EIRENARCHA:

OR OF

The Office of the Iuſtices of Peace, in foure Bookes.

Firſt gathered 1579. publiſhed 1581. and now fourthly *reuiſed, corrected, and enlarged in* this fortie and one yeare of the peaceable raigne of our moſt gracious Queene ELIZABETH.

By WILLIAM LAMBARD of Lincolnes Inne, Gent.

Hæ tibi erunt artes, pacique imponere morem.

AT LONDON,
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Cum Priuilegio.

do not well perceiue, how the reſtitution (that the Iuſtice of the Peace ought to make vppon ſuch a preſentment) can bee ſtayed, ſaue onely either by remouing of the record into the Bench of the Queene, or by alleadging three yeares quiet poſſeſſion: Thirdly, that if the Sherife ſhall returne ſmaller iſſues vppon the Enquirours than the Statute doeth appoint, yet the partye ſhall neuer take aduantage of it.

Reſtitution. Furthermore, though in ſome caſes for the puniſhing of the offendours (by impriſonment, and fine) it bee not altogether requiſite to bee found, that the party grieued is actually throwen out of his poſſeſſion by them, inſomuch as the onely holding with force will ſuffice for that purpoſe: yet (in other caſes) for the hauing of the reſtitution by the ſtatute, this putting out muſt of neceſſitie (ſaith M. Marrow) be founde by the Enquirie.

And therefore, if the truth of the caſe be, that after the death of A. an other man abateth (or entreth) into his land forcibly, before the heire of A. hath gotten any actuall poſſeſſion indeed: the heire of A. ſhall haue no reſtitution (as Mar. ſaieth) becauſe he had but a poſſeſſion in Lawe onely. So, if it be preſented, that you were ſeiſed, vntill that A. entred vpon you with Force: you ſhall neuer haue reſtitution by it, becauſe it may bee that hee entred forcibly, and that yet you

you were not put out of poſſeſſion by him, Mar. But, if it bee founde that you were ſeiſed, vntill that A. put you out with force: or vntill that A. put you out, & that he holdeth in with force, then you ſhall bee reſtored to your poſſeſſion, Mar.

And this putting out is alwaies to bee vnderſtood, either of a houſe (or land) onely, and not of a Rent, Common, Aduowſon, or of any ſuch other like thing, whereinto an actuall entry can not be made, Mar.

Moreouer, it is not enough that the putting out bee founde, vnleſſe the Enditement doe alſo containe *adhuc extra tenet*, that hee yet holdeth the other out of his poſſeſſion: without ỹ which, it may be thought that the other hath gotten in again, & then reſtitution ſhall be needles.

Againe, this reſtitution ought to be made to him that was put out, and to none other: So that, if the father be put out by force, and dyeth after the time of Enquirie, and before reſtitution, his heire ſhall not haue reſtitution vpon it, Mar.

And in ſome caſes (ſayeth Marr.) there may bee a mutuall (or croſſe) reſtitution awarded: as, if it bee founde by one Enquirie, that I my ſelfe was ſeiſed vntill that A. diſſeiſed mee with force: and by an other Enquirie, that the ſame A. was ſeiſed, vntill by mee diſſeiſed with force: nowe either of vs may pray reſtitution,

and



THE PROHEME.

TO write of the Office & Dutie of Iustices of the peace, after M. Marrow (whose learned reading in that behalfe made the 18. yeare of king Henry the 7. is in many hands to bee seene) & after the reuerend Iustice Fitzherbert (who published an excellent treatise thereof, which is yet euery where to be had) may at the first seeme no lesse vnaduisedly done, than if a man should bring Owles to *Athens*, (as the Prouerbe is) or to carie sticks into a growing Wood or Copise. Neuertheless, if it bee considered, that since their time, this Office is charged with many Statuts, which were not made when their Writinges were penned: and if it be weighed also, that sundry things in them had then the force of Law, which now at this day they haue lost by alteration of like authority: It can not be thought altogether in vaine, to conferre their writings

For conuerting a houſe to a Cottage, and for vpholding it.

IVratores pro dom. regina præſentant, quod 24. die Iulij anno regni dom. noſtræ Elizab. 32. quidam Io. Thurſtone de H. in dicto com. Calcearius, auſtralem partem cuiuſdam dom' manſionalis tunc & modo exiſtentis in H. prædict. in com. prædict. viz. vnam aulam, & 2. comeras ordinauit & conuertit, ad, & in cotagium pro habitatione, viz. vt quidam Anth. Burton de H. prædict. in com. prædict. Scilor eadem auſtrali parte dictæ domus pro habitatione ſua vteretur: qui quidem A. B. dictum illud cotagium modo inhabitat. Vbi reuera dictus I. T. nunquam aſſignauit aut adiecit dicto cotagio quatuor acras terræ ſecundum ſtatutum, ſiue ordinationem de terris manſionalibus computandas: de libero ipſius I. T. tenemento, vel de hæreditate ſua propè dictum cotagium iacentes, ac vnà cum dicto cotagio continuè occupandas, in magnum dict. dom. reg. contemptum, ac contra formam cuiuſdam ſtatuti in parliamento dictæ dom. reg. noſtræ tento apud Weſtm. anno regni ſui 31. in huiuſmodi caſu prouiſi ac edicti. Et vlteriùs præſentant, quod prædict. Anth. B. ipſum idem cotagium ſic vt præfertur conuerſum ac ordinatum à dicto viceſimo quarto die dicti menſis Iulij anno 32. ſupradict. vſque ad 29. diem huius præſentis menſis Sept. anno 32. ſupradict. apud Hilling prædict. voluntariè ſuſtinuit, manutenuit, & continuauit, in magnum dictæ dominæ reginæ contemptum, & contra formam ſtatuti prædicti. *Kanc.*

Hitherto of Enditements and preſentments: for a further direction wherein the Reader may haue recourſe to the fifth chapter of the fourth booke of the Eirenarcha before: in which he ſhall find further rules for the right framing of them.

with the Booke caſes, & Statutes that haue ariſen of latter times, and out of them all to collect ſome one body of diſcourſe, ỳ may ſerue for the preſent age wherein wee now liue, & ſomewhat further the good endeuor of ſuch gentlemen, as bee not trained vp in the continuall ſtudy of the Lawes.

In which doing, as I meane to robbe no man of his right, but to yeelde to each one the due prayſe of his owne, leaſt (as the Poet ſaide)

Moueat Cornicula riſum,
Furtiuis nudata coloribus:

So, if I my ſelfe ſhalbe found here and there to diſſent in opinion from other men, I deſire that my good meaning be not euill interpreted, that my allegations and reaſons be weighed indifferently, and that the reſpect of my perſon bring no preiudice to the thing in queſtion.

The diuiſion of this worke.

The whole labour I haue thought good (for helpe of the Readers memorie) to breake into foure ſeuerall Bookes, intending to ſpend the firſt, in a ſummarie conſideration & Theorique of the whole office belonging to this Iuſtice: & in the other three to ſet forth the whole practiſe of the ſame, as well at home, as at the Seſsions: dealing in the ſecond, with thoſe cauſes which one Iuſtice alone, & in the third with thoſe which two Iuſtices, may vndertake without the help of the Seſsion of the Peace: & in the fourth, handling ſuch matters, as haue regard onely to thoſe Seſsions.

THE

THE FIRST BOOKE,
containing a Theoricke (or inſight) of the Office of the Iuſtices *of Peace.*

What Iuſtices of the Peace be, and why *they are called* Iuſtices.

Cap. 1.

IVSTICES of the Peace, be Iudges of record, appointed by the Queene, to bee Iuſtices within certaine limites, for the Conſeruation of the peace, and for the execution of ſundry things comprehended in their Commiſsion, and in diuers lawes committed vnto their charge. A definition (or deſcription) of Iuſtices of the Peace.

Theſe, and many other Iudiciall officers in our law, bee called Iuſtices (*per Metonymiam ſubiecti*) becauſe they doe (or ſhould doe) Law, and Iuſtice. For in many olde Hiſtories, the Chiefe Iuſtice of *England*, is termed *Capitalis Iuſtitia*, and *Prima* (*poſt regem*) *in Anglia, Iuſtitia*: and the originall Writtes that are in maſter Glanuiles Booke (which was written vnder the reigne of King Henrie the ſecond) Why they be called Iuſtices.

haue this forme, *quod ſit coram me, vel Iuſtitijs meis*: And this (no doubt) was done of ſpeciall purpoſe, and to the end, that the mention of their name, ſhould put them in mind of their Office, and ſhould continually (as it were) ſolicite them to adminiſter Iuſtice, for whoſe ſake they were appointed.

But in the daies of King Henry the thirde, M. Bract. (who reduced the body of our law into Latine, and therein imitated the Methode of the Ciuill Lawyers) changed the word *Iuſtitijs* into *Iuſtitiarijs*, (how Latin like, let them iudge that can ſkill) and ſetteth downe the Writs accordingly, *coram Iuſtitiarijs noſtris*. Since which time, not onely all our Writs that commaunde appearance before the Iuſtices at *Weſtminſter*, doe vſe the word *Iuſtitiarys*, but all Commiſſions of Sewers of the peace, of Oyer and Terminer, & ſuch like, doe obſerue the ſame forme alſo.

And of this it commeth, that M. Fitzherbert (in his treatice of the Iuſtices of Peace) calleth them Iuſticers (contractly for Iuſticiars) and not Iuſtices, as we commonly (and not altogether vnproperly) do name them.

Of

Of the signification of this word Peace.

Cap. II.

Peace, hath many significations.

OF the Latine word *Pax*, the Normans framed their *Paix*, & we (out of that) our Peace: the which hath sundry significations both in ỹ holy Scripture of God, and in the Lawes of our countrie: For there is an inwarde, and an outward Peace. And this inward Peace, is either good, or euil: First then, ther is *pax apud Deum*, that is to say, our reconciliation made with God the father, by the obedience of Christ his sonne our sauiour: for hee is *pax nostra*, and hath appeased the wrath of God for our sinnes.

Out of this, proceedeth an other inwarde Peace, named the Peace of Conscience, for that our conscience is (by faith in Christ) at Peace, both with God & it selfe. The euil inward peace is that same mundane peace, whereof our sauiour Christ spake, saying: *Pacem do vobis, non quemadmodum mundus dat:* And this Peace, the kingly Prophet Dauid calleth *Pacem peccatorum*, because it is no better than carnall securitie.

The outwarde Peace, hath respect to other men, and that is of two sorts also: the one is opposed (or set) against all maner of striuing and cõtention, whether it be in countenance, gesture word, or worke: of the which S. Paul spake to the

Romans in these words: *Si fieri potest, quantum in vobis est, cum omnibus hominibus pacem habete:* And in the same meaning, the Latine men say, *Pace tua*, by your good leaue, or fauour, without your offence, or displesure. The other is onely an abstinence from actuall force, and offer of violence, and is rather contrarie to *arma, prælium*, and *bellum* (which cannot be without force, or armes) then it is to *lis, pugna*, or *certamen*, which (as Laurence Valla confesseth) may be *nudis verbis, & citra arma*. And heereof also our Sauiour Christ spake, when hee saide, *Non veni vt mitterem pacem, sed gladium.*

Peace in our Law.

The law of our Realme likewise vseth the word Peace diuerslly, but yet so, as it is altogether occupied about these outward Peaces. For as Cicero saide of fraudes, *aliter leges, aliter Philosophi, tollunt astutias: leges quatenus manu tenere res possunt, Philosophi quatenus ratione & intelligentia:* euen so may I truely affirme, that (in this matter of Peace) the Lawe of God (which is the only true Philosophie) respecteth the minde and conscience, although the Lawes of men doe looke but to the bodie, handes, and weapons.

Sometimes therefore, the word Peace is taken for Protection, or defence: as where M. Bracton calleth the Writs of Protection, *Breuia de pace:* Sometimes (as it seemeth to me) it is taken of Rights, Priuiledges, and Liberties.

as

as in the oth of the Queene at her Coronation, she sweareth, *Seruare Ecclesiæ Dei, Cleri, & populi, pacem ex integro*: the meaning whereof is, (as I suppose) that she will maintaine each degree and estate of her subiects, as well Ecclesiasticall, as Temporall (for *Populus* there comprehendeth all the Laitie) according to their seuerall customes, Lawes and priuiledges.

And sometimes it is taken for a withholding (or abstinence) from that iniurious force and violence, whereof I spake before. And this is that which is most commonly vnderstood by the word Peace, in our Law: & for the maintenance hereof chiefly, were these Wardens & Iustices of the Peace first made and authorised.

Peace for Iustices of the Peace.

For, Iustices of the Peace were not ordained (as some haue thought) to the end to reduce the people to an vniuersall vnanimitie (or agreement of mindes) which is indeed a thing rather to be wished for, then to be hoped after: Neither is it any part of their office, to forbidde lawfull suites and controuersies, (which neuertheless be disagreements of minds) but to suppresse iniurious force and violence, mooued against the person, his goods, or possessions.

And, that this may appeare to be the minde of that king, which first created these Wardeins or Iustices of the Peace (I meane King Edward the third) let mee shewe you the very Writ that he (in the first yere of his Raigne, and not many weekes

weekes before the Parliament, in which the Gardeins of the peace, who afterward obtained the name of Iustices of the peace were first ordained, did send to the Shirifes of all the Shires in *England*, bearing this forme.

Th. Walsingham in histo. pag. 107.

EDVVARDVS, *Dei gratia, Rex Angliæ, Dom. Hyberniæ, Dux Acquitaniæ, vicecomiti Kanc. salutem. Quia Dom. Edwardus, nuper Rex Angl. pater noster, de communi assensu prælatorum, Comitum, Baronum, & aliorum Magnatum, necnon Communitatum totius regni prædicti, spontanea voluntate se amouit à regimine dicti regni, volens & concedens quòd nos (tanquam ipsius primogenitus, & Hæres ipsius) regni gubernationem & Regimen assumamus: Nósque ipsius patris beneplacito in hac parte, de consilio & auisamento Prælatorum, Comitum & Baronum prædictorum annuentes, gubernacula susceptimus dicti regni, & fidelitates & homagia ipsorum Prælatorum & Magnatum recepimus, vt est moris: Desiderantes igitur pacem nostram pro quiete & tranquilitate populi nostri inuiolabiliter obseruari, Tibi præcipimus, quòd statim (visis præsentibus) per totam Balliuam tuam Pacem nostram facias publicè proclamari, vniuersis & singulis, ex parte nostra inhibendo sub pœna & periculo exhæredationis & amissionis vitæ & membrorum, ne quis dictam Pacem nostram infringere seu violare præsumat: sed quilibet actiones & quærelas absque violentia quacunque prosequatur, secundum leges & consuetudines*

etudines regni nostri: Nos enim parati sumus, & semper erimus, omnibus & singulis conquerentibus, tam diuitibus quàm pauperibus, in Curijs nostris plenam iustitiam exhibere. Teste meipso, Calendas Februarij, die dominica, in vigilia Purificat. &c.

This Writ I haue the rather chosen to set downe at large, because it containeth a faire shew of a foule shift, I meane, his attaining to the Crowne, by the deprriuation of his owne father.

But (for the present purpose) by this Writ it is manifestly declared, that the peace which hee meant, was not an vniting of mindes, but a restraining of handes: which is (in a manner) all one with that which Tullie writeth in his Oration *pro Sestio*, where he setteth *Vis* and *Ius* one against the other: and it agreeth well with that description and diuision of *Vis*, which M. Bracton maketh (*lib.* 4. *ca.* 4.) saying: *Vis est, quotiens quis (quod sibi deberi putat) non per Iudicem reposcit: Est autem interdum armata, interdum inermis.* According to the which meaning also, the old Statute of *Westminster* the first (*cap* 1.) saide, Let the peace of the land bee maintained in all points: and common right bee done to all, as well poore, as rich: Thereupon likewise sayeth the Statute (1. R. 2. cap. 2.) Let the peace bee well and surely kept, that the Kings subiects may safely go, come, and abide, according

according to the Lawe of the Realme: and that Iuſtice and right be indifferently miniſtred to euery ſubiect.

Finally the Statutes of 2. R. 2. cap. 4. 1. H. 4. cap. 1, and 7. H. 4. cap. 1, do all (in plaine ſpeech) couple the maintenance of the Peace, with the purſuing of ſuites, as things that may right wel ſtand together. And therefore, I conclude, that this furious geſture, and beaſtly force of body, or hands (and not euery contention, ſuite, and diſagreement of mindes) is the proper ſubiect and matter, about which the Office of the Iuſtices of the Peace is to be exerciſed.

Iuſtices of the Peace, be meete to pacifie ſuits.

Howbeit I write not this, as though I woulde not haue a Iuſtice of the Peace to occupie himſelfe alſo in pacifiyng the ſuits and controuerſies, that do ariſe amongſt his neighbors: Yea, rather I wiſh him to be, as wel εἰρηνοποιὸν, as εἰρηναρχῶ, a Compounder, as a Commiſſioner of the Peace: and I thinke him ſo much the meeter to ſtep in betwixt thoſe that bee at variance, as (by reaſon of his learning, wiſedome, authoritie, & wealth) he is like to preuaile more, by his mediation and intreatie, then is another man. But yet, as it is not all one, to ſpeake of his proper office in Lawe, and of his comon duetie in Charitie: ſo I thought good (for learning ſake) to ſeuer & diſtinguiſh them, in this Treatie.

Of

Of ſuch as had the Conſeruation of the Peace at the Common Lawe.

Cap. III.

AS the Common Lawe hath (euen from the beginning) continued a ſpeciall care for the conſeruation of this Peace: So did it not want meete Officers, (before that theſe Wardens or Iuſtices of the peace were made) to whoſe charg it did recommend the maintenance of the ſame: And foraſmuch as it will giue no ſmall light to the vnderſtanding of the office of the preſent Iuſtices of peace, to haue that ancient autority vnfolded, vpon the which this latter power is (as it were vpon a ſtocke) ſet & engrafted, I will ſpeak ſomwhat therof, before I begin with the other.

At the common Law therfore, and before the time of king Edw. the third, there were ſundry perſons that had intereſt in the keeping of the Peace. Of thoſe, ſome had that charge as incident to other Offices which they did beare, and ſo included within the ſame, that they were neuertheleſſe called by the names of their other Offices onely: Some others had it ſimply, as of it ſelfe, and were thereof named *Cuſtodes pacis*, Wardens or Conſeruators of the peace. Conſeruators of the Peace.

Againe, of theſe that had charge ouer the Peace, by the dignity of their Offices, ſome had By other Offices.

that

that power ouer all the realme, and ſome others had it within certaine limites onely: and both theſe ſorts after a diuers maner of diſpenſation, as in particularitie it ſhall appeare.

The Queenes maieſtie then, is (by her office and dignitie royall) the principall Conſeruator of the peace within her Dominions, and may giue authoritie to others, to ſee the peace kept, and to puniſh ſuch as ſhall breake the ſame. But, a Duke, Earle, or Baron, bee no Conſeruators of the Peace: becauſe thoſe bee no tytles of Office, but of dignitie onely, as ſayeth Marrow.

The Lord Chancellor (or Lord Keeper of the great Seale) the Lord Steward of England, the Lord Marſhall and Conſtable of England, and euery Iuſtice of the Kings Bench, haue (cloſed in their offices) a credite for conſeruation of the peace ouer all the realme, and may award precepts, and take Recognuſances, for the peace, Marrow and Fitzherbert. And (by good opinion) the Lord Treaſurer of England may well be added to the ſame number.

The maſter of the Rolles alſo (by the iudgement of M. Marrow) is a generall Conſeruator of the peace by his Office. But hee maketh proceſſe and taketh Recognuſances thereupon, not as incident to his office, but by preſcription.

The Iuſtices of the Common Place, and Barons of the Eſchequer, be Conſeruators within ſpeciall

ſpeciall places onely: that is to ſay, within the precincts of their ſeuerall Courts: So alſo the Iuſtices of Aſſiſes may award a man to priſon that breaketh the peace in their preſence, and they may commaunde the keeping of the peace vnder a paine, and that weapons be taken from the Iurours or Witneſſes, that appeare before them, if any complaint be thereupon made: But as they bee meerely Iuſtices of Aſſiſe, they can neither take Suerty of the peace, nor award any proceſſe for it, Marrow.

The Iuſtices of Gaole deliuerie, may take ſuerty for the peace of a priſoner before them, that was committed for not finding ſuertie of the Peace, Marrow.

The Coroners (ſayeth Britton, fol. 3.) bee principall Conſeruatours of the Peace within their counties: And euery Sherife is a Conſeruatour of the Peace, within his Countie: as Iudge Fineux affirmed, 12. Hen. 7. 17. and after him M. Fitzh. Nat. breu. fol. 81. where hee ſayeth, that the Sherife may (vppon requeſt made, and without any writ ſent vnto him) commaund a man to find Suerty of the Peace by Recognuſance.

The Steward of the Marſhalſey, may take Suertie of the Peace by Recognuſance alſo within the Vierge by preſcription: and the Conſtable Marſhall of the Queenes houſe, may ſee to the Conſeruation of the Peace within

within the ſame houſe. Marr.

The ſteward of the Sheriffes Turne, the ſteward in a Leete, or the ſteward in a Court of Pipowders, cannot graunt Suertie of the Peace, vnleſſe it bee by preſcription. But euery of them may commit him to Warde, that ſhall make any affray in their preſence, whileſt they be in execution of their offices: which is more than the Steward and Suitors in a court Baron can doe, Marrow: but the firſt two of theſe, may alſo take preſentment of any offence againſt the peace.

To be ſhort, euery Conſtable, Petie Conſtable, Tithingman and Borowhead, bee Conſeruators of the Peace by their offices, within the limits of their Hundreds, Townes, Tythings, and Boroughs, 12. Hen. 7. 17. Fineux. And by the ſame reaſon, our Borſholder in Kent, and their Thirdborowe in Warwicke-ſhire, bee Conſeruatours alſo within their Boroughes. For Borowhead, Borſholder, and Tythingman, bee three ſeuerall names of one ſelfe ſame Office, and doe ſignifie, The chiefe man of the free pledges within that Borowe, or Tything. And whereas each third Borow onely, hath a Conſtable, there the Officers be called Thirdborowes.

Theſe Conſtables were ordained (as it appeareth, 3. Hen. 4. 9. & 10. Hen. 4. & Fitzh. fol. 172.) to keep the Peace, and to repreſſe felons,

and

and might take ſuerty of the Peace (by obligation) if they found any man making an affray; or otherwiſe commit him to priſon, vntill hee ſhould find ſuch Suertie.

I haue read alſo, that a Conſtable might (at the common law) haue bailed a ſuſpect of felonie by Obligation, becauſe he was a Conſeruator of the Peace: and that both he and the Sherife loſt this authority by the Statuts (3. H. 7. ca. 3. & 1. & 2. Ph. & M. ca. 13) The which ſtatuts, in giuing that power to Iuſtices of the peace, do (in the opinion of ſome men) take it from y Sherife & Conſtable: reported by Daliſon Iuſtice.

Simple conſeruators.

Hitherto then, of ſuch as had, and yet haue, the charge of the Peace conueyed vnder their other Offices. Now as touching thoſe that had the ſimple Office of Wardeins (or Conſeruators) of the Peace, it is to bee vnderſtoode, that they alſo were of two diuerſe ſortes: that is to ſay, either Ordinarie, or Extraordinary: and the Ordinarie Conſeruators, were either by Preſcription, Election, or Tenure.

Ordinarie.

By preſcription.

A man may preſcribe (ſaith M. Marrow) that he and his anceſtors, or he and they whoſe eſtate he hath in the Manor of Dale, haue bin Conſeruators within the Hundred of Sale, either al the yeere, or onely at one certaine time of the yere. And as he may preſcribe in the power it ſelfe, ſo alſo may hee in the manner of the exerciſe of the ſame: as, that he & they haue vſed to take Suerty

of Peace by obligation, pledge, or Caution: and ſo alſo in the maner of the Proceſſe therefore, as to Diſtreigne, and to ſell the diſtreſſe: Mar.

But al this is to bee doubted of, becauſe that in the opinion of Brian and Pigot (21.E.4.67. & 22.E.4.35.) the Maior of Dale can not preſcribe to be a Conſeruator, or to commãd Suretie of the peace, or to commit to priſon for an affray in his preſence vntil ſuch ſuertie be found.

Furthermore, euen as the Sherifes were anciently choſen, and as the Coroners yet be: So alſo certaine perſons were wont to bee elected By Election. Conſeruators of the peace, in the full Countie before the Sherife: and of this kinde I my ſelfe haue ſeene certaine Records (*in Rotul. patent. de Anno* 5.E.1.) running in this courſe.

Firſt, a writ to the Sherife of Norfolke, commanding him to chooſe in his full countie *vnum hominem de probioribus & potentioribus comitatus ſui, in cuſtodem pacis.*

Then, another writ directed *ballinis & fidelibus* of the ſame county, giuing vnto them notice of the former writ, to the end (as it ſeemeth) that the Bailifes ſhould warne the men of the county, and that they ſhoulde appeare at the Countie Court, to make the Election.

And laſtly, to the Conſeruator elected, this Writ following.

EDWARDVS *Dei gratia Rex Angliæ, Dominus Hybernia, & dux Aquitaniæ, dilecto &*

to & fideli ſuo, Iohanni le Bretun Salutem: Cùm vicecomes noſter Norfolc. & communitas einſdem comitatus elegerit vos in Cuſtodem pacis noſtræ ibidem: vobis mandamus, quòd ad hoc diligenter intendatis, prout idem vicecomes vobis ſciri faciet ex parte noſtra, donec aliud inde præceperimus. In cuius rei, &c. Datum per manum venerabilis patris F. Bathon & Wellen Epiſcopi, Cancellarij noſtri, apud Ceſt. ſecundo die Septemb. Anno regni noſtri quinto.

By Tenure.

Touching the Conſeruation of the peace by Tenure of land: M. Marrow putteth this caſe: If the King graunt vnto a man, lands to holde of him by Knights ſeruice, and to be a Conſeruator of the Peace in a countie, hee is a conſeruator by Tenure: agreeably whereunto ſayth an Inquiſition found at Cheſter (An. 4. E. 2.) after the death of one Vrianus de Sancto Petro (*inter alia*) thus:

Quod idem Vrianus tenuit de domino rege in capite in dominico ſuo vt de feodo, die quo obijt, Medietatem Seriantiæ pacis, per ſeruitium inueniendi decem ſeruientes pacis ad cuſtodiam pacis in Ceſtr. pro qua quidem cuſtodia anteceſſores ſui percipere ſolebant xxx. ſolidos, per annum ad Scaccarium Ceſtr. pro Mantellis dictorum decem ſeruientum &c.

Extraordinary Conſeruators.

Theſe ſorts and ſome others (which M. Marrow reciteth, and which I, wanting Recordes to warrant them, doe omit) I call Ordinarie

Conſeruators of the Peace: becauſe their authoritie was then Ordinarie, alwayes one, and the ſame well enough knowen: But the Extraordinary Conſeruator, as he was indowed with an higher power, ſo was hee not ordinarily appointed, but in the times of great troubles onely, much like as the Lieutenants of Shires are now in our daies.

And he had the charge to defend the coaſts and countrey, both from forraine and inwarde enemies, and might commaund the Sherife and all the Shire, to aide and aſſiſt him: as it may well appeare by this Patent (remaining of Recorde in the Tower) *Rot Patent de An.* 49. H. 3. made by that king, or rather in his name, by Simon Earle of Leiceſter, whoſe priſoner he then was.

REX Iohanni de Pleſſet ſalutem. Cùm nuper de conſilio Magnatum qui ſunt de cõſilio noſtro, conſtituerimus vos cuſtodem pacis noſtræ in comitatu Northumb. ac vos tam laudabiliter & circumſpectè in officio illo geſſeritis, quòd probitatem ac diligentiam veſtram meritò duximus recõmendandam & adhuc neceſſe ſit (ſicut intelleximus) quòd ad tuitionem illarum partium & conſeruationem pacis noſtræ, eidem officio intendatis: vobis (de conſilio Magnatum prædictorum) mandamus firmiter iniungentes, quatenus omnem diligentiam (quam poteritis) adhibeatis ad pacem noſtram conſeruandam in partibus prædictis, in forma qua vobis aliàs iniunximus. Mandauimus enim

enim Vic. noſtro Northumb. quòd quotiens opus fuerit, & à vobis fuerit requiſitus, cum toto poſſe ſui comitatus, vobis ad hoc aſſiſtat. Nolumus autem, quòd pretextu huius mãdati noſtri, de aliquibus (quæ ad officium vic. pertinent) vos intromittatis, quòminus vic. de exitibus eiuſdem comit' nobis plenè reſpondere valeat ad Scaccarium noſtrum. Teſte Rege, apud Weſtmonaſt. xi. die Februarij, Anno regni ſui quadrageſimo nono.

Sundry the like Patents were at the ſame time made: as to Iohn de la Hay, to be Conſeruator of *Kent*, & of the ſea coaſts there: to Ralph Baſſet of *Drayton*, to bee Conſeruator of *Staffordſhire*: & ſo to others, for other counties: And the like did afterward grow to be vſuall, in the times of inteſtine troubles, or of forraine wars.

Of the firſt ordaining of the *Wardeins* and *Iuſtices* of the Peace, by Statute Lawe.

Cap. iiii.

After ſuch time as Queene Iſabell (cõtending with her huſband, king Edward the ſecond) was returned ouer the ſeas into *England*, accompanied with her ſonne Prince Edward (called afterward the third king of that name) and with Sir Roger Mortimer, and ſuch others of the Engliſh nobilitie, as had for the indignation of

the king, fled ouer the seas vnto her: She soone after got into her handes the person of the olde king, partly by the assistance of the Henalders that she brought with her, & partly by the aid of such other her friends as she found ready here: & she immediatly caused him (by forced patience) to surrender his crowne to the yong prince. And thē also, forasmuch as it was (not without cause feared, that some attempt would be made to rescrue the imprisoned king) order was taken, that he should be conueied (secretly, & by night watches) from house to house, & from castle to castle, to the end that his fauorers should be ignorant what was become of him. Yea, and then withal it was ordained by parliament, in the life time of that deposed king, and in the very first entrie of his sonnes reigne, (1. E. 3. cap. 15.) That in euerie shire of the realme, good men and lawful (which were no mainteiners of euill, nor Barettours in the Countrey) should bee assigned to keepe the peace: which was as much to say, that in euerie shire the king himselfe shoulde place speciall eyes and watches ouer the common people, that should bee both willing & wise to foresee, and be also enabled with meet authoritie to represse, all intention of vproare & force, euen in the first seede thereof, and before that it should grow vp to any offer of danger. So that, for this cause (as I thinke) the election of the simple Conseruators (or Wardeins) of the peace

was

was firſt taken from the people, and tranſlated to the aſſignement of the King.

And whether the authoritie & power of theſe Wardeins were then alſo with this alteration any thing increaſed, or no, I will not affirme: But I find (3. E. 3. *tit. Coron.* Fitzh. 360.) that an Enditement of murther was founde before one Wardein of the peace onely, and that hee thereupon wrote his letter (or precept) to the Sherife, to apprehend the perſon endited, who tooke & brought him before the Iuſtices in Eire: and that they alſo thereupon proceeded to the arraignment and triall of him.

And the ſtatute (4. E. 3. cap. 2.) taketh order, that ſuch as ſhould bee indited, or taken by the Wardeins of the peace, ſhould not be bailed by the Sherif, or other Miniſters, vnleſſe they were Mainpernable by the Law.

Howſoeuer that were, the ſame king vſed (as I think) for the firſt 33. yeeres of his reigne, to make his aſſignements and commiſſions to the Wardeins of the peace, not alwayes ſeuerally into each ſhire, but ſometimes ioyntly to ſundry perſons ouer ſundry ſhires: for ſo I find a commiſſion (2. E. 3. *part.* 2. *patent. in dorſo*) made to William Roos & three others his companions, to be Wardeins of the peace, not onely in Lincolneſhire, but alſo in three or foure of the other Counties thereunto next adioyning,

Commiſſions, or aſſignmēts, for the peace.

This, though it might ſeeme to be warranted

after 18. Ed. 3.) vpon the Construction of the word Counties, vsed Pluraly in the Statute, 18.E.3.Stat.2.ca.2. yet was it much contrarie to the meaning of the former lawes (made 1.E. 3.cap.15: & 4.E. 3.cap.2.) where the same word is read (Euerie Countie) in the Singular number. And therefore the Parliament (34.E. 3.ca.1.) restored the proper sense of those lawes, saying: In euerie Countie of *Englande*, there shall bee assigned for the safe keeping of the Peace, one Lord, and with him, three or foure of the mightiest men in that Countie. And afterwardes it addeth, They shall haue power to heare and determine (at the kings suit) all maner of Felonies and trespasses, done in the same Countie.

And hereof it commeth to passe, that euer sithence each Countie hath her proper Commissioners for the Peace, and Counties haue not beene conioyned in Commission, as they were sometimes before. Hereunto also may that bee referred, which M.Fitzh.(Fo.171.) hath, saying, That before the Statutes which ordained Iustices of the Peace, the king vsed to make Conseruators of the Peace by his commission, in those Counties and places, where he thought best, to keepe his Peace.

The first name of Iustices of Peace.

But now, at what time these Wardeins of the Peace, were first named (& might truly be termed) Iustices of the Peace, it is not so euident, that

that I dare determine vpon it. For, on the one ſide I know, that M. Marrowe taketh it cleare, that they were made Iuſtices by the Statute 18. E. 3. Stat. 2. cap. 2. and on the other ſide I ſee, that they were not named Iuſtices in anie Statute (that I haue found) within 17. yeeres after it.

There is a ſhewe (I confeſſe) in that Statute (18. E. 3.) that they ſhould be Iuſtices, becauſe of their power to heare and determine felonies, which is mentioned there. But if it be well weighed, it will appeare by the Statute it ſelfe, that the Wardeins of the Peace then were to haue one Commiſſion by themſelues for the keeping of the Peace: and that they and others (onely at times needfull) were to haue another Commiſſion to heare and determine Felonies: So that, as they were meerely Commiſſioners for the Peace, they had none authoritie to determine felonies: and conſequently could not (in regard thereof) be then worthily called Iuſtices.

And it is plaine (in mine opinion) that the generall power of determining felonies, was firſt giuen vnto the Wardeins of the Peace (as to themſelues) by the ſtatute 34. E. 3. cap. 1. After which time alſo it is very true, that they were both commonly reputed, and called Iuſtices.

For within one or two yeares after that Statute, there is a Commiſſion, which I haue ſeen

(in.

(*in dorſo patentium parte* 2.) that ſpeaketh thus, *Aſſignauimus etiam vos, & tres veſtrum, Iuſticiarios noſtros, &c.* and the Statute (36. E. 3. cap. 12.) taking order for the Quarter Seſſions to be holden, as well by them, as by the Commiſſioners for Labourers, calleth them plainly, Iuſtices of the Peace.

By whoſe authoritie, and by what meanes, *Iuſtices* of the Peace be appointed: and of what ſorts they be.

Cap. v.

FRom the King (who is the head of Iuſtice) ought to flow all authority to the inferiour and ſubalterne Iuſtices. And vpon this reaſon, it ſeemeth that the ſaid Statutes (18. E. 3. cap. 2. and 34. E. 3. cap. 1.) did ordaine, that the Wardeins of the Peace in each Countie ſhould be aſſigned by the Kings Commiſſion: to the ende that it might thereby appeare, that they receiued their whole authoritie and power, as it were by his owne hand or deliuerie.

Howbeit afterward, partly through ſuch as had *Iura regalia* within their Counties Palatine, and did thereby make Iuſtices of the Peace in their own names: and partly by the meanes of ſundrie Abbats and Religious perſons, who (labou-

(labouring by all policie to increaſe their iuriſdictions, and to ſhoale out themſelues from the ordinarie gouernement) had obtained graunts from the Kings of the Realme, that they themſelues might make *Iuſticiarios ſuos ad pacem conſeruandam* within their owne liberties, this prerogatiue of making Iuſtices was in manie places afterwarde ſeuered from the crowne, to no ſmall detriment of the royall eſtate and dignitie.

And therefore, although by the opinion of Iudge Fineux in the Abbat of Saint Albans caſe (20.H.7.8.) ſuch a graunt was of no value in law, becauſe it was of a Prerogatiue inſeparably annexed to the crowne: yet King Henry the eight thought it fit (by a generall reſumption in Parliament of all ſuch liberties) to reſtore vnto the crowne her ancient right in this behalfe. Whereupon (27.H.8.cap.24.) it was decreed, that no perſon whatſoeuer, ſhould haue any power to make Iuſtices of the Peace: but that they ſhould bee made by letters patents vnder the Kings great ſeale, in the name, and by the authoritie, of the King and his heires, Kinges of the Realme, in all Shires, Counties Palatine, and other places within his dominions.

So that now again, all Iuſtices of the Peace at this day (except the Archbiſhop of *Yorke*, and the Biſhops of *Durham* and *Elie*, and their temporall

temporall Chancellors for the time being, which are seuerally by that very Parliament authorised to be Iustices of the Peace within the liberty of *Hexam*, the Bishoprike of *Durham*, and the Ile of *Elie*: and except the Iustices of Peace, within the County Palatine of *Lancaster* (which also are by prouision in the same Statute to be made vnder the Kings vsual seale of the same Duchie) all others I say, bee ordained by the meane of the great Seale, and by the ministerie of the L. Chancellor, hauing the charge of the same: but yet so, that some of them be made by Letters Patents vppon speciall suite to the Queene, and by her bill assigned: and other some by Commission of Common Course, that resteth in the dispensation of the L. Chancellor himselfe.

Two sortes of Iustices of the Peace.

They of the first sort, be of some called Iudiciall Iustices, & Iustices of themselues: for that the Queene cannot discharge them at her will and pleasure, because they are to continue, and to enioy Iurisdiction, so farre forth as their Patent of graunt doth enable them. Mar.

By graunt.

And therefore, if the Queene doe graunt vnto a man to be a Iustice of the Peace during his life within a certain precinct, without any further wordes: he shall continue such a Iustice during his life: and shall haue all that power, that a Wardeine, or Conseruator of the Peace had: and perhaps such power also, as is giuen to a

Iustice

Iuſtice of the Peace by expreſſe wordes in ante Statute: but he ſhall not haue all that power, which is ordinarily giuen to the Commiſſioners of the Peace by their Commiſſion. Mar.

The Maiors, and other head officers, of many Cities and corporate Townes, be Iuſtices of this kind at this day, by grants of the Queene, and her progenitors.

Thoſe other Iuſtices of the Peace, which deriue their power from the Commiſſion, bee called Commiſſioners of the Peace: and doe differ from the other in this point ſpecially, that they be Iuſtices during onely the Queenes life, and (in her life) during onely her owne will, and pleaſure. By Commiſſion.

Theſe (as I ſaide) bee nowe at this day appointed by the diſcretion of the Lord Chancellor: but whether the king himſelfe did at the firſt nominate them (as he did thoſe which were made by Graunt) or elſe did leaue the choice of them to the Lord Chancellor alone, or to him & others, it hath ſome ſhew of queſtion. Commiſſioners of the Peace appointed by the Lord Chancellor.

It is true, that in the Parliament holden at *Canterbury* 12. R. 2. cap. 2. (which happened ſhortly after that Michael de la Pole was remooued from that place, and after the troubleſome Parliament of the eleuenth yeere of that Kings raigne.) It was enacted, that the Chancellor, Treaſorer, and keeper of the priuie Seale, the Steward of the kinges houſe, the kings

kings chamberlaine, clearke of the Rolles (now called maſter of the Rolles) the Iuſtices of both Benches, the Barons of the Exchequer, and others that ſhould bee called to the naming of the Iuſtices of the peace, Shirifes, Eſcheatours, cuſtomers, controllers, and other officers, ſhould be ſworne to do the ſame faithfully, and without affection. But, whether the meaning of that ſtatute were, that they all ſhould be continually preſent together at the nomination of all ſuch officers: and whether that ſtatute were made but for that buſie time onely, it may well be doubted. For againe, vpon fault found (as it ſhould ſeeme) that the Commiſſioners of the Peace were made of perſons inſufficient, and dwelling in forren counties, it was enacted (2. H. 5. Parli. 2. cap. 1.) that from thenceforth they ſhould be aſſigned by the aduiſe of the chancellor and of the kings counſel: which words may be taken to ſound, as though they had beene named before by the Lord chancellor alone: and yet, may they alſo indifferently bee extended, either to adioyne the aduiſe of the kings counſell to the chauncellor, or the aduiſe of them both vnto the king himſelfe.

This is out of all doubt that 18. H. 6. cap. 11 did take order, that (vpon knowledge giuen to the chancellor of England, by any appointed to be a Iuſtice of Peace, that he had not landes to the value of twentie pound by yeere) the chancellor

cellor himſelfe ſhould put another ſufficient in his place. And for want of ſufficient men, hauing landes of that value, learned in the Lawe, and of good gouernance, that the chauncellor of England, for the time beeing, ſhould haue power, by his diſcretion to put into the commiſſion other diſcreete perſons learned in the Law, though they had not lands to that value. And albeit this credite were heere giuen vnto him in theſe particular caſes onely, yet may it well be thought, that he had beene before, and ſhould be afterward, truſted with the choice of all the Commiſſioners of the Peace generally: the rather alſo, for this preſumption gathered vpon the ſtatute (3. E. 6. cap. 1.) which mentioneth, that the nomination of the *Cuſtos Rotulorum* (being a very ſpecial Iuſtice of the Peace) had of long time before belonged to the office of the chauncellor: vntill that (vpon ſiniſter occaſion) it was taken from him by the ſtatute of 37. Hen. 8. cap. 1. whereof you ſhall read more in the fourth Booke of this treatiſe.

What

What manner of men, the Commissioners of the Peace ought to be.

CAP. VI.

IN the choice of the Wardeins and Iustices of the Peace, the Statute lawes haue respect to the maners, and abilitie (or liuelihood) of them all: and to the skill and learning of such as are specially selected, and therefore named of the *Quorum*. For, Gardeins of the Peace ought to be good men and lawfull: no mainteiners of euill: nor Barretours in the countrey: or (as some bookes haue it) no mainteiners of euill Barretours in the countrey. 1. Ed. 3. cap. 15. Men of the best reputation (*Meultz vailantz*) moste substantiall (or of moste valour) shall be assigned keepers of the Peace. 18. E. 3. cap. 2. & 17. R. 2. cap. 9. In euery Countie, for safegard of the Peace shall be assigned one Lord, and with him three or foure of the (*Meultz vailants*) moste valiant men of the Countie, together with some Sages of the Lawes. 34. E. 3. cap. 1.

And, after some troubles in the time of K. Richard 2. it was enacted, that none shall bee made Iustice of the Peace, for any gift, brocage, fauour, or affection: nor any which sueth by himselfe or any other, priuily, or openly, to be a Iustice of the Peace, shall be admitted

to

to that office 12.R.2.ca.2: And of ſome ſpeciall pollicie it was then alſo prouided, (cap. 10. of the ſame parliament) that no Steward of any Lord ſhould be aſsigned in the commiſſion of the Peace. Howbeit in the Parliament of the next yeare (ca.7.) it was ordered, that (notwithſtanding that clauſe of the former ſtatute) Iuſtices of the Peace ſhould then bee made of newe in all places, of the moſt ſufficient knights, Eſquires, and men of law.

Againe, Iuſtices of the peace (eſpecially thoſe of the Quorum) from henceforth ſhal be made of the moſt ſufficient perſons, dwelling in the countie (without taking any others dwelling in forraine Counties) except the Lords, Iuſtices of both Benches, Iuſtices of Aſsiſe, the chiefe Baron, the chief ſtewards of the Duchy of Lancaſter, the Serieants, and the kings Attourney. 2.H.5.Parl.2.cap.1.

Laſtly, for that (contrary to thoſe former ſtatutes) men of ſmall ſubſtance had crept into the Commiſsion, whoſe pouertie made them both couetous and contemptible: a newe lawe was publiſhed, to this effect following:

None ſhall be aſſigned Iuſtice of the peace, if he haue not lands or tenements to the value of xx. poundes by the yeare: And if any bee otherwiſe appointed, hee ſhall within a monethafter notice of the Commiſsion (and vnder the paine of twentie poundes, and to bee

put out of the Commiſsion) giue knowledge of his not hauing ſuch lands or tenementes, to the Lord Chauncellor, who ſhall put another perſon ſufficient in his place. And the like paine is, if he ſit or make Warrant or any Precept, by force of the Commiſsion. But this extendeth not to cities, boroughs, or towns that be counties of themſelues, or that haue Iuſtices of peace (dwelling in them) by Commiſsion or graunt of the King: Nor to ſuch Counties, where there be not men ſufficient (hauing landes or tenements to the value aforeſaide) learned in the Law, and of good gouernance: for then, other diſcrete perſons (learned in the Lawe) may by the Lord Chancellour be put in the Commiſsion. 18. H. 6. cap. 11.

Now although this portion of twenty poũds. by yeare, be not at this day in account anſwerable to the charge and countenance of a fit Iuſtice of the Peace: yet who knoweth not, that at the making of this Lawe, it was farre otherwiſe: And therefore I do not doubt, but as the rate of all things is greatly growne ſince that time, ſo alſo there is good care taken, that none be nowe placed in the Commiſsion, whoſe liuings bee not anſwerable to the ſame proportion.

Thus then, our Parliaments (intending to make the Iuſtice of Peace an able Iudge) do require, that he come furniſhed with three of the principall ornaments of a Iudge: that is to ſay,

with

with Iuſtice, Wiſedome, and Fortitude, for to that ſumme the words, Good, Learned, Valiant do fully amount. And vnder the word Good, it is meant alſo that he loueth & feare God aright without the which he cannot be Good at all.

Howe manie Commiſsioners of the Peace there ought to be in each Countie.

Cap. vii.

The number of the Wardeins of the peace was not limitted, vntill that the Statute (18.E.3.ca.2.) ordained, that there ſhoulde bee two or three in each countie: And becauſe it was found, within a few yeares experience, that this number ſufficed not for the gouernance of the countrie, therefore by an Act (made 34.E.3.cap.1.) it was further prouided, that in euery Shire, one Lord, and with him three (or foure) of the Beſt in the Countie, and ſome learned in the Lawes, ſhould be aſſigned for keeping of the Peace, and to reſtraine offendors.

In execution of which Statute, there was (amongſt many other) which I haue ſeene, one Commiſsion for Kent, awarded (35.E.3.) to theſe eight perſons, Robert Herle, Iohn Cobham, Roger Northwood, Ralph Freningham,

Thomas Lodelow, Robert Vintar, Iohn Barrie, and Thomas Hartrege.

But, as it falleth out many times, that euill examples doe follow of good lawes: So, here it cam to passe, that whilest the parliament prouided an increase of Officers, to restraine offendors, ambition so multiplied the number of those Iustices, that it was afterwarde high time to make a contrarie lawe, to diminish them. And therefore by the statutes (12.R.2.cap.10. and 14.R.2.cap.11) it was prohibited, that there shoulde bee anie moe then sixe Iustices of the peace in any Commission, besides the two Iustices of Assise, and certaine Lords that were assigned in the Parliament it selfe. And, for the better restraint of the increase of them in time to come, it was also then further enacted, that no Association should bee made to the Iustices of peace, after their first commission, 12.R.2. cap.10. Which law, although it bee not abrogated till this day, yet was it long since eluded, by making of new commissions that had more new Iustices thrust into them.

Very many Iustices of peace at this day.

And (truely) it seemeth to me, that (together with the like ambitious desire of bearing rule in some) the growing number of the Statute lawes, committed from time to time to the charge of the Iustices of the peace, hath been the cause that they also are now againe increased to the ouerflowing of each Shire at this day.

For,

For, if Huſſey (the thiefe Iuſtice. 1.H.7.3.) did think it was inough to load al the Iuſtices of the Peace of thoſe dayes, with the execution, onely of the Statutes of *Wincheſter* and *Weſtminſter*, for Robberies and Felonies: the ſtatute of Forcible entries: the ſtatuts of Laborers, Vagabonds, Liueries, Maintenance, Embracerie, and Sherifes: Then, how many Iuſtices (thinke you) may now ſuffice (without breaking their backs) to beare ſo many, not Loads, but Stacks of Statutes, that haue ſince that time beene laide vpon them?

Iuſtices of Peace be ouerladen with ſtatutes.

To diſpute, where it bee now better to haue many or fewe Iuſtices of the Peace in each Shire, is a noble queſtion, & worthie of a higher conſideration: and therefore it becommeth not me to enter into it.

The Forme of the late reformed *Commiſsion* of the Peace.

Cap. viii.

COnſidering that all the authoritie and power of theſe commiſsioners of the peace, floweth out of their Commiſsion, and out of the Statutes (as it were from two principall Heads, or Fountaines) the place now requireth, firſt, that we vnfold the commiſsion it ſelfe, and conſider what is contained therein: then afterwardes,

that we peruse the Statuts also, as they arise and shew themselues.

The Salutation.

ELIZABETH *Dei gratia Angliæ, Franciæ, & Hyberniæ Regina, fidei defensor, &c. Prædilecto & fideli, Ioanni Cantuar. Archiepiscopo, &c. Necnon prædilecto* Thomæ Egerton, *militi, Domino custodi magni sigilli nostri &c. salutem.*

The power of the Iustices The 11. Ct Clause.

SCIATIS, *quòd assignauimus vos coniunctim & diuisim, & quemlibet vestrum, Iusticiarios nostros, ad pacem nostrã in comitatu nostro Kanciæ conseruandam: Ac ad omnia Ordinationes & statuta pro bono pacis nostræ, ac pro conseruatione eiusdem, & pro quieto Regimine & gubernatione populi nostri edita, in omnibus & singulis suis Articulis, in dicto comitatu nostro (tam infra libertates, quàm extra) iuxta vim formam & effectum eorundem, custodiendum & custodiri faciendum: Et ad omnes contra formam Ordinationum, vel Statutorum illorum, aut eorum alicuius in comitatu prædicto delinquentes, castigandum & puniendum, prout secundum formam Ordinationum & Statutorum illorum fuerit faciendum: & 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 inueniendam, coram vobis, seu aliquo vestrum, venire faciendum: & (si huiusmodi*

iuſmodi ſecuritatem inuenire refuſauerint) tunc eos in priſonis noſtis (quouſq; huiuſmodi ſecuritatem inuenerint) ſaluo cuſtodiri faciendum.

Aſsignauimus etiam vos & quoſlibet duos, vel plures veſtrum (Quorum aliquem veſtrum A. B. C. E. F. *&c, vnum eſſe volumus) Iuſticiarios noſtros, ad inquirendum per Sacramentum proborum & legalium hominum de comitatu prædicto (per quos rei veritas melius ſciri poterit) de omnibus, & omnimodis felonijs, veneficijs, incantationibus ſortilegijs, arte magica, tranſgreſsionibus, forſtallarijs, regratarijs, Ingroſſarijs, & extorcionibus quibuſcunq; : Ac de omnibus & ſingulis alijs malefactis & offenſis (de quibus Iuſticiarij pacis noſtræ legitime inquirere poſſunt, aut debent) per quoſcunque, & qualitercunque in comitatu præd. factis, ſiue perpetratis, vel quæ impoſterum ibidem fieri, vel attemptari contigerit: Ac etiam de omnibus illis qui in com. prædicto in conventiculis contra pacem noſtram in perturbationem populi noſtri, ſeu vi armata ierunt, vel equitauerunt, ſeu impoſterum ire, vel equitare præſumpſerint: Ac etiam de omnibus hys qui ibidem ad gentem noſtram mayhemandam, vel interficiendam in inſidijs iacuerunt, vel impoſterum iacêre præſumpſerint: Ac etiam de hoſtellarijs, & alijs omnibus & ſingulis perſonis, qui in abuſu ponderum, vel menſurarum, ſiue in venditione victualium contra formam Ordinationum vel Statutorum, vel eorum alicuius, inde pro communi* The ſecond Clauſe.

vtilitate regni nostri Angliæ, & populi nostri eiusdem editorum, deliquerunt, vel attemptauerunt, seu imposterum delinquere, vel attemptare præsumpserint, in comitatu prædicto: Ac etiam de quibuscunq; vicecomitibus, balliuis, seneschallis, constabularijs, custodibus gaolarum, & alijs officiarijs, qui in executione officiorum suorum (circa præmissa, seu eorum aliqua) indebitè se habuerunt, aut imposterum indebitè se habere præsumpserint, aut tepidi, remissi, vel negligentes fuerunt, aut imposterum fore contigerit, in comitatu prædicto: Et de ominibus & singulis ariculiis & circumstantijs, & alijs rebus quibuscunque, per quoscunque, & qualitercunque in comitatu prædicto factis, siue perpetratis, vel quæ imposterum ibidem fieri, vel attemptari contigerit, qualitercunque præmissorum, vel eorum alicuius, concernentibus plenius veritatem.

Et ad indictamenta quæcunq; sic coram vobis seu aliquibus vestrum capta, siue capienda, aut coram alijs vuper Iusticiarijs pacis in comitatu prædicto facta, siue capta (& nondum terminata) inspiciendū, ac ad processus inde versus omnes & singulos sic indictatos, vel quos coram vobis imposterum indictari contigerit (quousq; capiantur, reddāt se, vel vtlagentur) faciendum, & continuandum.

Et ad omnia & singula felonias, veneficia, incantationes, sortilegia, artes magicas, transgressiones, forstallarias, regratarias, ingrossarias, extorsiones, conuenticula, indictamenta prædicta,

cæteraq;

ceteraq́ omnia & ſingula præmiſſa, ſecundum leges & Statuta regni noſtri Angliæ (prout in huiuſmodi caſu fieri conſueuit, aut debuit) Audiendum, & Terminandum: Et adeoſdem 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 conſueuit, aut debuit) caſtigandum, & puniendum.

Exceptions or reſtraint.

Prouiſo ſemper, quod ſi caſus difficultatis ſuper determinatione aliquorum præmiſſorum coram vobis, vel aliquibus duobus, vel pluribus veſtrum euenire contigerit: Tunc ad Iudicium inde reddendum (niſi in præſentia vnius Iuſticiariorum noſtrorum, de vno, vel de altero banco, aut vnius Iuſticiariorum noſtrorum ad aſſiſas in comitatu prædicto capiendas aſſignatorum) coram vobis, vel aliquibus duobus, vel pluribus veſtrum, minimè procedatur.

The charge to the Iuſtices.

Et ideò vobis, & cuilibet veſtrum mandamus, quod circa cuſtodiam pacis, ordinationum, ſtatutorum, & omnium & ſingulorum cæterorum præmiſſorum, diligenter intendatis: Et ad certos dies, & loca, quæ vos, vel aliqui huiuſmodi duo, vel plures veſtrum (vt prædictum eſt) ad hoc prouideritis ſuper præmiſſis faciatis inquiſitiones, & præmiſſa omnia & ſingula audiatis & determinetis, ac ea faciatis, & expleatis in forma prædicta facturi inde quod ad iuſtitiam pertinet ſecundum legem, &

conſuetudi-

consuetudinem regni nostri Angliæ: Saluis nobis amerciamentis, & aliis ad nos inde spectantibus.

To the Sheriffe.

Mandamus enim tenore præsentium vicecomiti nostro Kanciæ, quod ad certos dies & loca (quæ vos, vel aliqui huiusmodi duo, vel plures vestrum vt prædictum est, ei vt prædictum est, scire feceritis) venire faciat coram vobis, vel huiusmodi duobus, vel pluribus vestrum (vt dictum est) tot & tales probos & legales homines de ballina sua (tam infra libertates, quàm extra) per quos rei veritas in præmissis melius sciri poterit & inquiri.

To the Custos Rotulorum.

Assignauimus denique te præfatum Edw. Hoby Militem, custodem Rotulorum pacis nostræ in dicto comitatu nostro: Ac propteria tu, ad dies & loca prædicta, Breuia, Præcepta, Processus, & Indictamenta prædicta, coram te, & dictis sociis tuis, venire facias, vt ea inspiciantur, & debito fine Terminentur, sicut prædictum est. In cuius rei testimonium, &c. Datum decimo septimo die Nouembris, Anno regni nostri quadragesimo primo.

(**)

An

An Explication of ſundrie partes of the ſaid *Commiſſion* of the *Peace*.

Cap. IX.

Before that I enter into the opening of the Capital pointes of this preſent reformation, it ſhall not bee out of the Readers way, to leade him along by the old Commiſſion: and to ſhew vnto him, both what it was at the firſt, how many acceſſions it receiued in proceſſe of time, and how (being of late yeeres vnregarded) it was ſo fallen into corruption, that of neceſſitie it ought to be redreſſed.

It is the agreeing opinion of all the Iudges (2.R.3.9.) that Iuſtices of the Peace had none other power (at the firſt) but onely *ad pacem Regis conſeruandam*. And that the ſame is moſt true, you may well perceiue by that Statute (1 E.3.cap.15.) which firſt created theſe Iuſtices, and gaue vnto them the onely power, to keepe the Peace. But the very next yeare after, the forme of their Commiſſion was enlarged, ſo as they had the Statute of Winton in charge, and were both enabled to enquire of Felonies, and treſpaſſes, and warranted alſo to arreſt Felons that were indited. For ſo was the Commiſſion to William Roos and others, whereof I haue ſpoken before.

After

After this, in the twentith yeere of the ſame King E. the third, the ſtatute of *Northampton*, (which was made 2. E. 3. cap. 3.) was inſerted to their Commiſſion: and together with it a direction to certifie into the chancerie the names of ſuch, as (being indited) did flie, and did refuſe to be Juſticed: becauſe at that time they had no power (as it ſeemeth) to awarde any proces at all: 20. E. 3. *part patent. in dorſo.*

In which ſame 20. yeere (*part 2. patent. membrana 7. in dorſo*) you ſhall finde a commiſſion of the peace directed afterward, *Roberto de Scardeburgh, Adæ de Somere &c. ad cuſtodiendū pacem noſtram & Statutum de Wynton, Statutum apud Northampton, & Statutum apud Weſtm. anno 5. regni noſtri editum, ſi ſuſpitio mali verſus aliquos habeatur, &c.* Which ſtatute of *Weſtm.* lieth in the 14. chapter of that 5. yeare of king E. 3. and was made againſt Robertſmē, drawlatches &c. and was at that time firſt mentioned in the cōmiſſion of the Peace.

Againe, as it is euident, that the ſtatute (34. E. 3. ca. 1.) was the firſt that gaue authority to theſe Iuſtices to heare and determine of treſpaſſes and felonies: So is there a forme of a commiſſion to be ſeene (35. E. 3. *par. 2. paten. in dorſo*) which was awarded to Robert Herle, Iohn Cobham, Iohn Barry and others for *Kent*, in which their power in Felonies & Treſpaſſes, was accordingly enlarged: with a further addi-

tion

tion alſo touching weights and meaſures, Seruants, Artificers & labourers: and therein alſo is the firſt clauſe (that I haue ſeene) for taking the Suertie of the peace and good abearing.

Thus ſtoode the forme of the commiſſion of the peace (ſo far as I haue perceiued) vntill the time of king Richard 2. In the 13. yeare of whoſe reigne (as you may reade *parte* 1. *patent. membrana* 25.) there was a commiſſion dated the 15. of Iuly, whereby theſe Iuſtices were commanded to enquire of cappes and liueries, foreſtallings, and regrataries, and of extortions committed by Victuallers, Hoſtlers, Labourers, Artificers, and Seruants.

In the next yeare of the ſame King R. the ſecond, the execution both of the ſtatute made at *Cambridge* (12. R. 2. cap. 7. 8. & 10.) concerning Labourers, and of the ſtatute made at *Weſtm.* (13. R. 2. cap. 13.) againſt Hunters, was recommended to the Iuſtices of the Peace in their commiſſion.

At which time alſo, the clauſe concerning ſhirifes, maiors, and bailifes, was firſt brought into the commiſſion of the peace: and Stephen Betenam was then the firſt for *Kent*, to whom the credit of the Records of the Peace was thereby committed: which officer is now ſithens called the *Cuſtos Rotulorum*: all which matters you may find in the Records. 28. *Iunij, ann.* 14. R. 2. *parte* 1. *patent, membrana* 35.

Further-

Furthermore, after all this (but in what very yeeres I certainly know not) first the Statutes of Liueries (made 1. H. 4. ca. 7. & 2. H. 4. ca. 21.) Then the Statute made 2. H. 5. cap. 7. against Lollardes: and lastly, the Statute made 3. H. 5. ca. 6. & 7. against Counterfaiting, clipping, and washing of mony, were al thrust into the Commission of the Peace.

And in this plight (that part of the Lollards onely excepted) stoode the Commission of the Peace, till it was euen now of late: Notwithstanding, that it was both surcharged with vain recitall, and often repetitions of some of these Statutes that were a good while before repealed: and also fowly blemished with sundry other corruptions that had crept into it, partly by the miswriting of Clearks, and partly by the vntoward huddeling of things together, which were at strife the one with the other of them.

Which imperfections being made knowen to the late Reuerend Iudge Sir Christopher Wray (then Lord chiefe Iustice of the Kings Bench) he communicated the same with the other Iudges and Barons of the Coyfe, so as by a generall conference had amongst them, the Commission was carefully refined in the Michaelmas Terme 1590. and being then also presented to the Lord Chauncellor, as a meete paterne of a Commission of the Peace to be vniformely put in vre throughout the Realme, hee forthwith both

both accordingly accepted therof, and commanded the ſame to be Sealed and ſent abroad.

How many amendments it receiued hereby, and vpon what ſpeciall reaſons, I will not now repeate, ſince I did ſoone after publiſh the ſame in a Conference made of that olde and of this new Commiſſion.

Thus much therefore premiſed, let vs goe in hand with the Commiſſion as it now ſtandeth before you.

Forasmuch as in the late reformation of this Commiſſion, care was taken that the drolle matter of the former commiſſion beeing tryed out (by the fire of learning and diſcretion) the body and countenance thereof ſhould (as much as might bee) remaine, and bee let to ſtand: it commeth to paſſe, that the chiefe partes hereof be yet the very ſame that they were before, and are comprehended within theſe fewe Termes following.

The { 1 Salutation of the Queene. 2 Power of theſe Iuſtices. 3 Charge, giuen to them, and to others.

The three parts of the Commiſſion.

The Salutation of the Queene is but a Catalogue of al the names of the Iuſtices, and containeth nothing that hath neede of light.

Next followeth the power of the Iuſtices, contained in two ſeuerall Clauſes, whereof the former beginneth thus: *Sciatis quòd aſſignauimus vos, coniunctim & diuiſim, & quemlibet veſtrum,*

vestrum, Iusticiarios nostros, ad pacem nostram, &c.

The latter beginneth at the ende of the former thus: *Assignauimus etiam vos, & quoslibet duos, vel plures vestrum (Quorum aliquem vestrum, &c. vnum esse volumus) Iusticiarios nostros ad Inquirendum &c.*

The first clause.

This first Clause (or *Assignauimus*) maketh them Iustices for the conseruation of her Maiesties peace: by force of which words, they haue singularly, dually, and plurally, both all that ancient power, touching the peace, which the Conseruator of the peace had by the common law: and also that whole authoritie which the Statutes haue sithens added thereunto. For the more euident declaration whereof, they are immediatly after assigned to conserue *Omnia Ordinationes & Statuta pro bono pacis, &c.* in which generall words there doe lie implied, not only the seuerall statutes of Westminster 1. ca. 9. 13. E. 1. cap. & 28. E. 3. ca. 11. for Huy and Crie after Felons: and that of Westminster (5. E. 3. cap. 14.) against Night-walkers, that be suspected: but also whatsoeuer other lawes and statutes made, either for the arresting of Robbers, Murtherers, Felons, and of those that be suspected to be such: or for the repressing of Riots, Affraies, Force, and violence, all which be directly against the peace, as all men do know: or for the hauing of Armor and weapon, which tend

Both Conseruators and Iustices: for the Peace, and for the Statutes.

tend principally to the keeping of the Peace, as the ſtatute of Wincheſter it ſelfe doth acknowledge.

And therefore, there is no more neceſſitie to recite any of them by name in the Commiſsion, then to make tedious rehearſall of al thoſe other ſtatutes, which (giuing expreſſe authority to the Iuſtices of the Peace) doe containe a ſufficient warrant and ample Commiſsion within themſelues.

But, euen as the conſeruation of the Peace, and the execution of theſe ſtatutes bee ſeuerall things: So is ther in this firſt branch (or Clauſe) two diſtinct waies (or meanes) for the effecting of the ſame. For, the ſtatuts are to be performed accoording to ſuch preſcript and order, as themſelues do deliuer: wherein if no power at all bee expreſſly giuen to any one Iuſtice of the peace alone, then can hee not otherwiſe compell the obſeruation thereof, (ſo far as I can learne) then by Admonition only, and calling vpon the parties: in which behalf, if he ſhal not be obeyed accordingly, he is to preferre the cauſe at the Seſſions, and to worke it to a preſentment vpon the ſtatute, and ſo (by the help of his fellow Iuſtices) to heare & determine thereof, as law requireth.

Two meanes to conſerue Statutes.

But, for preuention of the breach of the Peace, he hath ful authoritie hereby, not onely to call the partie for the finding of Suerties for the Peace, or for the good behauiour, as the

Suertie of the Peace.

cale shall require, but also (for not finding such Suerties) to commit him to safe custody, within her Maiesties gaole or prison.

Lastly, for the closing vp of this first clause, it is to be remembred, that al this authoritie is to be exercised, *In comitatu prædicto, tàm infra libertates quàm extra*, in the said Countie, as wel within the liberties, as without. But yet so, as the distinction of Liberties bee not neglected. Liberties.

For, as in many other shires, so in Kent also, there be some cities or townes that be counties of themselues, hauing their proper Iustices within them: And some others there be, which hauing their proper Iustices, bee not yet anie Counties of themselues at all, though happily they haue in their Charter special words of prohibition, that the Iustices of the shire at large, *Non se intromittant, &c.* of that former sort is the city of Canterbury with vs, and of this latter sort is the citie of Rochester.

Whereupon it followeth, that a Iustice of the peace in Kent, of the shire at large, hath no more authority by this commission, within the liberties of the citie of Canterbury, thē he hath within the shire of Sussex: because that citie is not *in comitatu Kancie*, but it is a distinct countie from it, euen as Sussex is.

Howbeit, some thinke that there is not the same, but another manner of impediment for a Iustice of the shire at large, to doe the partes of his

his office within the citie of Rocheſter: becauſe that is no county of it ſelfe, but is *in comitatu Kancia*, as other common townes are. Onelie there is a reſtraint in the Charter of that Citie, that ſuch a forrain Iuſtice ſhal not intermeddle there within that libertie: the which if hee ſhall (notwithſtanding ſuch inhibition) attempt to do, he tranſgreſſeth not the bounds of his owne Commiſsion thereby, but breaketh into their liberties, againſt that Prohibition: and conſequently it ſeemed to ſome (20. H. 7. 6.) that his act is not meerely voide of all authoritie (becauſe it is the ſeruice of the Queene, which alwaies carieth *Non omittas propter aliquam libertatem*, in it) but he himſelfe is ſubiect to ſuch puniſhment, as belongeth to that his temeritie, and vndiſcreat action.

The latter clauſe (or *Aſſignauimus*) of the cõmiſsion, cõprehendeth the power giuen to theſe Iuſtices, as well for to enquire of al thoſe offences that bee contained therein, as to proceede, heare, and determine thereof, vpon any former (or future) enditements: So alwaies, that two of theſe Iuſtices at the leaſt be preſent therat, & ſo that the one of thoſe two be of that ſelect nũber, which is cõmonly termed of the *Quorum*. The ſecond clauſe. Enquire, proceede, heare, and determine

For theſe of the *Quorum* were wont (and that not without iuſt cauſe) to be choſen, ſpecially for their knowledge in the Lawes of the land: and that was it which led the makers of The Quorum.

the statutes (18.E.3.cap.2: 34.E.3.cap.1: & 13 R.2.ca.7.) expressly to enact, that some learned in the laws should bee put into the commission of the Peace: and (to say the truth) al statutes, that desire the presence of the *Quorum*, doe secretly signifie such a learned man.

For, albeit that a discreet person (not conuersant in the studie of the lawes) may sufficiently follow sundrie particular directions concerning this seruice of the Peace: yet when the proceeding must be by way of presentment vpō the euidence of witnesses an othes of Iurors, and by the order of hearing and determining according to the streight rule and course of the law, it must be confessed, that learning in the laws is so necessary a light, as without the which, al the labor is but groping in the darke, the end whereof must needs be error and dangerous falling.

The Branch for punishment.

This clause giueth speciall authoritie also, both for the punishmēt of offenders, and for the correction of such officers as shall bee found remisse: the which was suffred to remain, not as of any necessitie at all (seeing that the punishment of all offenders is implied in the word determining, & considering that it is incident to euerie court of Record, to do correction vpon whatsoeuer officers and ministers that doe serue them) but only for the plainer declaration of the power of these Iustices in that behalfe, and for the more assured terrifying of such as shal (either of contempt,

contempt, or negligence) doe that which is amiſſe.

And heere, leaſt theſe Iuſtices ſhoulde rather ground their iudgements vppon the number of voices, then vppon the weight of reaſons, this latter clauſe is ſhut vp with a prouiſion and reſtraint, that in all caſes of ambiguitie & doubt, they ſhall ſpare to proceed to iudgement, & ſhall expect the preſence, either of ſome one of the Iudges of the kings Bench, or of the Common place, or (at the leaſt) of the one of the Iuſtices of Aſsiſe in that Countie, which be their more neare and ready Oracle. And yet (as M. Fitzh. fol. 7. well noteth) is not their iudgement void, if they liſt to proceed without ſuch aduiſe: but it ſtandeth good and effectuall, vntill it ſhall be reuerſed by a writ of Error. Reſtraint in matters of doubt.

The power of theſe Iuſtices hath thus appeared: nowe therefore let vs heare the commandement and charge, that is giuen to them, and the others. The charge to the Iuſtices.

Firſt, theſe Iuſtices, and euerie of them, bee charged to be diligently intendant about the execution of all and ſingular the premiſſes, by theſe wordes, *Et ideo vobis & cuilibet veſtrum, mandamus, &c.* in the end whereof, there lieth a plain Sauing to ỹ Queene, of al ſuch amerciaments & other things, as ſhal grow due vnto her by their ſeruice in this Commiſ. of which point I will ſay more, in place more conuenient for it.

To the Sherife.

Then is the Sherife of the countie commanded to be attendant vpon theſe Iuſtices, for the returne of Iuries to bee made before them, by theſe words, *Mandamus enim tenore præſentium vicecomiti noſtro Kanciæ, &c.* And laſtly, the *Cuſtos Rotulorum* (being one of theſe Iuſtices) hath moreouer a ſpeciall charge by himſelfe, in right of this Office, to produce the Records of the Peace, to the end that they may be both peruſed, directed, and proceeded vpon: all which matter lieth in the words, *Aſſignauimus denique te præfatum Edw. Hoby militem, Cuſtodem Rotulorum pacis noſtræ &c.*

To the Cuſtos Rotulorum.

Of whoſe office and authoritie more ſhalbe ſaid in particular, when we come to the fourth booke of this volume.

Of the two Oathes, vſually miniſtred to the *Iuſtices* of the Peace.

CAP X.

The cauſes why Iuſtices be ſworne.

SUch as doe occupie Iudicial places, ought to take heede what they doe: knowing (as Iehoſaphat ſaid) that they exerciſe not the iudgments of Men onely, but of God himſelfe: whoſe power as they doe participate, ſo hee alſo is preſent on the Bench with them. And thereore, it hath been alwaies the policie of chriſtian lawes, to appoint meet

meet formes of religious atteſtations (or Oches) for ſuch Officers to take and conceiue: meaning thereby, not only to ſet God continually before their eies (whom by ſuch oath, they take to witneſſe of their promiſe, and call for reuenge of their falſhood) but alſo to threaten them (as it were) with temporall paines prouided againſt corrupt dealings: and withal to ſtrengthen their mindes, and arme their courages, againſt the force of humane affections, which otherwiſe might allure and draw them out of the way.

Upon this grounde, the Statute (13. R. 2. Stat. 1. c. 7.) which willed, that Iuſtices of the Peace ſhould be made of newe in all the Counties of England, did therwithal take order, that they ſhould be ſworne, to keep, and put in execution, all the Statutes touching their office: which, albeit that it be the firſt Oath that I find to haue been miniſtred to Iuſtices of the Peace yet I think they were neither vnſworne before, nor at any time after, as may be collected vpon the bookes 21. E. 4. 67: & 12. E. 4. 18.

I beleue alſo, that the ſame maner of Oth was deuiſed but for that time onely, & continued not long in that forme, as being of it ſelf very general, & hard to bee obſerued. And ỹ (happily) was the cauſe, that it was afterward changed to that forme, which M. Fitzh. in his Booke hath left vs, and which (with the alteration of a fewe words onely) is yet at this day kept in vſe.

For, vppon the renuing of the commiſsion of the Peace (which now a dayes happeneth as often as any perſon is newly brought into the ſame) there commeth (of courſe) a Writ of *Dedimus poteſtatem*, directed out of the Chauncerie to ſome auncient Iuſtice of the Peace, to take the Oath of him whoſe name is newly inſerted, and to certifie the ſame into that Court, at ſuch day as the Writ commandeth.

This Writ is now accompanied with two Scedules, whereof the one containeth the Oath of the Office of a Iuſtice of the Peace, in this forme:

The oath of the office.

YEE ſhall ſweare, that as Iuſtice of the Peace in the Countie of *Kent*, in all Articles in the Queenes Commiſſion to you directed, ye ſhal doe EGAL right to the poore, and to the rich, after your cunning, wit, and power, and after the laws and cuſtomes of the Realme, and Statutes thereof made: And ye ſhal not be of counſel of any quarrel hanging before you: and that yee hold your ſeſſions after the forme of ſtatuts therof made: And the iſſues, fines, and amercements that ſhal happen to be made, and all forfaitures which ſhal fal before you, yee ſhal cauſe to bee entred without any concealement (or embeaſeling) & truly ſend thē to the Queenes Exchequer. Yee ſhall not LET for gift, or other cauſe, but well and truely you ſhall doe your

1. REGAL in the printed Booke Fitzh.

2. SVRCEASE. In the printed Booke.

your office of Iuſtice of the Peace in that behalfe; and that you take nothing for your office of Iuſtice of the Peace to be done, but of the Queene, and fees accuſtomed, and coſtes limited by the ſtatute: and yee ſhall not direct, nor cauſe to bee directed, anie Warrant (by you to be made) to the parties, but yee ſhall direct them to the Bailifes of the ſaide Countie, or other the Queenes Officers (or Miniſters) or other indifferent perſons, to doo execution thereof: *So helpe you God, and by the contents of this Booke.*

3. And his Saints. in the printed Booke.

The variance betweene this and that elder forme, ſtandeth (as you may ſee by the Margent) in three points: whereof twaine be of no waight at all, but the third needed amendment. For, right godly and well did thoſe 32. perſons (that were put in truſt to pen Eccleſiaſticall Lawes) purpoſe to make this Lawe, amongſt others:

Legitimum autem iuramentum, iis verbis, & nullis alijs, ſuſcipi volumus: Ita me Deus, per Dominum noſtrum Ieſum Chriſtum adiuuet.

This Oath of the Office conſiſteth of fiue Articles, which (for memories ſake) I haue ſeene expreſſed in theſe fiue Verſes following:

1 *Doe equall right to rich and poore,*
as Wit and Law extends:
2 *Giue none aduice in any cauſe,*
that you before depends:

3 *Your*

3 *Your Seſſions hold, as Statutes bid:*
the forfeits that befall,
4 *See entred well, and then eſtreat*
them to the Cheaquer all:
5 *Receiue no fee, but that is giuen*
by Queene, good vſe, or right:
6 *Ne ſend Precept to partie ſelfe,*
but to indifferent wight.

The other Scedule comprehendeth that forme of Oath, which (after the ſecond aboliſhment of the vſurped authoritie of the Romiſh Pharaoh, by the ioyous entry of our gratious Queene Elizabeth) was in the firſt Parliament of her raigne (cap. 1.) appointed for Iuſtices of Peace (amongſt others) to take, before that they ſhould exerciſe the office: and it hath theſe words:

The Oath of Supremacie.

I WILLIAM LAMBARD, doe vtterly teſtifie and declare in my conſcience, that the Queenes highneſſe is the onely ſupreme Gouernour of this Realme, and of all other her highneſſe Dominions and Countries, as wel in all ſpirituall & eccleſiaſticall things (or cauſes) as temporall: and that no forraine Prince, Perſon, Prelate, State, or Potentate, hath, or ought to haue, any iuriſdiction, power, ſuperioritie, preheminence, or authoritie, eccleſiaſticall or ſpirituall, within this realme: And therefore, I doe vtterly renounce and forſake all forraine iuriſdiction

iuriſdiction, powers, ſuperiorities, and authorities, and doe promiſe, that from henceforth I ſhall beare faith and true alleageance to the Queenes Highneſſe, her heires and lawfull ſucceſſours, and (to my power) ſhall aſſiſt and defend all iuriſdiction, priuiledge, preheminence, and authoritie graunted or belonging to the Queenes Highneſſe, her heires and ſucceſſours, and vnited and annexed to the Imperiall Crowne of the Realme: *So helpe me God &c.*

There hath beene care taken, (once, or twiſe, in our memorie) to exact this latter Oath of all the Iuſtices of Peace throughout the Realme, whereof ſome good hath enſued: But yet many a Iuſtice there is, that (by indirect practiſe) neuer tooke either this, or the former: whereof what harmes do, & may grow, I leaue to wiſer and higher men, to be conſidered: Adding this onely, that it would auaile greatly to the furtherance of the Seruice, if the *Dedimus potestatem* to giue theſe Oathes were dirigible to the Iuſtices (and none other) to miniſter the ſame, not elſe where, but in their open Seſſions.

Of

Of the power absolute, and limitted, that the Iustices of the Peace haue.

Cap. xi.

Discretion.

THe power of the Iustices of Peace, whether you will consider it by the view of this their Commission, or by their authoritie conteined in the statutes, is in some cases Limitted, and (in other some cases) Absolute: By which latter word, I doe not meane absolute Simply, but after a Maner: For, they may neither hang a man for a greeuous Trespasse, nor fine him for a Felonie: and therefore this absolute authoritie is to our Law better knowen by the name of Discretion, because the Iustice of Peace may exercise sometimes *Legis actionem*, and sometimes *Iudicis officium*: or, (which is all one) *Iudicium, & Decretum*, as the case shall offer, and the law will suffer him.

It is a good Counsell which Aristotle giueth in his Rhethorikes *ad Theodectem*, that in the making of lawes, *Quoàd eius fieri possit, quàm plurima legibus ipsis definiantur, quàm paucissima verò Iudicis arbitrio relinquantur*: and the Commission of the Peace (following that aduise) doth leaue little (or nothing) to the discretion of the Iustices of the Peace, but bindeth them fast with the chaines of the Lawes, customes,

cuſtomes, ordinances, and ſtatutes.

Howbeit, our latter lawes of Parliament, although they alſo do indeuor (for the moſt part) to hold the ſame courſe: yet, foraſmuch as euery conſiderable circumſtance cannot be foreſeen at the time of the making of the law, they do many times leaue to bee ſupplied (by the diſcretion of the Executioner of the Law) that thing which was not cõueniently cõprehended before hand, by the wiſedome of the Author of the Law.

And therefore, although Diſcretion be neceſſarie in the execution of euery Lawe (bee it neuer ſo certainely ſet forth, and bounded in it ſelf) yet (in the mouth and language of our Lawe,) that onely and properly is ſaide to bee done by Diſcretion, which is not ſpecially limited with all the circumſtances, but is indifferently referred to the conſideration of the Iuſtice that is put in truſt with it.

And truly it is to be wiſhed, that Iuſtices of the Peace woulde not (by colour of this referente to their Diſcretion in ſome few caſes) arrogate vnto themſelues authoritie to vſe their diſcretion, and to play (as it were) the Chauncellours in euery cauſe that commeth before them. For, no way better ſhall the Diſcretion of a Iuſtice of the Peace appeare, then if he (remembring that he is *Lex loquens*) doe containe himſelfe within the liſtes of law, and (being ſoberly wiſe) doe not vſe his owne Diſcretion,

but

but onely where both the lawe permitteth, and the preſent caſe requireth it. Right well ſaide Cicero: *eſt ſapientis Iudicis cogitare, tantum ſibi eſſe permiſſum, quantum ſit commiſſumac creditum.*

Of the Iuriſdiction, and Coertion, belonging to the *Iuſtices* of Peace.

Cap. xii.

AS Iuſtice cannot bee adminiſtred, without both a Declaration of the law, & an Execution of the ſame: So to the ende that our Iuſtices of the Peace may be able to deliuer Iuſtice, they are accompliſhed with double power, the one of Iuriſdiction, and the other of Coertion, that is to ſay, with ample Authoritie, not only to conuent the perſons, but alſo (after the cauſe heard & aiudged) to conſtraine them to the obedience of their order and decree.

Iuriſdiction. This Iuriſdiction of theirs is exerciſed, for the moſt part (if not altogether) about thoſe cauſes, which be in a manner the ſame that the ciuil Lawiers do call, *Iudicia publica:* partly, becauſe the prince (who repreſenteth the heade of the common wealth) hath intereſt in the moſt of them, aſwel as that priuate perſon which is immediatly offended: and partly, becauſe they are not commonly tryed by ſuch Action as other ciuill

uill and priuate cauſes are, but rather by criminall and publique Accuſation, Information, or Preſentment.

And herein, the Iuſtice of the Peace is by the one halfe ſuperiour to the ancient Conſeruator of the peace, who had onely Coertion or Prehenſion in a few caſes, and no Iuriſdiction in any cauſe that I remember.

But if the authoritie of theſe Iuſtices ſhoulde ceaſe, when the fault is told, heard, and aiudged, then ſhould they be no better then halfe Iuſtices: and therefore the law hath alſo put Cohertion, Execution, or puniſhment (as I ſaid) into their handes: leaſt otherwiſe their iudgementes ſhould bee deluded for want of power to bring them to effect.

Cohertion, or puniſhment, for what cauſes it is appointed.

This Puniſhment then, is an orderly execution of a lawfull iudgement, laide vpon an offendor, by the miniſter of the Law: and it is done for foure cauſes: firſt, for the amendment of the offendor: Secondly, for examples ſake, that others may be thereby kept from offending: Thirdly, for the maintenance of the authoritie and credite of the perſon that is offended: and theſe three reaſons bee common to all ſuch puniſhmentes. Seneca rehearſeth the fourth finall cauſe, that is to ſay, that (wicked men beeing taken away) the good may liue in better ſecuritie: & this pertaineth not to all, but to Capitall puniſhments onely, as euery man may

may at the firſt hearing vnderſtand.

The Romanes vſed ſpecially, eight ſortes of chaſtiſements, knowen to them by theſe names, *Damnum, Vincula, Verbera, Talio, Ignominia, Exilium, Seruitus, Mors*, that is, loſſe of goods, impriſonment, ſtripes, retaliation, reproch, baniſhment, ſeruitude, and death: all which, our law (before the Conqueſt) was wont to inflict, albeit that now, ſeruitude, and retaliation being gone, baniſhment, is almoſt out of vſe.

The ſorts of puniſhment.

The puniſhments that be commonly put in execution at this day, and wherewith the Iuſtices of the Peace haue to do, they be diuided into corporall, pecuniarie, and infamous.

Corporall.

Corporall puniſhment, is either capitall, or not capitall. Capitall (or deadly) puniſhment is done ſundry waies, as by hanging, burning, boiling, or preſſing: not capitall, is of diuers ſorts alſo, as cutting off the hand or eare, burning (or marking) the hand or face, whipping, impriſoning, ſtocking, ſetting on the Pillorie, or Cuckingſtoole, which in olde time was called the Tumbrell. Of this kinde of puniſhment, our old Lawe (making precious eſtimation of the liues of men) had moe ſortes then wee now haue: as pulling out the tongue for falſe rumors, cutting off the noſe for adultery, taking away the priuie parts for counterfaiting of money &c.

Pecuniarie.

Vnder the name of Pecuniarie puniſhment,

I comprehend all iſſues, fines, amerciaments, and forfeitures of offices, goods, or lands.

And, if the Iuſtices of Peace may by vertue of their Commiſſion deale with ſuch Conſpirators as doe confederate together, to cauſe anye perſon vniuſtly to be indited of Felonie, whereof afterward he is acquited (as ſome doe thinke they may) then is there a ſpeciall puniſhment in that caſe appointed by law, which (in 24. E. 3 73.) is termed Vilanous, and may be wel called Infamous; becauſe the iudgement in ſuch caſe ſhall be like vnto the ancient iudgement in Attaint, (as it is ſaid 4. H. 5. Fitz. Iudgement 220) and is (in 27. lib. Aſſ. Pl. 59.) ſet downe to bee, that their oaths ſhall not bee of any credite after: nor lawfull for them in perſon to approch the Queenes courts: and that their landes and goods be ſeized into the Queenes hands: their trees rooted vp, and their bodies impriſoned, &c. And at this day, the puniſhmēt appointed for Periurie (hauing ſomwhat more in it then Corporall or Pecuniarie paine) ſtretching to the diſcrediting of the teſtimony of the offendor for euer after, may be partaker of this name. Infamous.

That Iuſtices of the Peace, bee *Iudges of Record.*

Cap xiii.

IT maketh not a litle, both for maintenance of the Peace, and for the credit of the Iuſtices thereof, that they are numbred amongſt the Iudges of Record. For, on the one ſide euill doers will be afraid, when they ſhal ſee Memorials of their wickednes before their eyes: and on the other ſide, the proceedings of thoſe Iuſtices ſhall be ſo much the more reuerenced and ſet by, as it ſhall appeare that their indeuours are countenaunced with the fauour of authoritie. And therefore, let vs ſee what is meant by the word Record.

A Record, what it is.

The Latine men vſe *Recordor*, when they will ſignifie, to keepe in minde, or to remember: in which ſenſe the poet ſaid,

Si rite audita recordor:

And after the ſame ſenſe alſo doth our Lawe vſe it. For, Recordes be nothing elſe, but Memorials (or Monuments) of thinges done before Iudges, that haue credite in that behalfe. And therefore, where King E. 1. doth in the beginning of the booke (called Britton) ſet foorth the Iudges of his Courts, he ſaith of ſome, that they ſhall haue authoritie of Record: and of others,

thers, that they ſhall beare Record: both which ſpeeches doe meane but one thing, namely, that they ſhall be truſted in the report of cauſes happening before them: and we yet ſay in common ſpeech, Such a man ſhall beare recorde of a thing, when we intend to ſay, that he remembreth it, and can beare witneſſe of it. So that in the vſe of the word, there is (in maner) no difference, and therefore let vs examine the matter.

One man may affirme a thing, and an other man may denie it: but if a Record once ſay the word, no man ſhall be receiued to Auerre (or ſpeake) againſt it. For (ſaith M. Bracton Fol. 156. writing of a ſpeciall caſe, where the Sherife in his Countie hath Record) if men ſhould be admitted to denie the enrolled actes of the Court, then would there neuer be any ende of controuerſies. And of the ſame minde, before him was M. Glanuile (lib. 8. cap. 8.) And therefore, to auoyde all contention that may ariſe, while one ſaith one thing, and one other ſaith an other thing, the Law repoſeth it ſelfe wholy and ſolely in the report of the Iudge: and hereof it commeth, that he cannot make any Subſtitute or Deputie in his Office (as M. Bracton and Britton doe affirme) ſeeing that he may not put ouer the confidence that is put in him.

The Rolles be Records.

This Record (or Teſtimonie) is firſt contained within the breaſt of the Iudge (as our Law ſpeaketh) and afterward committed to the

Rolles, which are therefore figuratiuely called Records alſo. For you may ſee (7. H. 6. 28. in Hildebrands caſe: 19. H. 6. 9. and elſewhere) that during all the time of that Terme, in which any thing paſſeth before the Iuſtices at Weſtminſter, the record therof is in *Scrinio pectoris*, in their own hearts, or breaſts, ſo that they may at their owne pleaſure correct or amend it: but after the terme ended, it is only in their Rolles, ouer the which they haue no controlment.

And this agreeth right well with that which Britton (fol. 3.) affirmeth, ſaying in the Kinges perſon, thus: And albeit that we haue graunted to our Iuſtices to beare recorde of the Pleas pleaded before them: yet by this wee will not that their record ſhall bee any warrant in their owne wronge, nor that they may raze or amend their Roll, nor make record againſt their enrolment.

Thus much generally of all Iudges of Record: now touching our Iuſtices of the Peace, it is the opinion of the Court (9. Ed. 4. 3: and 14. H. 8. 16.) and of diuerſe other Bookes in our lawe, that euery one of them (euen by himſelfe) is a Iudge of Recorde. For (as you haue heard) he is made, by the great Seale, a matter of Record: and hath Iudicial power giuen vnto him, euen by the firſt *Aſſignauimus* of the Commiſſion: He hath alſo a Seale of his office, by the opinion of Brudnel, 14. H. 8. 16. and if he make

make any Warrant, although it bee beyond his authority, yet is it not disputable by a cõstable, or other inferior Ministers, but must be obeyed: And he may take a Recognusance for the peace as appeareth, 7. H. 4. 34. & common experience telleth: which none can doe, but a Iudge of Record: because the acknowledging of ỹ summe, is to remaine as a matter of Record.

Yea, by good opinion (2. H. 7. 1.) a *Supersedeas* of the Peace, made by one Iustice of peace, vnder his seale, being brought into the Sessions, is a sufficient Record to proue, that there is a Recognusance of Peace taken by the same Iustices: and it is warrant inough to call the party bound thereupon, and if he make default, to Record the same. Moreouer, his Recorde (or testimonie) is in some case of greater force and value, then an Enditement vnder the oath of twelue men: for, his Record (as I will shew particularly heereafter, in place conuenient) shall conclude the partie so, that hee shall not be admitted to Trauerse or gainsay it. 21. H. 6. 5: Fitzh. Fol. 18. 15. R. 2. ca. 2. 11. H. 7. ca. 15. & 33. H. 8. ca. 6. Thus much being truely saide of any one Iustice of the Peace: most truely may it be affirmed, that two, or mo such Iustices, sitting in the execution of their authoritie, are Iudges of Record.

Great cause haue the Iustices of Peace therfore, to take diligent heede, that they abuse not

this credite: either to the oppressing of the subiect by making an vntrue Record, or the defrauding of the Prince by suppressing the Recorde that is true and faithfull.

How longe time the authoritie of the *Commissioners* of the peace is to endure: and by what meanes it may be suspended, or determined.

CAP. XIIII.

WE haue alreadie touched, that the power of the commissioners of the peace is not perpetual: but now the place serueth to handle it at full.

The commissioners of the Peace, are to continue during only the pleasure of the Prince, by whose pleasure they were at the first appointed: and therfore, by the determination of that pleasure, their authoritie ceaseth also. Besides the which, there are other meanes to determine their Authoritie, as namely, the Accession of another office: the presence of a higher power: and (in some special case) the want of Adiournement of their Commission.

By expresse word.

The pleasure of the Prince may bee determined, either by expresse word, or by implication, or by death.

The Queenes Maiestie therefore, may discharge the Commissioners of the peace by her expresse

expreſſe Writ, vnder the great Seale. L. 5. E. 4. 3 2. And if ſhe ſend a *Superſedeas* to al the Commiſſioners of the Peace, that will ſuſpend all their authoritie: But yet ſo, as it may bee reuiued by a *Procedendo*: and therefore it doth not vtterly determine their authoritie, as may bee gathered by 12. lib. Aſſ. Pl. 21.

Againe, when the Queenes Maieſtie maketh other Commiſsioners of the ſame kinde within the ſame limits, it is implied thereby, (for auoyding of repugnancie in the ſeruice) that the former Commiſsioners ſhal haue no longer power, although there bee neuer a word ſpoken of the diſcharge of them: 3. Mar. Regi. Brooke. *Tit.* Commiſſion 24. By implication of a new Commiſſion.

But yet, if ther be Iuſtices of the peace by commiſſion in a whole County, and afterwarde the Queene maketh another mā Iuſtice of ỹ peace, in one Towne of the ſaid countie, Chock onely (againſt others) was of opinion (10. E. 4. 7.) that the power of the firſt Commiſſioners continued ſtil in that Town, becauſe that it is not altogether contrariant. And Iudge Fineux helde alſo (20. H. 7. 8.) that if the Queene make a proper Iuſtice of the peace within a ſpeciall Libertie, yet may the general Iuſtices of the peace of that Shire meddle there: vnleſſe there be wordes of Prohibition in the Patent, as *quod nulli alij Iuſticiarij noſtri ſe intromittant &c.* General, and proper Iuſtices.

If the auncient Commiſsion of the Peace

were to foure persons, & afterward the Queene should make one man a full Iustice of the Peace through the same limit, during his life: then should the hands of the foure Commissioners be closed, saith Marrow.

And a newe Commission *pro hac vice tantùm*, will determine the olde: So also, a newe commission to heare and determine Felonies, determineth the olde commission of the Peace concerning Felonies, but not concerning the Peace: And a newe commission of the Peace, *ad inquirendum tantùm*, is a determination of the old commission *ad audiendum & terminandum*, by Mar.

But it is plaine, by the preamble of the statute (2. & 3. Phil. & Mar. ca. 18.) that the law was taken, that if a Commission of the Peace were first graunted to certaine within a towne, and after another Commission had been granted to others within the whole shire, that this had been a *Supersedeas* to the Commissioners within the said towne.

Howbeit, this determination of the olde commission (that we speak of) groweth not immediatly by the making of a newe commission: but either after the reading (or proclayming) of the newe commission at the Sessions of the Peace, or at the full Countie: or else by holding of some open Session by vertue of the new Commission (in all which cases the olde com-

commiſſioners muſt take notice of newe commiſſion) or elſe after the giuing of notice of the new commiſſion vnto the olde commiſſioners: for, otherwiſe al the meane acts of the old commiſſioners, be good in law. Mar. & 21. H. 6. 29. & 34. lib. Aſſ. Pl. 28.

And, forasmuch as ſome cities and corporate townes found themſelues grieued with the law (ſtanding as hath been remembred) it was ſpecially ordained by the ſaid ſtatute (2. & 3. Phil. & Mar. cap. 18.) that a cõmiſſion of the Peace and Gaole deliuerie made to a city or corporate towne (not being a countie by it ſelf) ſhould not bee determined by the making of ſuch an other commiſſion afterwarde to any of the Shire, Lath, Rape, or Wapentake, in which, that citie or towne ſtandeth.

Finally, it is to be noted, that in all caſes where an ancient commiſſion of the Peace is determined by a newe: yet no Proceſſe or Suite (hanging before the old commiſſioners) ſhalbe diſcontinued thereby: 11. H. 6. cap. 6. & 1. E. 6. cap. 7.

By the death or demiſe of the Prince, dieth alſo the power of all the commiſſioners of the Peace made by him: for he maketh them *Iuſticiarios ſuos*: ſo that he being once dead, or hauing giuen ouer his crowne, they are no more his Iuſtices: and the Iuſtices of the next Prince they ſhall not be, vnleſſe he be pleaſed ſo to make thē:

4.E.4.44.& 1.E.5.1.

Accession of another office.

It seemeth that some tooke the Lawe to be, that if a Iustice of the Peace were created a Duke, Marquesse, Earle, Vicount, or Baron, or were elected an Archbishop, or Bishop, or were made a Knight, or Iustice of any of the two Benches, or Serieant at the lawe: that then his Office of the Peace was determined thereby: because it could not be thought, that (his name being changed) he should remain the same person: And so, if he were made Sherife, that his Iusticeship ceased also: because (as Mar. saith) he could not be both a Iustice and an Officer, to direct & serue his owne Precepts: & so likewise, was it thought of him, if he were made a Coroner; but not so if he were made an Vndersherife.

And therefore for explanation of the Lawe in the most of these cases, it was enacted (1.E.6.c. 7.) that if a Iustice of the peace were made a Duke, Marquesse, Earle, Vicount, Baron, Archbishop, Bishop, Iustice of the one Bench, or other, Knight, Serieant at the Lawe, or Sherife, that yet hee should bee Iustice of the peace still: But that act was afterward vpon good reason controlled in part, and a new law made (1. Mar. Parl. 1. cap. 8.) by which it was ordered, that no man shall exercise the office of a Iustice of the Peace, during onely the time that he is a Sherife of the same Countie, wherein he is also Iustice of the Peace.

Further-

Furthermore, if the Iuſtices in Eire (being of a higher power then Iuſtices of the peace) do (after proclamation thereof firſt made) come into any Countie, and ſit there by vertue of their authoritie: then ceaſeth the power of the Commiſſioners of the peace. Mar. And he thinketh ſo likewiſe, if the Kings bench (vpon proclamation thereof made) ſhoulde remooue into any Countie. By the preſence of a higher power.

But alſo of this, for if it ſhould be ſo, then it may be ſome queſtion alſo, what is wrought by the comming of the Iuſtices of the *Niſiprius* into the countrie, who doe ordinarily bring Commiſſion of Oyer, and Determiner, and of Gaole deliuerie with them.

Laſtly, if Iuſtices of the peace, that haue a Commiſſion *hac vice tantum*, doe ſit by vertue of their commiſſion, and doe not Adiourne the ſame, it ſeemeth that their Commiſſion is determined thereby. Brooke *Tit.* Commiſſion. 11. By want of Adiournement.

THE

THE SECOND Booke, containing the *Practique* of one *Iustice* of the Peace, out of the Session.

That all the authority of the Iustices of the Peace is exercised, either out of the Sessions, or at (or by reason of) the Sessions of the Peace, &c.

CAP. I.

The summe of the first Booke.

IN the former Booke I haue dilated that which lieth in the first part of my Definition of the Iustices of Peace: and I haue therewithall giuen the Reader a Theorique (or insight) as it were, of their whole Office: in shewing what it is, when it began, how it is endowed, by what meanes it is maintained, and after what sort it may be determined.

But nowe, forasmuch as all the Power and Seruice of those Iustices of the Peace is directed to that ende which is disclosed in the latter halfe of the same Definition, namely, For the conseruation

conſeruation of the Peace, and for the execution of their Commiſſion, and of the ſtatutes committed to their charge, it is meete that I enter into the Practique of their office and duetie, and ſhewe you from point to point how the ſame is to be done and adminiſtred.

And for the more lightſome proceding herein: I will ſet foorth the power of the Iuſtices of the Peace by a Diſtribution, though not Eſſentiall, yet ſuch as may ſuffice to conuey my whole plot and meaning.

A partition, of all that which foloweth in theſe three bookes enſuing.

Whether therfore, the Iuſtices of the Peace, do (by vertue of the commiſſion, or ſtatutes) enquire: or heare, and determine, by the way of Iuriſdiction: or elſe do keep (or cauſe to be kept) the Peace: or do puniſh and execute, by way of Coertion: And whether the ſame alſo be done by their Regular power, or Abſolute authority: It is alwaies practiſed and done, either out of the Seſſions of the Peace, or elſe at (or by reaſon of) the Seſſions of the Peace.

The ſummes of that which is hereafter contained in this ſecond Booke.

And that which is done out of the Seſſions, is either ſuch, as one Iuſtice alone may doe: or elſe it requireth the helpe and preſence of other Iuſtices with him. And therefore, firſt of that which one Iuſtice alone may doe out of the Seſſions.

Of

Of Suertie of the Peace, and the *Good Abearing*: and of ſundry things incident vnto the ſame: And what any one Iuſtice of Peace (out of the Seſſions) may doe therein.

CAP. II.

FOraſmuch as the Conſeruation of the Peace ſtandeth, partly in prouiding that it bee not broken, and partly in puniſhing ſuch as haue already violated and broken it: and for that any one Iuſtice of the peace is ſufficiently armed with authoritie (out of the Seſſions) to preuent the breach of the Peace, both by taking Suertie for the keeping of it, and for the good behauiour of offendors, I thinke good, firſt to ſhewe what Suertie of the Peace is: then, to open howe it may be commanded: after that, to declare howe the ſame commandement ſhall be executed and brought to effect: fourthly, to diſcloſe what ſhal become of the Suertie when it is taken: and laſtly, to deſcribe the Suertie of the Good behauiour (or Good Abearing) and to conferre the handling thereof with that of the Peace.

The parts of this Chapter.

The ancient Normans had a maner of Suertie of the peace, which they named Treues (the ſame that wee call Truce) and which they vſed to giue after this order, He of whom it was demaunded,

maunded, did (in open Court) take him by the hand that demaunded it, and did withall ſolemnly ſweare, that neither hee, nor any of his, ſhould doe harme vnto him. But our Gouernors, knowing that euill men bee more reſtrained by loſſe of goods, then by conſcience of an oath, haue vſed to take ſure bond, and that to the Prince, for the ſecuritie of ſuch as bee in feare. And therefore, I will (at this day) call Suertie of the Peace, An acknowledging of a bond to the Prince, taken by a competent Iudge of Record, for the keeping of the peace. And it is called Suertie, of the word *Securitas*, becauſe the partie that was in feare, is thereby the more ſecure and quiet.

What Suertie of the Peace is.

This Suertie may a Iuſtice of the Peace commaund, either as a Miniſter, when hee is willed to doe it by a higher authoritie: or as a Iudge, when he doth it of his own power deriued from his Commiſſion.

He doth it as a Miniſter, when the Writ of *Supplicauit* (which in old time was called *Breue de Minis*, as appeareth by the Regiſter) directed out of the Chauncery, is deliuered to his hands: for then, he only is to direct his Precept, to compell the party (vpon that Writ) to finde Suertie for the Peace. 21. H. 7. 20. Fineux.

Suertie of the Peace taken vpon a Supplicauit, by a Iuſtice of the Peace as a Miniſter.

The forme of which Precept (or Warrant) may be thus in Engliſh:

George

GEORGE MVLTON, one of the Iuſtices of the Peace of our Soueraign Lady the Queenes Maieſty within the Countie of *Kent*, To the Sherif of the ſaid ſhire, the conſtables of the hundred of *Wroteham*, the borſholder of the towne of *Ightham*, and to all and ſingular the Queenes Maieſties Bailifes, & other Miniſters, aſwell within liberties as without, in the ſaide Countie, and to euery of them, greeting: Know yee, that I haue receiued the commandement of our ſaide ſoueraigne Ladie in theſe wordes (reciting the whole Writ of *Supplicauit*, which is not alwaies of one forme, becauſe it is ſometimes directed to all the Iuſtices of the Peace, ſometimes to them and the Sherife, and ſometimes to one Iuſtice alone) or reciting onely the effect of the *Supplicauit*, thus:

Knowe yee that I haue receiued the commandement of our ſaide Soueraigne Ladie, to compell *A. B.* of *Ightham*, in the ſaid Countie Yeoman, to finde ſufficient Suertie for her Maieſties peace by him to bee kept toward *C. D.* of the ſaid town of *Ightham* Tailor: And therefore on the behalfe of our ſaid Soueraigne Ladie, I command & charge you, iointly & ſeuerally, that immediatly vpon the receipt hereof, you cauſe the ſaid *A. B.* to come before me at my houſe in *Ightham* aforeſaid, to find ſufficiēt ſuertie and mainpriſe, for the peace to bee kept towards

towards our ſaid Soueraigne Lady, and all her liege people, and ſpecially towards the ſaide *C. D.* And if he the ſaide *A. B.* ſhall refuſe thus to doe, that then you him ſafely conuey, or cauſe to be ſafely conueyed, to the next Gaole of her Maieſtie in the ſaid Countie, there to remaine vntil that he ſhal willingly do the ſame. So that he may bee before the Iuſtices of the Peace of our ſaid ſoueraigne Lady within the ſaid countie at their next generall Seſsions of the Peace (to bee holden at *M.*) there to anſwere to our ſaid Soueraigne Lady for his contempt in this behalfe. And ſee that you certifie your doing in the premiſſes, to the ſaid Iuſtices at the ſaid ſeſſions, bringing then thither this Precept with you. Yeouen at *Ightham* aforeſaide, vnder my ſeale, the fourth day of &c.

Suertie of the Peace taken by a Iuſtice of the Peace as a Iudge.

A Iuſtice of the Peace, may alſo (by vertue of his Office, and as he is a Iudge) command this Suertie to be found: and that, either of his owne motion and diſcretion, or elſe at the requeſt and prayer of another.

By his owne diſcretion.

For he may cauſe a common Barettour, Riottour, one that maketh an Affray, or other perſon to him Suſpected, to finde Suertie of the Peace. 9. Edw. 4. 3. *Curia.* And if hee ſee men contending in hote wordes, and threatning the one to hurt (or kill) the other, hee may of Diſcretion, and ought of duetie (as I thinke) to commaund them to finde Suertie of the Peace,

and thereby prouide for their mutuall saftie.

For, as he is put in trust with the care of the Peace, so ought he both to imploy his witte, and to vse his authority, to preuent the breach of the same. And if a man that was bound to keepe the peace, haue broken his bond, the Iustice of peace ought of discretion to binde him of new 21. E. 4. 40. and Marr.

And his authoritie is so litle to be controlled in this matter, that M. Marrow is of the opinion, that if a Iustice of the peace should procure one man to demand Suertie of the peace against another, and he himselfe should grant a Warrant for it, by which the party is arrested: yet no Action would lie against that Iustice for his so doing: because he might haue granted it without any demaund made: and then it shal not be said, but that hee saw cause both for to prouoke the partie to aske it, and for himselfe to grant it.

Suertie at the request of an other.

In commaunding this Suertie (at the sute of another, or of his own discretion) sundry things are wisely to be considered: first, for whom, and against whom: then, for what cause, and how it ought to be required or commanded: and lastly, by what meanes it shall be inioyned.

For whom, and against whom Suertie of the peace lieth.

The wife (if she be threatned to be killed, or to bee outragiously chastised by her husbande) may with good reason demaunde the peace against him. Fitzh. Nat. Br. Fol. 80. & 230. And I doe not doubt, but a Iustice may (in such a case happening

happening in his presence) commaund it vpon his owne discretion.

The husband also may demaund the peace against his owne wife in the like case: and any man may demand it against the wife of an other Marrow.

A man attainted of Treason, or Felonie, or conuict of Heresie, or Abiured, a Dumbe man, or an Infant (though within 14. years of age) or a Villaine against his lord, may demaund, and ought to haue, suertie of the peace, Marr. And I do not find any strong reason, why the Lorde against his Villaine, or an other man against a dumbe man that is not deafe, or against the Infant aboue the age of 14. yeers, ought not (vpon good cause) to haue it, though perhaps the two last cannot be bound for themselues. But a mad man shall not haue suertie of the peace, at his owne request (as M. Mar. thought) because hee hath no discretion to aske it: and therefore (if there bee cause) he ought to be prouided for by the discretion of the Iustice, as I thinke.

Neither shall suertie of the Peace be graunted against a Mad man, except hee haue *Lucida interualla*, that is to say, certaine respits and cases from his Lunacie, in which hee maye seeme to haue the vse of reason and right iudgement.

A man attainted in a Premunire, or that is an Alien borne (and no Denizen) ought not to

haue this Suertie at his deſire, as M. Mar. taketh it: but perhaps he would haue changed his opinion, in the caſe of premunire (if he had liued at this time) vpon ſight of the ſtatute 5. Eli. ca. 1. for, ſuch a man may not now bee killed, as though hee were out of the protection of the Queene: and as touching the Alien, ſome think there ought to be a difference, betweene ſuch an Alien as is of the Enmitie of the Queene, and him that is of her Amitie: for, the Statuts (Mag. Car. ca. 30: 9. E. 3. ca. 1: 14. E. 3. Stat. 2. cap. 2. and ſundry others) doe all vſe that difference in Marchant ſtrangers, and doe prouide, that ſuch of them as bee not Enemies of the realme, may both ſafely come into the Realme, & tarrie here, and goe hence, at their free pleaſures.

But the caſe may beare ſome doubt, becauſe the Commiſsion it ſelfe ſeemeth to authorize the Iuſtice of Peace, no further then to prouide for the Queenes people, of which number no Alien ſeemeth to bee. But, why any Alien may not bee bounde to the Peace, I doe not yet vnderſtand.

Furthermore, one Iuſtice of the Peace, (ſaith M. Mar.) may graunt this Suretie to any man, againſt one of his fellow Iuſtices. But as M. Mar. requireth a Diſcretion in a Iuſtice of the Peace, when Suretie is craued of him againſt a Sherife, Coroner, Eſcheator, or ſuch other Officer, (whome hee wiſheth not to bee bound to keepe

keepe the Peace *versus cunctum populum*, but onely towardes him that praiethit, leaſt otherwiſe it ſhould argue them to bee vnworthie of ſuch Offices) ſo, much more hee ought to vſe good diſcretion, in graunting it againſt his fellow Iuſtice, leaſt otherwiſe hee both bring the Office in contempt, and himſelfe to reproofe by it. But I doubt not, that one Iuſtice of Peace (if he will) may pray Suertie of the peace at the handes of his felow Iuſtice againſt another perſon: & the Recognuſance may then be according to the cõmon forme, with *Et præcipuè versus &c.*

Hitherto of thoſe, for whom, & againſt whom, the Iuſtice of Peace may graunt this Suertie when it ſhall be required: which will ſuffice to giue him light what to doe in other like caſes.

But ſome others there bee perhappes, with whome hee may not well meddle: As if a man haue cauſe to require the peace againſt a Lord: he for ſo ſmall a cauſe is not to be arreſted (as I take it) by warrant from a Iuſtice, nor yet by a *Supplicavit* out of the Chauncerie. But the Lord Chauncellor may in ſuch caſe graunt to the partie a *Subpœna* againſt that Lord for the Peace, as it ſeemeth by 35. H. 6. Fitzh. Tit. *Subpœna* 20. Suertie of the peace againſt a Lord.

For, ſuch an opinion hath the lawe conceiued of the peaceable diſpoſition of Noblemen, that it hath bin thought ynough to take one of their promiſes vpon Honor, that he would not breake

the Peace against a man. Brooke, *Tit.* Contemptes, 6: 17. Ed. 4. 4: & 24. E. 3. 33: & *subpœna.* Fitzh. 20. But whether the lord Chancellor may award an Attachment vpon such a *subpœna*, it hath beene (in our memorie) made a question.

And if there bee cause to aske the Peace against one that dwelleth in the Cinque Portes, that must be by Writ out of the Chauncerie, directed to the Constable of Douer, & the warden of the Cinque Ports, Fitzh. *Nat. Br.* 80. & Regist. 88.

For what causes Suertie of the Peace may be required.

The cause, for which this Suertie of the peace may be required (or commaunded) appeareth in the first *Assignauimus* of the Commission of the peace, in these words, *Et ad omnes illos qui aliquibus vel alicui de populo nostro (de corporibus suis, vel de incendio domorum suarum) minas fecerint, ad sufficientem securitatem de pace &c. inueniendam &c.* which M. Fitz. (fol. 8.) construeth thus: He that is threatned that he shall be hurt in his body, or that his house or goods shall be burnt, may demaund Suertie of the peace for his safegard in that behalfe. But (saith the Court. 17. E 4. 4.) if a man will demaund the Peace, because he is in feare that another man will take and imprison him, it ought not to be graunted: and one yeelveth the reason to be, because hee may haue a Writ *De homine replegiando*, or an Action of false imprisonment, and may thereby recouer the

the dammages of his imprisonment.

The same reason might be made against the demand of the peace, where a man is threatned with Batterie: and yet it is cleere, that in such a case the Suertie of Peace ought not to bee denied him: and truely to threaten imprisonment, is within the wordes, *Minas de corporibus*, no lesse than Batterie it selfe: and like harme may happen by hard imprisonment, and cruell beating. It shalbe good therefore, to enquire of this matter.

But I take it somewhat cleere, that a Justice of the peace may not (by this commission) award a Precept of the peace, in the behalfe of a man that will require it because he is at variance with his Neighbour, or feareth that hee will doe harme to his seruants, or cattel. For in that case M. Fitzh. helpeth him with an olde Writ to the Sherife, as he findeth it in the Register. Fitzh. Nat. Bre. 80.

How Suertie of the Peace is to be required.

The Peace being thus (for good cause) required, it is the common manner to exact an Oath of the partie: whereby the Justice may be the better enformed and led to thinke, that hee doth not aske it for malicious veration of another, but of verie feare, and for the needfull safetie of himselfe and his. And M. Fitzh. (in his Nat. Bre. Fol. 79.) laboureth to shewe, that the Justices of the peace ought not (without such an Oath) to graunt this Suertie, at the suite of any

By Oath.

man: For as much as not onely the Iudges of the Kings Bench doe yet take an Oath in such case, but the auncient course of the Lawe was such in the Chauncerie it selfe also, although it be now a dayes otherwise vsed there.

Now, that a Iustice may in this case the better iudge of this Feare, let him hearken what M. Bracton (Fol. 16.) saith: *Metus est* (saith he) *præsentis, vel futuri periculi causa, mentis trepidatio: talis enim debet esse metus, qui in se contineat mortis periculum, vel corporis cruciatum.* And therefore, if a Iustice of the Peace, doe perceiue, that the Peace is demanded against such a person, as for his impotencie is not like to breake the Peace, he may safely denie it, sayth M. Marrow: But *Satius est peccare in alteram partem*, as I suppose: least (if hee be blame that demaunded it) the Iustice be worthily blamed, for that he prouided not for his life and safetie. Besides all which, the common forme of the Recognusance, is to binde a man from procuring hurt, the which any impotent man is sufficient to accomplish.

By what means Suertie of the Peace shalbe enioyned. In.

By Word.

It resteth, that I shew, by what meane this Suertie may be enioyned: and that is, either by Word, or by Writing vnder Seale. For a Iustice of the Peace may by word only command a man (being in his presence) to finde Suertie of the Peace: 9. E. 4. 3. for, seeing that hee is a Iudge of Record (saith M. Fitzh. Fol. 8.) his Precept

Precept by mouth, is stronger then his Precept in writing.

So, if the Peace bee demaunded against one that is in his presence, hee may commaund the Shirife, or other knowen Officer, or his owne seruant (if they bee then present also) to arrest the partie to finde this Suertie, 14. H. 7. 8. & Marrow. For, it is not so much the arrest of the Minister, as of the Iustice himselfe.

But, if either the Officer, Seruant, or Partie be absent, then it is requisit to make a Warrant (or Precept) in writing: The forme whereof may be thus in English: for I see no cause yet, why it should be directed in Latine, to a Constable, or Borsholder, that (by all presumption) vnderstandeth no Latine at all. By writing.

ELIZABETH by the grace of God, &c. To our Shirife of *Kent*, the Constables of the hundred of *Wroteham*, the Borsholder of the towne of *Ightham*, and to all and singular our Bailifes, and other our Ministers in the said Countie, as well within liberties as without, greeting. Forasmuch as *A. B.* of *Wrotehamm* aforesaid Yeoman, hath personally come before GEORGE BING. of the saide towne Esquier, one of our Iustices of the Peace within the saide Countie, and hath taken a corporall oath, that hee is afraid that one *C. D.* of *Shipborne*, in the said Countie Yeoman, will beate, *Kanc.* The Precept, for the peace.

All, or any one of these causes may suffice.

beate, wound, maime, or kill him, or burne his houses, & hath therewithall praied surety of the Peace against the said *C.D.* Therfore we command and charge you iointly & seuerally, that immediatly vpon the receipt hereof, you cause the saide *C.D.* to come before the saide *G.B.* or some other of our said Iustices, to finde sufficient suertie & Mainprise, aswell for his appeareance at the next quarter *Sessions* of our Peace to be holden at *M.* in the said County, as also for our Peace to bee kept towardes vs, and all our liege people, and chiefly towards the said *A.B.* that is to say, that he the said *C.D.* shall not doe, nor by any means procure or cause to be done, any of the said euils, to any of our said people, & especially to the said *A.B.* And if hee the saide *C.D.* shall refuse thus to doe, that then immediately without expecting any further Warrant, you him safely conuey, or cause to be safely conueied, to our next prison in the said Coūtie, there to remaine vntil he shall willingly doe the same: So that he may be before our said Iustices, at the saide next generall Sessions of the Peace to be holden at *M.* aforesaide, then and there to answer vnto vs for his contempt in this behalf. And see, that you certifie your doing in the premisses to our said Iustices at the said Sessions, bringing then thither this precept with you. Witnesse the said *G.B.* at *Wroteham* aforesaid, the fourth day of August, &c.

Or thus, in the name of the Iustice himselfe, *Mutatis, mutandis.*

EDVVARD WOTTON Knight, one of the Iustices of the peace of our Soueraigne Lady the Queene, within the said County, to the Sherife &c. greeting. *Kanc.*

Forasmuch as *A. B.* &c. hath personally come before mee, &c. These shall bee therefore on the behalfe, and in the name of our said soueraigne Lady; to commaund you iointly, &c. to come before mee, or one other of her Maiesties said Iustices of the Peace, in the saide Countie, &c. Giuen vnder my Seale, at *W.* aforesaid, &c.

It is meete that the Precept for the Peace doe expresly containe the cause of the Peace within it: for otherwise, howe can the Officer or Partie, take knowledge that Suerty must be prouided for it? Yea (by the way let mee say it) euery Precept (made by a Iustice of the Peace) ought to comprehende the speciall matter vppon which it proceedeth: euen as all the Queenes Writs doe beare their proper cause in their mouth with them. And as for the Forme that is nowe commonly vsed (to answer to such things as shall be obiected and such like) they were not fetched out of the olde learned Precedents, but lately brought in by such as either knew not, or cared not, what they writ.

The Warrant of the Peace is the better also

alſo, if it beare Date of the place where it was made: for if a man be to plead ſuch a Precept, for his excuſe in an Action of falſe impriſonment brought againſt him, he ought (in his Plea) to ſhewe the place where the Warrant was made 14 H.8.18.

And this Precept may alſo bee directed to any indifferent perſon by name, though he be no Officer at all: for ſuch ſeemeth to be permitted in the Oath of the Iuſtices of the Peace, and ſo is that Booke alſo 14 H.8.18.

The which libertie the Iuſtices in ſome Shires doe vſe to take, accuſtomably directing their preceptes to priuate men of their owne election and choice: But yet I take our *Kentiſh* courſe to be the ſafer way, where we commonly write to the ſworne Conſtables and Borſholders onely.

The commanding of Suertie of the Peace hath thus appeared: and now the execution, and bringing of that commandement to effect, muſt next be diſcloſed.

How the commandement of the Peace ſhall be executed.

The execution of this Precept ſtandeth, partly in ſeruing the Precept it ſelfe: and partly in taking the Recognuſance, if the partie doe come with Suerties, and if that there be no let in the way.

And becauſe (for the moſt part) there is but one and the ſame manner of doing, whether the Precept come from the Iuſtice of the peace, as he

he is a Miniſter, or as hee is a Iudge, I alſo will handle them together, noting by the way, thoſe fewe differences that ſhall ariſe betweene them.

If ſuch a Precept be made iointly to twaine, yet the one alone may ſerue it: if it be directed to the Sherife, then he may commaund his Bailife, Vnderſherife, or other ſworne and knowen Officer, to ſerue it, without writing any Precept. But if hee will commaund another man (that is no ſuch Officer) to ſerue it, he muſt giue him a written Precept: for otherwiſe a Writ of falſe impriſonment will lie for the Arreſt. And if it be directed to the Bailife, or to a ſeruant of a Iuſtice of the Peace, or other ſtranger, they muſt ſerue it themſelues: for they can command none other to doe it, neither by worde, nor Precept, Marrow. *The ſeruing of the Precepe for the peace.*

A ſworne and knowen Officer needeth not to ſhewe this Warrant, when hee doth ſerue it vpon a man: 8. Edw. 4. 14. and 20. Henr. 7. 13 &c. for his Office doth (after a ſorte) authorize him. But if the Iuſtice will ſet his ſeruaunt to ſerue it, that ſeruaunt muſt ſhew the Warrant, if the party demaund it: and otherwiſe the partie may make reſiſtance: 8. E. 4. 14.

A Iuſtice of the Peace (ſayeth M. Brooke, *Tit.* Peace 9.) may make this Warrant returnable before himſelfe, and the Bailife needes not to carrie the partie before any other Iuſtice:

But

But Iudge Fineux (21.H.7.20.) ſaith, that if a Iuſtice of the peace do make a Warrant of the peace *Ex officio*, (that is, without any Writ of *Supplicauit* awarded) then the party may chooſe to appeare before him, or any other Iuſtice in the ſhire: and that hee ſhall puniſh the Bailife in falſe impriſonment, if he doe otherwiſe compell him: Otherwiſe it is in the execution of the writ of *Supplicauit*: for he alone to whoſe hands it firſt commeth, is authorized to execute and returne that writ. And thereupon M. Fitz. (in his Nat. Br. Fo. 81.) affirmeth, that if ſuch a Writ of *Supplicauit* be deliuered to the Sherif, then he may both execute it alone, and alſo take ſuertie by Recognuſance, which otherwiſe (beeing but a Conſeruator) he could not do, becauſe the Writ doth ſo enable him, yet Littleton (9.E.4.31.) is to the contrary.

The Officer ought alſo to require the partie to come and find ſurety of the peace, before that he doe arreſt him by the opinion 5. E.4.13. And in trueth, the common forme of the Precept is, And if he refuſe, &c. then he ſhall conuey him to the Gaole: and therefore if hee yeelde to come and to finde Suertie, the Officer may neither abſolutely arreſt him, nor take any fee of him.

And this may bee the cauſe, that when one appeareth vppon ſuch a Warrant before the Iuſtice of peace, the Iuſtice needeth not to demaund

maund Suertie of him, but may commit him, if he do not offer Suertie. 4. H. 7. 9.

If a Bailife doe arreſt a man for the Peace, before that he haue any Warrant, and then afterward doe procure a Warrant for it: this neuertheleſſe is vnlawfully done, and will not excuſe him in an action of falſe impriſonment: *ibidem.* But if the Bailife doe cauſe one (by force of a Warrant) to come & finde Suertie of the peace, and when the party is brought, the Iuſtice will not bind him, yet the Bailife is excuſed 21. H. 7. 22.

If Suertie of the Peace bee required at the handes of a Iuſtice of the Peace (that dwelleth out of the Countye) againſt a man within the County, the Iuſtice may grant a Precept to bee ſerued in the County: but when the party ſhall be thereupon warned, and commaunded to finde ſuerty, the Officer may not carry him out of the Countye to the Iuſtice of Peace that made the Warrant. Mar: For, a Iuſtice of the Peace hath no authority, but in the County where he is Iuſtice. 13. E. 4. 8. *& Comment Plowd.* 37. & therefore it may be doubted alſo, whether ſuch a Warrant be good or no.

The Caſe was there, that a Iuſtice of Peace in one Countie, purſued a Felon and tooke him in another Countie; whereupon it was holden, that hee ought to bee committed to the Gaole of the Countie wherein hee was taken, and

and not of the Countie, wherein he which tooke him was a Iuſtice: for that, he (being out of his Countie) had no more authoritie, then a priuate man. But yet, the Bailife may not diſpute the ſufficiencie, or inſufficiencie of ſuch a Warrant, becauſe hee that awardeth it is a Iudge of Record: 14. H. 8. 18.

That which hath beene hitherto ſaid, is of the execution of the former part of the Warrant for the Peace, that is to ſay, to warne and cauſe the partie to come and finde Suertie for the Peace: But if it fall out, that he refuſe to come and put in ſuch Suretie, then may the Officer, by vertue of his Warrant conuey him to priſon. For (if you remember) the words are, And if he ſhall refuſe then, &c. And if he adde reſiſtance to this refuſall, & make aſſault vpon the Officer, then may that Officer iuſtifie the beating, or hurting of him. 21. Henr. 7. 39. Fineux. But, for our better proceeding, let vs here conſider what an Arreſt is.

What an arreſt is.

Budee in his Greeke Commentaries, is of the opinion, that the French word (Arreſt) which with them ſignifieth a Decree, or iudgement of a Court, took beginning of the Greeke ἀρεσ-τὸν, that is, *placitum*: and (as wee might ſay) the pleaſure (or will) of a Court.

And albeit that it were not out of our way, to thinke that it is called Arreſt, becauſe it ſtayeth (or reſteth) the partie: yet I beleeue rather that

that wee receiue the name from the Normane Lawes, becauſe we vſe it in the ſame ſenſe with them: for commonly (with vs) an Arreſt is taken for the execution of the commaundement of ſome Court, or of ſome Officer in Iuſtice. But howſoeuer the name beganne, An Arreſt is a certaine reſtraint of a mans perſon, depriuing it of his owne will and libertie, and binding it to become obedient to the will of the Lawe: and it may be called the beginning of Impriſonment. The Precepts and Writtes of the higher Courts of Lawe, doe vſe to expreſſe it by two ſundrie wordes, as *Capias*, and *Attachias*, which doe ſignifie, to take (or catch hold of) a man. But this our Precept noteth it by the wordes *Ducifacias*, (cauſe him to be conueyed, &c.) for that the Officer hath (after a ſort) taken him before, in that he commeth vnto him, and requireth him to goe to ſome Iuſtice of the Peace.

To this Arreſt, all Lay perſons (vnder the degree of Lords, or peeres of the realme) be ſubiect: and Eccleſiaſticall perſons (if they bee not attendant vpon diuine ſeruice) may bee arreſted for the Peace alſo, Marr.

The end therefore is, that if the partie will not come to find Suertie of the Peace; the Officer may (vpon that Warrant) arreſt and carrie him to the Gaole, where he ſhall remaine, vntill that he will freely offer, and find it.

Deliuery of him that is imprisoned, for refusing to find Suertie.

And here it is good to be enquired, whether the Release (or Death) of him that prayed the Peace, will not bee sufficient cause to deliuer such a prisoner: and if it shall bee, then by what order hee shall be deliuered. For, as it seemeth to some, that any Iustice of the Peace may (vpon his offer) take the Suertie, and deliuer him: so it may be some doubt, whether hee may bee deliuered (vpon the death, or release of the partie) without the helpe of a Sessions, or Gaole deliuerie.

It appeareth (4.E.4.16.) and by the opinion of Brian, 2.H.7.2.& 4. that if such an imprisoned person had a sute hanging in the Common Place afore hand, he might by a Writ of priuilege be discharged of the imprisonment, if the partie (at whose suite hee was arrested for the Peace) were not readie in Court at the day of the returne of the Writ when he should be called to pray there againe the Suertie of the Peace against him: and he saith, that it had bin alwaies their common course so to doe: but other there were of a contrary opinion.

And it seemeth a hard case, that without any sufficient notice of such a remouing of the partie, a man should bee defeated of his Suertie for the peace.

To what Iustice he that is arrested, may goe.

But now (to goe forward) if the partie shall yeeld to find suerty of the peace, then may he be at his libertie (if the precept proceede *Ex officio*

and

and without the Writ of *Supplicauit*) to goe to any other Iuſtice of the peace, to offer his Suertie. For ſuch (as I told you before) is the opinion of Iudge Fineux 21. H. 7. 20. though Maſter Brooke (Peace 9. & Faux Impriſon. 11.) liketh better to giue the election thereof vnto the Officer.

And I doe remember, that a Iuſtice of the peace was (by order in the Starre Chamber) thruſt out of the Commiſsion, onely becauſe he refuſed to accept ſuertie of the Peace, offered vnto him, vpon a Warrant awarded by one his fellow Iuſtice, to whome the partie (as hee alleaged) durſt not go to giue it, for feare that hee would execute vpon him the malice that he bare againſt him.

But here againe the officer had neede to bee aduiſed, leaſt he find much trouble in following the partie, whether he ſhall pleaſe to leade him. For, as there may be iuſt cauſes to yeelde vnto the requeſt of a man that ſhall diſlike to bee brought before that Iuſtice which gaue out the Warrant, either for ſome matter of priuate diſpleaſure, or for the great diſtance of his dwelling, or for other reaſons: So yet (without good allegation made) I allow not, that the Officer ſhall be drawen out of the Diuiſion and limitte where both he and the partie doe dwell. For in ſo doing, the Officer, and not the offendor may ſeeme to be puniſhed by the ſeruice.

Hereupon alſo it happeneth often, that ſuch perſons (chooſing rather to bee bound by any other, than by him that maketh the Warrant) do offer themſelues, and doe become bound before ſome other Iuſtice: and doe withall procure a *Superſedeas* from him to be diſcharged of any other arreſt to be made vpon them. Yea, and many times (hearing of ſuch Precepts, and miſliking to bee bound in the Countrey) they goe vp to Weſtminſter, and giue Suertie of the peace there, either in the Kings Bench for a time onely (as the maner of that Court is) or in the Chancerie for euer, or for a time (as they vſe it) and do therupon procure a *Superſedeas* from the Court where they are bound, to cloſe the hands of the countrey Iuſtices. And therefore it is not amiſſe to ſay ſomewhat of this matter of *Superſedeas* thus falling in the way.

Superſedeas by a Iuſtice of Peace.

If therefore a Iuſtice of the peace, will (by a *Superſedeas*) diſcharge a precept for the peace, (awarded by his fellowe Iuſtice, by vertue of his Office, and not by force of a *Supplicauit*, which is of a far higher nature, and cannot bee ſo auoided) then ſhall he doe well, to take the Recognuſance after the ſelfe ſame ſorte, in all points, as the forme of the former precept doth require.

For, as it is good reaſon, that (hauing taken Suertie for the peace) hee may by his *Superſedeas* ſaue the partie from finding other Suertie

Suertie for the selfe same cause: So is it not reasonable, that he should proceed otherwise, than according to the first Precept: and thereby discharge a matter of Record that was made by one of equall authoritie with himselfe. Fitzh. Fol. 9.

But this *Supersedeas* (sent by a Iustice of the Peace) is sufficient, although it neither name the Suerties, nor containe the summes in which they are bounde: Yet is it the better forme to expresse them both: as well because the higher Courts vse so to doe, as also that if the Bailife, Constable, or other Officer (to whom it is deliuered) be called at the next Sessions (by the suite of him that sought to haue the Peace) to shew how he hath executed his Warrant, and doe come in and shew forth the *Supersedeas*, then the partie that is bound may be called thereupon at the day that appeareth to be limitted vnto him by the *Supersedeas*: for it is vnder the seale of a Iustice, and doth testifie that the partie is bound, and hath found suertie, to appeare at a certain day: and if he make default, that (being Recorded) shall bee sufficient to cause him to forfeite the penaltie of the Recognisance, although the Iustice that awarded it, shall omit to bring in the Recognisance it selfe, according as he ought now to doe by the Statute, 3. H. 7. cap. 1.

And this may bee gathered vpon the opinion

2. H. 7. and may also bee seene by this forme of the *superſedeas* here vnder written.

The forme of a Superſedeas, by a Iuſtice of the Peace.

WILLIAM SEDLEY Eſquier, one of the Iuſtices of the Peace of our Soueraigne Lady the Queenes Maieſtie within the County of Kent, to the Sherife, Bailifes, Conſtables, Borſholders, and other the faithfull miniſters, and ſubiects of our ſaide Soueraigne Lady within the ſaid Countie, and to euerie of them, ſendeth greeting: Forasmuch as *A. B.* of &c. Yeoman hath perſonally come before me at *Aylesford*, &c. and hath founde ſufficient ſuertie, that is to ſay, *C. D.* and *E. F.* &c. Yeomen, eyther of the which hath vndertaken for the ſaid *A. B.* vnder the payne of xx. lib. and hee the ſaid *A. B.* hath vndertaken for himſelfe vnder the paine of xl. lib. that hee the ſaide *A. B.* ſhall well and truely keepe the Peace toward our ſaid Soueraigne Lady, and all her liege people, and ſpeciallie towardes *G. H.* &c. Yeoman, and alſo that hee ſhall perſonally appeare before the Iuſtices of the Peace of our ſaide Soueraigne Ladie within the ſaide Countie, at the next generall Seſſions of the Peace to be holden at *M.* there: Therefore, on the behalfe of our ſaide Soueraigne Ladie, I command you, and euerie of you, that ye vtterly forbeare and ſurceaſe, to arreſt, take, impriſon, or otherwiſe by anie meanes

meanes (for the ſaide occaſion) to moleſt the ſaid *A. B.* And if you haue (for the ſaide occaſion, and for none other) taken, or impriſoned him, that then you doe cauſe him to be deliuered and ſet at libertie, without further delay. Yeouen at *Aylesford* aforeſaid vnder my ſeale this laſt day of Iuly, &c.

This *Superſedeas* may alſo be in the name of the Queene, and vnder the Teſte of the Iuſtice of the Peace, thus:

ELIZABETH by the grace of God &c. To the ſherife &c. greeting: Foraſmuch as *A. B* hath come before *Thomas Fane* Knight, one of our Iuſtices of Peace within our ſaid Countie, and hath found, &c. We therefore commaund you & euery of you, that ye forbeare &c. Witneſſe the ſaid *T. F.* &c.

Thus much of the *Superſedeas* iſſuing from a Iuſtice of the Peace the which ought to withhold and ſtay the proceeding of his fellow Iuſtices in the ſaid cauſe: in ſomuch that if any Officer by any of their Warrants, hauing this *Superſedeas* deliuered vnto him, will neuertheleſſe vrge the party to find new ſuerty for the Peace, he may refuſe to giue it, and (if hee be committed to priſon for ſuch his refuſal) hee may (as I thinke) haue his action of Falſe impriſonment againſt the Officer vpon the ſame.

Superſedeas out of an higher Court.

I reade (21. E. 4. 40.) that a *Superſedeas* proceeding out of the Chauncerie, will diſcharge a Suertie of Peace taken before the Iuſtices in the Bench of the King. Much more then, will a *Superſedeas*, ſent out of the Chauncerie, or the Kinges Bench, diſcharge a Precept for the peace that is awarded from an inferior Iuſtice of the Peace. And if the Iuſtice of Peace, to whom a *Superſedeas* out of ſuch an high Court ſhall be deliuered, will not thereupon ſurceaſe, an Attachment may bee awarded againſt him for his contempt, and he may be impriſoned, and fined for it.

It is good counſell therefore, that M. Fitzh. (in his Nat. Br. Fol. 238.) giueth, where hee willeth the Iuſtices of Peace (after ſuch a *Superſedeas* receiued) to forbeare to make anye Warrant to arreſt the partie: and if they haue awarded it, then to make their owne *Superſedeas* to the Sherife and other Officers, thereby commaunding them to ſurceaſe to put it in execution.

The taking of the Recognuſance for the Peace.

This impediment of *Superſedeas*, (lying after this ſort, as you haue ſeene, in the waie to the Iuſtice of the Peace) thus paſſed ouer, let vs nowe ſuppoſe the partie ſerued with the Precept, to come before ſome Iuſtice of the Peace: & let vs enter into the taking of the Recognuſance of him: for that is one part of the execution of the Warrant for the Peace, & may doe

doe ſeruice, whether the party come to him that made the Precept or goe to any other.

If the Iuſtice of the Peace deale in this matter, as a Iudge, and by vertue of his commiſſion, then the number of the Suerties, the ſumme of their bond, their ſufficiencie in goods, (or lands) the time how long the partie ſhall be bound, and ſuch other circumſtances, are referred wholly to his owne conſideration: and if hee be deceiued in the abilitie of the Suerties, hee may compell the party to put in others: Mar. For the auoiding of which deceit alſo, the Iuſtices of the Common Place (7. H. 6. 25.) did examine the abilitie of the Suerties vppon their Oaths, &c.

The common manner is, to take two Suerties, beſides the partie himſelfe: and good reaſon it is that thoſe ſhould bee ſuch as haue their names regiſtred in the booke of Subſidie: for albeit that here and there ſome may be ſufficient that were not aſſeſſed to the Queene, yet it ſtandeth not well together, that hee ſhoulde become bound to the Prince in x. or xx. pounds, that was not in the Subſidie found worth any thing at all. And, the caſe may bee ſuch, that Suerties onely, and not the principall partie, ſhall giue the Bond. For, if the Peace bee praied againſt a Wife, or an Infant vnder the yeares of diſcretion, they ſhall be bound by their Suerties onely, as was the Monke, or chanon, 36. Henr. 6. 23.

But

But if the Iuſtice of Peace ſhall commaunde the Peace as a Miniſter in execution of the Writ of *Supplicauit*, then muſt he behaue himſelfe as the Writ itſelfe directeth him: and that hath not beene alwaies after one maner.

For ſome forme commaundeth him to take ſufficient Manucaptors (in any paine or ſumme to be reaſonably ſet by himſelfe) ſo that he will be anſwerable for it at his owne peril: and ſome willeth him to take ſufficient Suertie, in a ſum certainely preſcribed vnto him, as a hundred pounds in all, or euery of them in xx. pounds: as it may be ſeen at large, in the Regiſter of Writs fol. 89.

A Iuſtice of the Peace (ſaith M. Marrow) may take this Suertie by a Gage, or Pledge, which ſhall not be forfaited thereby, but pauned onely, ſo that the partie ſhal (vnder a certain pain) keep the Peace, which paune hee ſhall forfeite, if hee breake the Peace. And (by his opinion) a Iuſtice of the Peace may alſo take this Suertie by an obligation made to himſelfe, by the name of Iuſtice of the Peace: For ſo ſhall it be (ſaith he) *ad vſum domini Regis*: But if it were made vnto him without his name of Iuſtice of the Peace, thē it could not be to the vſe of the King, vnleſſe it had the words, *ad vſum Domini Regis*.

M. Fitzh. on the other ſide (in his Nat. bre. fo. 81.) holdeth, that ſuch an Obligation taken to the King, by a Iuſtice of the Peace, is nothing worth:

worth: for a man cannot be bound to the King (saith he) but onely by matter of Record, vnlesse he will afterward come into a Court of Record, & confesse it to be his deed, and pray that it may be Enrolled there.

But the new Statute (33.H.8.ca.39.) hath made a plaine Lawe in these cases, and willeth, that all obligations and Specialties (made for any cause touching the king) shall bee made in his own name, by the words, *Domino Regi*, and to none other person to his vse. And it ordaineth further, that such bondes shall be of the nature of a Statute Staple: and that if any person take any obligation otherwise, hee shall be imprisoned at the pleasure of the King, or of his honourable Counsell.

The safe way therefore, is to take this suerty by Recognusance, as is commonly vsed, & that also by the words *Domin. Reginæ:* and then (vpon the forfeiture thereof) the Queene shall haue execution accordingly.

Now, if a Recognusance be meant to bee taken for the Peace, by a Iustice of the peace, and yet do not containe within it (or in the condition thereof) that it was taken For the keeping of the Peace: it seemeth to be voide, as being then taken *Coram non iudice:* because a Iustice of the Peace hath not power to take Recognusances generally, but for matters concerning his Office specially. And therefore W. Marrow addeth further,

further, that if the Recognuſance bee, That the Recognuſor ſhall not maime, nor beate *A.* yet it is not good, becauſe it ought to bee For the keeping of the Peace, and that may bee broken otherwiſe, as by burning the houſe of A. or by ſuch like miſdemeanour.

Although this recognuſance doe not comprehend any time of appearance, but be generally to keepe the Peace: yet it is good in lawe (ſaith M. Marrow) becauſe the chiefe Scope is, the keeping of the Peace, and the time is referred to the diſcretion of the Iuſtice: But, as it was moued (2. H. 7. fo. 1.) whether the Iuſtice of Peace ought to bring in the recognuſance to the *Cuſtos Rotulorum*, that the partye might bee called vppon it: So, by the Statute (3. H. 7. cap. 1.) it is plainly enacted, that euery recognuſance (taken for the Peace) ſhall be certified at the next Seſſions of the Peace, that the party may thereupon be called, & his default (if any happen) may be recorded. Wherby it ſeemeth, that euery recognuſance of the Peace, ought now to contein the appearance of the party at the next Seſſions.

And otherwiſe, there may be ſome miſchiefe: For, if the partie ſhall not ſo appeare, he is at libertie (without a new arreſt) and not forthcomming to be bound ouer, if it be ſo required.

And (by M. Marrow) if the recognuſance conteine a day of apparance, and yet haue no perſon named, before whom the partie ſo bounden

den ſhall appeare: then may hee appeare where hee will before that Iuſtice of the peace which tooke the recognuſance of him,

Againe, if the forme of the Recognuſance bee in twenty pounds, to be leuied only of the goods, or onely of the landes of the Recogniſor: it ſeemeth to be good enough: for peraduenture the words, Of the goods onely, or Lands onely, ſhal be take to be void, ſeeing that the very acknowledgement of the ſumme of twenty pounds (before a Iudge enabled to take it) both maketh it a debt, and implieth the ordinary meane of law to come vnto it.

So, if this Recognuſance be taken, To keep the Peace againſt one ſpeciall partie onely, M. Marrow thinketh it good: but aduiſe well of it, for the wordes in the commiſſion of the Peace nowe be, to take Suertie, *Erga nos, & populum noſtrum.*

Many other waies there bee, after which the Iuſtice of Peace may walke in taking of this kinde of Recognuſance: which, howſoeuer they may fall out ſufficient to binde the partye vnto the Queene, yet peraduenture they ſhall not excuſe our Iuſtice of the Peace from checke and blame: and therefore, for the better eſchewing of all errour in himſelfe, and hard dealing againſt the party, I wiſh him to go *Regia via*, following the receiued forme, which I take to bee thus:

Memo-

The forme of a Recognisance for the peace.

Memorandum, quod quarto die Iulij, An. regni domin. nostræ Elizab. Dei gratia, &c. 41. R.P. *de* E. *in comitatu prædict.* Yeoman, *in propria persona sua venit coram me I. Leuison milite, vno Iusticiariorum dict. domin. reginæ ad pacem in dicto comitatu conseruandam assignatorum, & assumpsit pro seipso sub pœna viginti libr. Et* H. I. *de* L. *in comitatu prædicto* Yeoman: *Et* I. F. *de* M. *in eodem comitatu* Husbandman, *tunc & ibidem in proprijs personis suis similiter venerunt, & manuceperunt pro prædict.* R.P. *(videlicet) quilibet eorum separatim sub pœna* 100. *solid. quod idem* R.P. *personaliter comparebit coram Iusticiarijs dict. Domin. reginæ ad pacem ad proximam generalem sessionem pacis in comitatu prædicto, ad faciendum & recipiendum quod ei per curiam tunc & ibidem iniungetur: Et quod ipse interim pacem dictæ Domin. Reginæ custodiet erga ipsam Dominam Reginam, & cunctum populum suum, & præcipuè versus* M. N. *de* Ighthaim *prædict.* Yeoman, *Et quod dampnum vel malum aliquod corporale aut grauamen præfato* M. N. *(aut alicui de populo dict. Domin. Reginæ quod in lesionem aut perturbationem pacis ipsius domin. reginæ cedere valeat) quouismodo non faciet, nec fieri procurabit. Quam quidem summam xx. libr. prædict.* R. P. *& quilibet manucaptorum prædictorum prædict as separales summas* 100. *solid. recognouerunt se debere dict. Domin. Reginæ, de terris & tenementis, bonis & catallis suis, quorumlibet*

rumlibet & cuiuslibet eorum, ad opus dict. domin. Reg. hæredum & successorum suorum fieri & leuari, ad quorumcunque manus deuenerint, si contigerit ipsum R. P. *præmissa vel eorum aliquod in aliquo infringere, & inde legitimo modo conuinci. In cuius rei testimonium, ego prædictus* I. L. *sigillum meum apposui. Dat. &c.*

Or thus, a little different in forme.

MEmorandum, quod 4. die, &c. A. B. *de* Ightham *&c. Et* C.D. *de eadem* Yeomen, *venerunt coram me* I.F. *&c. & manuceperunt pro* I.S. *nuper de* L. *&c. quod ipse personaliter comparebit coram me præfato* I.F. *vel sociis meis Iusticiarijs pacis domin. reg. ad proximam generalem sessionem &c. Et quod ipse interim geret pacem erga cunctum populum dom. reginæ, & præcipuè erga* R. B. *&c. videlicet, quilibet manucaptorum prædictorum sub pœna xx. libr. Et prædictus* I.S. *assumpsit pro seipso sub pœna* 40. *libr. Quam quidem summam* 40. *libr. prædictus* I.S. *& quilibet manucaptorum prædictorum dictam summam* 20. *libr. recognouerunt. &c.*

And this may bee well done also, by a single recognusance in Latine, with a condition added or endorced in English, for the keeping of the peace, and for the day and place of the parties appearance at the Quarter sessions.

The

What shal be done with the Recognisance.

The Suertie (or Recognisance) of the peace, thus commanded, & accomplished, order draweth me to disclose, how the Iustice of the peace is to demeane himselfe with it.

The returne of a Supplicauit.

If the Suerty were taken, by vertue of a *Supplicauit*, then must the Iustice of the peace (being in this case but a Minister) make returne of the Writ and certificat of his doing, into the court from whence the *Supplicauit* did proceede: for helpe wherein, I wil set him downe that, which I haue seene put in practise vpon a Writ of that kinde.

First let him note vpon the backe of the *Supplicauit* thus:

Executio istius breuis, patet in quadam schedula eidem breui annexa.

Then may that Scedule be thus:

EGo Thomas Fludde, *miles, vnus custodum pacis Dominæ Reginæ in comitatu Kanciæ, certifico in cancellariam dictæ Dominæ Reginæ me virtute istius breuis (mihi per* A. B. *in eodem breui nominatum, primò deliberati) personaliter coram me (tali die & loco) venire fecisse* T. R. *in dicto breui nominatum, ac eundem* T. *ad sufficientem securitatem, & manucaptores pacis inueniendum secundum formam dict. breuis videlicet,* (as the Writ shall appoint, which is of diuerse formes, as I tolde you before) *compulisse: In cuius rei testimonium huic præsenti Certificationi*

meæ

meæ ſigillum meum appoſui: Dat. apud D. prædictam, in comitatu præd. 25. die Februarij, anno regni dict. dom. noſtræ Elizab. Dei gratia, &c. 41.

And if a *Certiorari* bee directed out of the Chancerie to the Iuſtice of the peace, for remouing this Recognuſance, becauſe it was not ſent vp together with the Certificate, (as there was no neceſſitie that it ſhould) then that Writ alſo may be thus anſwered. The returne of a Certiorari

Upon the backe of the Writ thus:

VIrtute iſtius breuis ego Perciuallus Hart *vnus cuſtodũ pacis dom. Reg. in com. Kanc. tenorem ſecuritatis pacis (vnde infra fit mentio) dict. dom. Regin. in Cancellariam ſuam ſub ſigillo meo diſtinctè & apertè mitto, prout patet in ſchedula huic breui conſuta.*

The which Scedule may be thus.

Memorandum quod 20. die Iunij &c. (reciting the whole Recognuſance to the end therof.)

Then, *In cuius rei teſtimonium ego prædictus* P. H. *ſigillum meum appoſui: Dat. &c.*

If the *Supplicauit* be againſt diuers, and the party will releaſe his prayer of the peace againſt one of them, then that releaſe ought to be certified for him, and the Writ muſt be ſerued for the reſt: or elſe, *non eſt inuentus*, may be certified for him, and the Writ may be ſerued for the reſt.

And this forme may ſerue alſo, where a

Certiorari is brought to a Iuſtice of the Peace, to remoue a Recognuſance of the Peace that was taken by him *Ex officio*, without any ſuch Writ of *ſupplicauit*: as you may reade in the Regiſter fol. 90.

But if the Recognuſance be not thus remoued from the Iuſtice of the peace, then may hee keepe it till the *Certiorari* come to him for it.

The certifying of the Recognuſance and releaſe, to the Seſſions.

On the other ſide, if the Recognuſance were taken by vertue of his Office, then (whether it were by his own diſcretion, or at the ſuite & deſire of another) he muſt ſend, or bring it in at the next Seſſions, to the *Cuſtos Rotulorum*: ſo that the Recogniſor may be ther called, & if he make default, then the ſame default to be recorded, as is appointed by the ſaid ſtatute 3. H. 7. cap. 1.

And although the party that prayed the peace doe not then appeare at thoſe Seſsions, yet is not the default of the Recogniſor diſcharged thereby 39. H. 6. 26. Bro. Suertie 10. and the Iuſtices may then of diſcretion bind him ouer: which alſo they ordinarily doe in ſome places, for two or three Seſsions together, by order amongſt themſelues.

And here againe, ſome difficulties doe ariſe, that may make the Iuſtice of peace ſometimes doubtful, how to hold, certifie, or ſend in, the recognuſance. For ſundrie meanes there are, by which this Recognuſance of the Peace may (before any forfeiture thereof made) be after a

ſort

ſort diſcharged, and therefore let vs conſider of them apart, and withall giue ſome aduiſe what ſhall be beſt to doe therein.

The Iuſtice of peace, that of his owne motion compelleth one to giue Suertie of the Peace vntil a certaine day, may by like diſcretion before that day releaſe it. Fitzh. fol. 10. And if it ſhould fortune to be made to keep the Peace generally, without any day limited, then would it be conſtrued that it was to continue during the life of the party bound, and then could no man releaſe it, by Fitzh. & 21. E. 4. 40. Releaſe of the Peace by a Iuſtice of Peace.

If (at the ſuit of A.) the Recognuſance ſhould be taken, To keepe the Peace againſt A. onely, & none other: then may A. releaſe it, either before the ſame Iuſtice, or any other that will certifie the Releaſe, which certificate (being of Record) will diſcharge it: but to releaſe it by his deede, is nothing worth, Marr.

And ſo if it bee *verſus cunctum populum, & præcipuè verſus* A: yet may A. after that ſort releaſe it, as the Law is now practiſed in our time cleane againſt the opinion of the booke, 21. Ed. 4. 40. For, albeit that it ſeeme popular, ſo that all others ſhould haue equall interreſt with A. in it, yet was it taken ſpecially (ſay they) for his ſafetie, as the word *Præcipuè* doth argue plaine. And M. Brooke ſaith truely, that it was ſo vſed at that time alſo Peace 17.

But, ſince the Recognuſance is made to the

Queene, and not to the party (though for his ſecuritie) and ſeeing alſo that by ſuch releaſe, hee that ought to remaine bounden ſhal be at libertie and may doe harme, whileſt (intending to beate B.) he may collude with A. both to pray and pardon the Recognuſance for the peace: It could for my part like better, to maintaine that old, then to imitate this new opinion.

And now, whether the Recognuſance bee at the ſute of A. or by the meere motion of the Iuſtice in the behalfe of A. the Queene cannot releaſe or pardō it, before that it be forfeited: both for the miſchiefe that may come to A. thereby, (by Fineux opinion 11. H. 7. 12.) and for that the Recogniſance being taken according to the common forme, as is before ſet downe, it is not properly a debt to the Queene, vntil it be forfeited, as appeareth 11. H. 4. 43. & 1. H. 7. 10. But, being once forfeited, then ſhee (and none other) may pardon the forfeiture: for then it is become a proper debt vnto her.

Now in theſe caſes, the Recognuſance may not bee cancelled: leſt perauenture the Peace was broken (and conſequently the Recognuſance forfeited) before the time of the Releaſe made, Fitzh. fol. 10.

And therefore, it ſhall be beſt, in ſuch caſes to ſend to the Seſſions, the Recognuſance and the Releaſe together: and that may be done in a few lines vnder the Recognuſance it ſelfe.

First

First for the release of the Iustice, thus: *Ego præfatus* Thom. Walsingham Miles *qui supranominatum* A.B. *ad prædictam securitatem pacis inueniendam ex mea discretione compuli, eandem securitatem pacis (quantum in me est) ex mea discretione* 1. *die Augusti &c. remisi & relaxaui: In cuius rei testimonium, huic præsenti relaxationi meæ sigillum meum apposui. Dat. &c.*

And for the release of the Partie before the same Iustice that tooke it, thus.

Release by the partie.

MEmorandum, *quòd primo die Augusti &c. præfatus* C.D. *venit coram me* Samuele Leonarde, *& gratis remisit & relaxauit (quantum in se est) predictam securitatem pacis, per ipsum, coram me, versus supra nominatum* A.B. *petitam. In cuius rei testimonium, Ego præfat.* Sam. Leon. *&c. Dat. &c.*

But if the release be made (as some thinke it may) before another Iustice which hath not the Recognusance, then this latter forme must bee framed accordingly.

Certifying of the Recognusance, and Superſedeas.

Furthermore, if a man be bound before a Iustice of the Peace, to keepe the Peace against all the Queenes people, and to appeare at the next Quarter Sessions: and doe afterward procure a *Superſedeas* out of the Chancery, testifying that hee hath found suertie there against all the Queens people for euer: this will discharge his appearance at the Sessions: because the

graunting of this *Superſedeas* is the Act of the Queene, which is ỹ fountaine of Iuſtice, & controlleth al other deriued authorities. Fitz. fol. 9.

But if that *Superſedeas* ſhould teſtifie, that he hath found Suertie in the Chancerie, onely vntill a certaine day (which day is after thoſe Seſſions) then M. Fitzh. thinketh, that his apparance at the Seſsions ſhall not be diſcharged by the *Superſedeas*. In both theſe caſes alſo, I would aduiſe the Iuſtice of the peace, to ſend in as wel the Recognuſance as the *Superſedeas*, if it come to his hands: for peraduenture the Recognuſance was broken before the *ſuperſedeas* purchaſed: or, if it were not, yet hee ſhalbe excuſed, and the Recognuſor neuer a whit the more endangered thereby.

Certifying of the Recognuſance, though it be diſcharged by death.

Laſtly, the death of the Prince diſchargeth the Recognuſance of the Peace 1. H. 7. 2. *Cur.* So doth the death of the Recognuſor: & ſo alſo doth the death of him, at whoſe ſuite it was taken, if ſo bee, that it were made to keepe the Peace againſt him alone.

But, although the Mainpernours or Suerties die, yet the Recognuſance liueth: for, if the Peace be broken after their deaths, their executors ſhalbe charged with it. 21. E. 4. 40. Neyther (in the former caſes) is the Recognuſance diſcharged by ſuch death, if it were forfeited before.

And therefore, here againe my counſell is, to

ſend

ſend in the Recognuſance to the *Cuſtos Rotulorum*: for otherwiſe, how ſhal the Iuſtice of peace be aſſured, that he doth not defraud the Queene of a forfeiture, that was growne vnto her?

Thus haue I both bound the partie to the Peace, and conueyed the Recognuſance from the Iuſtice to the *Cuſtos Rotulorum*, readie to bee called vppon at the Quarter Seſsions: So that I might forthwith proceede to treate of the good Abearing: But, becauſe I haue tolde you (out of M. Mar. & 21. E. 4. 40.) that if the Recognuſance of the peace bee forfeited, and that forfeiture be leuied, ſo that the Recognuſance is vtterly determined, yet (of Diſcretion) the partie is to bee compelled to find new Suertie, or elſe to be ſent to the priſon: becauſe it appeareth euidently, that hee hath broken the Peace: I take it now fit, to runne ſwiftly ouer ſome fewe things that may enforme a Iuſtice of the Peace concerning ſuch forfeitures: to the end, that hee may thereupon compell the offendor accordingly.

Cauſes of forfeiture, ſo that the party ſhall be compelled to giue newe Suerties.

The Condition of this Recognuſance (of what good forme ſoeuer you make it) ſtandeth vppon two points: the one, for appearance at a time: the other, for keeping the Peace in the meane while. Of the firſt of theſe I haue ſaide ſomewhat already in this Chapter: concerning the ſecond point, this is generall, that whatſoeuer Act is a breach of the Peace, the doing

thereof doth also beget a forfeiture of the Recognusance that is made for keeping of the Peace. And what acts shal amount to a breach of the Peace, I will hereafter shew in the next Chapter of this booke, where I shall (to another end) haue meeter place for it. In the meane space, take thus much here.

If a man bee bound to keepe the Peace against A. and doe afterward threaten A. to his face, that he wil beate him: he hath forfeited his Recognusance. And an action of Trespasse lieth at the Common law, against him that shall threaten one to beate him: as appeareth in diuers Booke cases 33. H. 6. 18. 37. H. 6. 20. &c. and shal suppose it to bee *Contra pacem*. But otherwise it is, if A. be not present at that threatning, by good opinion 18. E. 4. 28. yet, if (in the absence of A.) he doth threaten, that he wil beat him, and then do afterward lie in wait to beate him: hee hath in that case also broken his Recognusance 22. E. 4. 35. *Car.*

Like forfeiture is it, if hee that is bound, doe but command or procure another to breake the Peace vpon any man, or to do any other vnlawfull act against the Peace, if that it bee done in deede 7. H. 4. 34. & Brooke *Tit.* Peace 20. *tempore* H. 8.

Of the suertie of the good Abearing: and where it lyeth.

And now for closing vp of this part (concerning the Preuention of the breach of the peace) it remaineth, that I intreate of the Suertie of

of good Abearing: which is of great affinitie with that of the Peace, as being prouided for preseruation of the Peace, as that other is: for in the Commission of the Peace, they are both conueyed vnder this one tract of speach, (*ad securitatem de pace, vel de bono gestu suo, erga nos & populum nostrum inueniendum*) against such as doe threaten hurt to mens bodies, or Fire to their houses: which thinges are now commonly preuented by Suertie of the Peace onely.

And (2.H.7.2) the Suertie of the good Abearing is set forth to rest in this point chiefly, That a man demean himself well, in his port, & company, doing nothing that may bee cause of the breach of the peace, or of putting the people in feare, or trouble: & that it doth not consist in the obseruation of things that concerne not the Peace: And that it should differ from Suertie of the Peace, in this, that where the Peace is not broken without an affray, or batterie, or such like, this Suertie *de bono gestu*, may bee broken by the number of a mans company, or by his or their weapons, or harnesse.

Herewithall also doe certaine Precedentes of the Kings Bench agree, which in Suertie of the good Abearing (taken at the suite of some one person) doe mingle these wordes, *Amodo se bene geret erga Dominum Regem, & cunctum populum suum, & præcipuè erga* T. P. with those other words that are commonly put in

in the Recognuſance for the Peace, as in the new Booke of Entries, fol. 416. any man may plainly ſee.

But all this notwithſtanding, mee thinketh that a man may reaſonably affirme, that the Suertie of good Abearing, ſhould not bee reſtrained to ſo narrow boundes.

For firſt, the Statute (34. E. 3. cap. 1) enableth the Wardeins of the Peace, to take of all them that bee not of good fame (where they ſhall be found) ſufficient ſuertie and mainpriſe of their good Abearing towards the king and his people. So that, if a man be defamed, hee may by vertue hereof be bound to his good behauiour, at the diſcretion of the Wardeins and Iuſtices of the Peace. And I once receiued a ſpeciall Writ out of the Chauncerie, directed *Cuſtodibus pacis ac vicecomiti: & eorum cuilibet*, and grounded vppon the ſame Statute, for the binding of a man with Suerties, *quod ipſe boni geſtus & famæ de cætero erit, & quod nihil in contrarium ſtatuti prædicti quouiſmodo attemptabit, &c.* wherein I proceeded as a Miniſter onely. But the doubt reſteth in this, to vnderſtande concerning what matters this defamation muſt be: and that (as I think) may be partly gathered out of the ſaide Statute alſo. For, after it hath firſt giuen power to the Wardeins of the peace, to arreſt and chaſtiſe offendors (S. againſt the Peace, Riottors, & Barretors) then it willeth them

them, to enquire of ſuch as hauing beene robbers beyond the ſea, were come ouer hither, & would not labor as they were wont: and laſtly, it authorizeth them, to take ſuertie of the good behauiour of ſuch as be defamed, namely (as I thinke) for any of thoſe former offences: for ſo it ſtandeth well together, that they ſhall both puniſh ſuch as haue already ſo offended, and ſhall alſo prouide, that others ſhall not likewiſe offend. And euen ſo doe they of the Chauncerie vnderſtand it, as by their ſpeciall *Superſedeas*, which I afterwarde receiued from them vppon that Writ (whereof I ſpake euen nowe) I did well perceiue.

Moreouer, it ſeemeth to me, that all theſe ſtatutes, firſt (1. Mar. Parl. 1. cap. 3.) which gaue this Suertie of good Abearing againſt ſuch as diſturbed a Preacher: then (5. Elizab. cap. 21.) that prouideth the ſame againſt the takers of fiſh in Ponds, or of Deere in Parkes: After that, (23. Eliz. ca. 1.) which graunteth it againſt ſuch as wilfully abſent themſelues from the Church by the ſpace of 12. monthes: And laſtly, (39. El. ca. 4.) which tyeth to the good behauior all ſuch as diſturbe the execution of that ſtatute, either for the puniſhment of Rogues, or for the reliefe or ſetting on worke of the poore: It ſeemeth (I ſay) that all theſe Statutes haue this one meaning, that a party (ſo bounde) may afterwarde forfeit his Recognuſance, if he eſtſoones offend

againſt

againſt the ſaid Statutes.

Beſides this, you may ſee (admitted by the opinion of the Court. 13.H.7.10.) that if a man in the night ſeaſon, haunt a houſe that is ſuſpected for Bawderie, or vſe ſuſpicious companye, then may the Conſtable arreſt him to find ſuertie of his good Abearing. For, Bawderie is not meerely a ſpiritual offence, but mixed, and ſounding ſomewhat againſt the Peace of the lande 27.H.8.14.Fitz.& 1.H.7.6.

And therefore, it ſhal not be amiſſe at this day (in my ſlender opinion) to graunt Suertie of the good Abearing againſt him that is ſuſpected to haue begotten a Baſtard childe: to the ende that he may be forth comming when it ſhall be born: for otherwiſe, there will bee no Putatiue father found, when the two Iuſtices of Peace, ſhall (after the birth, and by vertue of the Statute. 18. Eliz. cap.3.) come to take order for his puniſhment.

And if this medicine might lawfully be applied to Shomakers, Tailours, Weauers, and other light perſons that (without teſtimoniall, or other good Warrant) doe flit out of one ſhire into another: not onely that euill of Baſtardie, but many other miſchiefes, might be either preuented, or puniſhed thereby.

But, for ſome aduiſe (by the way) in conceiuing rightly this Suſpition, mark what M. Bracton writeth: *Oritur ſuſpicio ex fama, & ex fama*

&

& ſuſpicione, oritur grauis preſumptio: Fama verò ſuſpicionẽ inducens, oriri debet apud bonos & graues, idque non ſemel, ſed ſæpius. Oritur etiam ſuſpicio, ex facto præcedente, cui ſtandum eſt donec probetur contrariũ: nam qui ſemel eſt malus, ſemp præſumitur eſſe malus, in eodem genere mali.

Now, the further that this bond of the Good Abearing doeth extend, the more regard there ought to be taken in the awarding of it: & therefore although the Iuſtices of the Peace haue power to grant it, either by their own diſcretiõ, or vpon the Complaint of others, euen as they may that of the Peace: yet I wiſh rather, that they do not command it, but only vpon ſufficient cauſe ſeen to themſelues, or vpon the ſute & complaint of diuers, and the ſame very honeſt and credible perſons.

And heere, forasmuch as one Iuſtice of the Peace (alone, and out of the Seſſions) may (both by the firſt Clauſe of the Commiſſion, and alſo by the opinion of M. Fitzh. 8. 9. E. 4. 3.) graunt this ſuertie of the good Abearing, (although the common maner be, that two ſuch Iuſtices do ioyne in that doing, whereof alſo M. Fitzh. hath very good liking) I will not ſticke to ſet forth the common formes, aſwell of the Precept, as of the Recognuſance for the ſame: wherein if I ſhall vſe the names of two Iuſtices, you muſt take that to bee done according to the common faſhion, and not of any neceſſitie in law.

For,

For, as I would more gladly vse the assistãce of a fellow Iustice in this behalfe, if I may conueniently haue it: so (if that may not be gotten) I would not greatly feare (whẽ good cause shal require) to vndertake the thing my selfe alone.

The Precept may haue this course.

The precept of the Good Abearing.

BRYAN ANNESLEY, and EDMVND STILE, two of the Iustices of the peace of our soueraigne Ladie the Queenes Maiestie in the county of *Kent*, to the Sherife of the saide countie, to the Constables of the Hundred of *Blackeheath*, and to the Borsholder of the town of *Eltham*, in the said Hundred, and to euery of them, greeting: Forasmuch as *A.B.* of E. aforesaid, is not of good fame, nor of honest conuersation (but an euill doer, riotter, barretor, and perturber of the Peace of our saide soueraigne Lady) as wee are giuen to vnderstande by the complaint of sundry credible persons. Therefore, on the behalfe of our said soueraigne Ladie we commaund you and euery of you, that you cause the saide *A.B.* to come before vs, or some others of our fellow Iustices, to finde sufficient suerty and mainprise as well for his good Abearing towards our saide soueraigne Lady, and all her liege people, vntill the next quarter Session of the peace to bee holden in the saide County, as also for his appearance then there. And if he shal refuse so to do, &c. as in the Precept of the peace with a very litle (or no) chãge.

Any one of these is sufficient cause.

The

The vſuall Recognuſance hath this forme.

The Recognuſance for the Good Abearing.

MEmorandum, quod quinto die menſis Iul. anno regni Eliz. &c. venit coram nobis Henrico Palmer milite, & Samuele Leonard armigero, vt antea in Recognitione pacis, vſque ad hoc: *Quod idem* R. G. *perſonaliter comparebit coram Iuſticiarijs dict. dom. reg. ad pacem, &c. ad proximam generalem ſeſſionem, &c. Et quod ipſe interim ſe bene geret erga dom. reg. & cunctum populum ſuum & præcipuè erga* I. B. *de* C. *&c. Et quod ipſe non inferet, nec inferri procurabit, per ſe nec per alios, damnum aliquod ſeu grauamen præfato* I. B. *ſeu alicui de populo ipſius dom. reg. de corporibus ſuis, per inſidias, inſultus, ſeu aliquo alio modo, quod in læſionem ſeu perturbationem pacis dictæ dom. Reg. cedere valeat quouiſmodo: videlicet vterque prædict.* H. C. *&* I. S. *ſub pœna* 100. *lib. Et prædictus* R. G. *ſub pœna* 200. *lib. quas quidem ſeparales ſummas* 100. *lib. vterque prædictorum* H. C. *&* I. S. *(vt prædicitur) per ſe, ac prædictus* R. G. *dictas* 200. *lib. recognouerunt ſe debere dictæ dom. reg. de terris & tenementis bonis & catallis ſuis, & quorumlibet, ac cuiuſlibet eorum ad opus ipſius dict. do. reg. fieri & leuari, Si contingat præfatum* R. G. *in aliquo præmiſſorum deficere, & inde legitimo modo conuinci, &c.*

Or by a ſimple Recognuſance, with this Condition endorced, or vnderwritten.

COnditio Recognitionis prædictæ talis eſt, Quod ſi prædictus R. G. *impoſterum ſe bene geret,*

geret, & pacem Dom. Regina conſeruabit, erga dictam dominam reginam, & cunctum populum ſuũ, & nullum damnum corporale, &c. Extunc Recognitio prædicta pro nullo teneatur, alioquin in ſuo robore permaneat.

Releaſe of the Good Abearing.

I haue knowen it doubted, whether the ſuertie of the Good Abearing (commaunded vpon complaint) may be releaſed by any ſpeciall perſon, or no: becauſe it ſeemeth more popular than the Suertie of the Peace. But if it may, then may the forme of ſuch a Releaſe be eaſily made, by that which is before concerning the Peace, vſing the words *Securitatem de ſe bene gerendo*, in ſteede of the words *Securitatem pacis*.

And the like imitation may be vſed alſo, for a *Superſedeas* of the Good Abearing, if at the leaſt that bee graunted by the Iuſtices of the Peace.

I might here without breach of Order, proſecute the preſeruation of the peace, by the preuenting of ſuch as be riotouſly aſſembled, & by handling the Statute of Northampton, which ſeemeth (by plaine ſpeech) to bee prouided for preuention of the breach of the peace alſo: but becauſe the firſt ſhall haue his proper place, and the latter is commonly put in vre at this day after the Peace broken by forcible entrie, I will ſpare to ſpeake of any of them, till I come to treate of thoſe matters by themſelues.

Of

Of the Breach of the Peace without a *Multitude*, against the perſon, and how it *may be ſtaied, or puniſhed by any one* Iuſtice of Peace out of the Seſsions.

Cap. iii.

THE preuention of the breath of the peace hath appeared, as well in the Suertie of the peace, as of the good Abearing: and therefore mine owne order requireth, that I nowe declare what one Iuſtice of the peace may doe (out of the Seſsions) for punihment of ſuch as doe breake the peace. Breach of the Peace without a multitude.

For, our law is no leſſe carefull this way to conſerue the peace, both by ſtaying them that do any way aduenture towardes the breach thereof, and by puniſhing them that do actually enter into the verie violation of the ſame, than it was prouident to ſee it preſerued before it came to any neere ſhew of diſturbance, or grater euill.

But becauſe the breach of the Peace (as the law is taken at this day) whether it be by word, or other act, (and that alſo whether it bee to the perſon, or his goods, or lands) may bee as well committed by one onely, or by two vppon a ſide (both which wee holde to bee done without a

multitude, though two in preciſe ſpeech doe make a number) as by three or mo in one companie (which the lawe properly calleth a multitude,) it ſhall be good to intreat by it ſelfe, firſt of that breach of the Peace which may be committed without a multitude, and then to proſecute the other, if before all wee giue the Iuſtice of Peace to vnderſtand, that by what way ſoeuer hee may preuent (or puniſh) the breach of the peace in one perſon, the ſame meanes hee may alſo vſe againſt any multitude offending therein.

The breach of the peace that may be practiſed againſt the perſon, climeth to the deſtruction of the perſon, by ſundrie ſteps and degrees: as by Threats, Affray, (or Aſſault) violent and malicious ſtriking, beating, wounding, maiming, and killing. The matter of menacing and threatning is already handled in the laſt chapter.

Affray and Aſſault, The words Affray and Aſſault, be indifferently vſed of moſt men, and that alſo in ſome of our booke caſes: but yet (in my opinion) there wanteth not a iuſt difference betweene them.

For, Affray, is deriued of the french *effraier*, which ſignifieth to terrifie, or bring feare, which the law vnderſtandeth to be a common wrong, and therefore is it inquirable and puniſhable in the turne of the Sherife, and in a leete, 4.H.6.10 & 8.Ed.4.5. Otherwiſe it is of an aſſault, as it ſeemeth by thoſe very bookes.

Yet

Yet may an Affray be without word or blow giuen: as if a man ſhall ſhew himſelfe furniſhed with armour or weapon, which is not vſually worne and borne, it will ſtrike a feare vnto others that be not armed as he is: and therefore both the ſtatute of Northampton (2. E. 3. cap. 3 made againſt the wearing of Armour and weapon) & the Writ thereupon grounded, do ſpeake of it, by the words, *effray del pais*, and *in terrorem populi.*

But an Aſſault, as it is fetched from an other fountaine, namely from the Latine *Aſſultus*, which denoteth a leaping (or flying) vpon a man: ſo can it not bee perfourmed, without the offer of ſome hurtful blow, or at the leaſt, of ſome fearefull ſpeech. And therefore, to rebuke a Collector with foule words, ſo that he departed (for feare) without doing his office, was taken for an Aſſault, 27. lib. Aſſ. Pl. 11. And to ſtrike at a man (although he were neither hurt, nor hit with the blowe) was adiudged an Aſſault. 22. lib. Aſſ. Pla. 60. For this Aſſault doeth not alwayes neceſſarily imply a hitting: and therefore, in Treſpaſſe of Aſſault and Batterie, a man may be found guiltie of the Aſſault, and yet be excuſed of the Batterie, 40. E. 3. 40. & 45 Ed. 3. 24.

What actes be breaches of the peace and what not.

Menacings then, Affraies, Aſſaults, iniurious and violent handlings and miſintreatings of the perſon, batteries, malicious ſtrikings, &c.

be breaches of the peace, & doe draw after them the forfaiture of a Recognusance, knowledged for the keeping of the peace.

And therefore (for example) if a man doe imprison another without Warrant: or doe thrust him into a water (or riuer) wherby he is in danger of drowning: or do rauish a woman against her will: or do commit Manslaughter, or Burglarie, or Robberie, vpon the person of another: or do any Treason against the person of the Prince (who as he is the head of his people, so are they also wounded in his hurt) hee hath broken the peace: Marrow.

But concerning the menacing, assault, or batterie of the person, this is to be noted by the way, that it is not in all cases a violation and breach of the peace: for some are alowed to haue priuately a natural, and some a ciuile power (or authority) ouer others: so that they may (in reasonable manner onely) correct and chastise them for their offences, without imputation of any such breach. After the one sort, the parent is suffered (with moderation) to threaten and chastise the child within age. By reason of the other sort of power, the master is not punishable, if (not outragiously) he chastise his seruant, the schole-master his Schollers, or a Gaoler (or his seruant, by his commaundement) his vnruly prisoners, or the Lord his villaine. But these things neuertheless must be done in conuenient place,

and

and therefore not in the presence of the Prince, as it is thought, 27. lib. Ass. Pl. 49.

And this power of the Master and Schole-master, ouer the Seruant & Scholer, is affirmed by M. Mar. and confirmed by some opinion in the booke, 21. E. 4. 6. & 53. Whereunto I may also adde the mind of those that made the Statute (33. H. 8. c. 12.) concerning malicious striking in the kings house: for they doe therein specially exempt the maister that striketh his seruant, with his hand, fist, small staffe, or sticke, in way of correction for his offence.

Euery man also may take his kinsman that is mad, and may put him in a house, and binde, and beate him with roddes, for the reclayming of him, without breach of the Peace, 22. lib. Ass. Plac. 56.

A Constable, or other Officer, or any other, being of their companie, that shall be driuen to strike any person, for ỹ better executing of their Office, or charge (as in many cases they may lawfully do) breaketh not the Peace, nor shalbe in perill to forfeit any Recog. of the Peace, by reason of any such assault or batterie: as may well be inferred vpon these booke cases 17. E. 4 5. 2. E. 4. 6. & 8. 4. H. 7. 1. & 14. H. 7. 8. For such Actes be iustifiable. And see for this purpose also, M. Stamford. Fo. 13. 14. 15.

Besides this, if a man be enforced to repulse violence (done vnto his owne person, or to the

perſon of his wife, father, mother, child, maſter, or ſeruant, or to his goods being in his poſſeſſion) either by threatning, or ſtriking againe, his ſo doing is alſo iuſtifiable, as may bee ſeene in Marrow: & 33. H. 6, 18: 19. H. 6. 31. 9. E. 4. 48 & 35. H. 6. 50. But a Farmer, or Tenant, cannot iuſtifie ſuch an Act in defence of his Landlord: nor a Commoner in defence of the Maior (or the Bailifes) of a citie, or towne corporate, where he dwelleth.

If one man alſo kil, or hurt another at Fence-play, or at the Tilt, Torneament, or Barriers (in preſence of the Queene, and by her commandement, or licence) it is no breach of the Peace: 11 H. 7. 22. Fineux: But M. Brooke ſaith (Corone 228.) that the Iudges were of an other opinion, in the time of K. H. the 8. becauſe ſuch a licence, or commandement, is againſt the law.

More allowably therefore writeth Mar. that it breaketh not the Peace, to kill a man, in a Wager of Battaile, for triall of a cauſe, according to the auncient law of our countrey.

Breaches of the Peace that make no breach of bond for the Peace.

Thus far of thoſe breaches, that may bring danger to a Recognuſance of the peace: for ſome others there be, which are (in a degree) againſt the Peace, ſo that an Enditement *Contra pacem* may be found vpon them, and yet no forfeiture of ſuch a Recognuſance, ſhal enſue of them. For the act, that ſhall breed ſuch a forfaiture, muſt be done vnto the perſon Mar.

There-

Therefore, (if a man ſo bounde) doe take a mans goods wrongfully, (ſo that it be not from his perſon) or doe rauiſh or take another mans Warde: or doe a Treſpaſſe in another mans Corne, or graſſe: or doe Diſſeiſe another of his lands: or do enter into lands, where he ought to bring his Action: it will breede no forfeiture of this bond.

Let vs now therefore come to the pacifying and puniſhing of the Breach of the Peace, vpon the perſon, by one Iuſtice of the peace out of the Seſſions.

A Iuſtice of the Peace, is vndoubtedly (for this purpoſe) endued with no leſſe power, than euerie Priuate man, or any Conſtable hath: as it is plaine by 14. H. 7. 8. & 9. E. 4. 3. And therefore, it may not be thoght *Heterogenium*, (or beſides my purpoſe) if I ſhall ſhewe what both a priuate man and Conſtable may do in this caſe, yea rather I choſe to vtter this matter vnder their names, to the ende that I may with that one labor bewray the dueties, both of them & of the Iuſtice of the Peace himſelfe in this behalf.

The Lawe looketh, that euerie Priuate perſon, whome it ſhall happen to bee preſent at an Affray, Aſſault, or Batterie, (for nowe I will with other men confound thoſe names) ſhoulde doe his part to depart them that fight together: and it doth (to that ende) enable him alſo with ſome portion of authoritie. The duetie of a ſtander by at an Affray.

To part them

For, if two bee fighting, euerie Stander by, may lawfully, and shall doe well to put them in sunder: and if he take hurt thereby, he shal haue his remedie by Action against him that did the hurt.

But yet he (being but a Priuate man) may do no hurt, if they resist him: for they also shal then haue Action for it against him: wherein his case differeth (as you shall see anon) from the case of an Officer.

And if an Affray bee in the high streete, and one commeth towards it with harnesse or weapons to ioyne with the one or other partie, euerie man that seeth it, may stay him til the Affray be ended.

To stay them.

Any man also may stay the Affraiors, vntill the storme of their heat be calmed: and then may he deliuer them ouer to the Constable to imprison them, till they finde Suertie for the Peace: but he himself may not commit them to prison, vnlesse the one of them bee in perill of death by some hurt: for then may any man cary the other to the Gaole, till it be knowen, whether hee so hurt, will liue or die, as appeareth by the Statute, 3. H. 7. cap. 1.

And if (in that case) hee which did the harme doe flee into another mans house, yet may any man (that followeth him vppon Huie and Crie made) breake open the house, and enter, and take him. 7. E. 3. Fitzh. Barre 291.

Now,

Nowe, that it is not onely lawfull, but commaunded also, that the ſtander by doe ſhewe his beſt endeuour in theſe caſes, it appeareth (Corone Fitzh. 395.) that one which ſtood by, and looked on, whileſt a man was ſlain, was empriſoned till he made fine, becauſe he did not helpe him to attache the Murderer.

But, as the keeping of the Peace is more ſpecially recommended to the charge of Iuſtices of Peace, Conſtables, petit-Conſtables, Borſholders, Tithingmen, & ſuch like Officers: ſo be they alſo (to that end) armed with a larger meaſure of authoritie.

And therefore, if a Conſtable, or ſuch other Officer, doe ſee a man endeuouring to make an Affray, he may commaund him to auoide, vpon paine of impriſonment: & if the Affray bee great or dangerous, he may make Proclamation, and may commaund the parties to priſon for a ſmall time, til their heat be paſſed ouer, and then hee muſt deliuer them without any fine taking. The Officers duetie in an Affray.

But if two do vſe only hote words one againſt the other, the Officer may lay no handes vppon them, vnleſſe they do alſo draw weapon, or do otherwiſe offer to ſtrike: If they once fight together, then may the Officer depart them, & if he hap to be hurt in that doing, he ſhall haue an Action of Treſpaſſe for it: but if any of thē be hurt by him in the reſiſtance, no Action lieth for thē: For, the Officer ought to doe his beſt to depart them:

them: insomuch as if it be presented at the Sessions of the Peace, that hee was present at an Affray, and did not vse his indeuour to put them in sunder that fought together, he shall be deeply fined for it: Otherwise it is, if hee were not present, but were onely told of the Affray. Mar. If any of the parties be in danger, by reason of a hurt receiued in the Affray, then ought the Officer to arrest & carry the other to the Gaole, vntill hee shall finde suertie to appeare at the Gaole deliuerie. Fitzh. 72. 38. E. 3. 6. & 22. lib. Ass. pl. 56.

And if two men bee fighting in a house (the doores shut) then may the Officer breake open the doores to see the Peace kept, though neither of them haue taken hurt.

And yet when the Constable hath taken an Affrayor, he may not imprison him in his house, but in the Stocks: and that, not aboue such a reasonable time, as hee may prouide to conuey him to the Gaole till hee finde suertie for the Peace. 3. H. 4. 9. & 22. E. 4. 35.

And herein he differeth from a Gaoler, or the Sherife (who hath the charge of the Gaole) for he may make a Gaole of his house: and so cannot a Constable or Iustice of the peace doe. For by the Statute (5. H. 4. cap. 10.) the Iustice of Peace must sende his prisoners to the common Gaole. And you may reade (Britt. fol. 72.) that the Sherife (in his Turne) vsed to enquire of those

thoſe which made Priſons in their priuate houſes.

If one doe make an Affray vppon a Iuſtice of the Peace, Conſtable, or ſuch other Officer, hee may not onely defend himſelfe, but may alſo apprehend the offender and ſend him to the Gaole, till he will finde ſuertie of the Peace. 5. H. 7. 6. And the Iuſtice, or Conſtable may (if neede be) command aſſiſtance of the Queenes people, for the pacifying of an Affray. 3. H. 7. 10.

If hee that maketh an Affray doe flie into a houſe when the Iuſtice of peace (or Conſtable) commeth to arreſt him, they may alſo (in freſh ſuite) breake open the doores and take him, Mar. or if he flie thence, they may make freſh ſute and arreſt him, though it be in another Countie, by the opinion of ſome men 13. E 4. 9. And it ſhuld ſeeme (by the reaſon of that Booke) that in this caſe alſo, they may breake open the doores to apprehend him: becauſe the Prince hath an intereſt in the matter, and then a mans houſe ſhall be no refuge for him, as it ſhould be in Debt or Treſpaſſe, where the intereſt is but only to ſome particular ſubiect.

Nowe, if the Conſtable doe arreſt one, that hath hurt another, and doe voluntarily ſuffer him to Eſcape, and then he that was hurt dieth thereof within the yeare and day, the Conſtable ſhall make a great Fine, and that to the value of his goodes, in the opinion of ſome, 11. H. 4.

H. 4. 12. & Stanford 35. But yet the offence ſhal not haue ſuch Relation to the time of the ſtroke, as to make the eſcape to become felonie therby: *Commentar. Plowd.* 263.

Of the breach of the Peace, without, or with, a multitude, by forcible entrie *into lands or tenements, &c. And what any one* Iuſtice of the Peace (out of the Seſſions) may doe therein.

Cap. iiii.

IT ſeemeth, that (before the troubleſome Raigne of King Richard the ſecond) the common Law permitted any perſon (which had good right (or title) to enter into any land) to win the poſſeſſion thereof by force, if otherwiſe he could not haue obtained it.

For, a man may ſee (in Britton, fo. 115.) that a certaine reſpite of time was giuen to the diſſeiſee (according to his diſtance, and abſence) in which it was lawfull for him to gather force, armes & his friends, and to throw the diſſeiſor out of his wrongfull poſſeſſion.

And at this day, if (in a common Action, or enditement, of Treſpaſſe for entring into land) the Defendaunt will make Title thereunto, the matter of the Force alleaged againſt him will reſt altogether vpon the validitie of his Title, as appea-

appeareth 7.H.6.13.and 40.

But, after the rebellious tumult, and insurrection of the villaines, & other the base cõmons which happened the fourth yeare of the Raigne of R.2. the Parliament (5.R.2. cap.7.) thinking it necessary to prouide against all such occasions of further sedition, vproare, and breach of the peace, did ordain amõg other things, Thus, from hencefoorth none make any entry into any lands and tenements, but in case where entry is giuen by the lawe, and in such case not with strong hand, nor with multitude of people, but onely in peaceable and easie manner: vpon paine (if he be duely conuict thereof) of imprisonment, and to be ransomed at the kings will.

But because that statute prouided no speedy remedy in this point: nor extended to holding with force: nor left any speciall power therein to the Iustices of peace in the countrie: whereas the experience of that vnquiet time required a more ready hand to the suppression of such disorder: and Iustices of the peace were (by 13. Ric. 2. Stat. 1. cap. 7.) then newly chosen in all the Counties of England, of the most sufficient Knights, Esquiers, and men of Lawe of the same, and sworne to put in execution all the ordinaunces touching their offices. Therefore (15.R.2.ca.2.) it was further enacted, That when such forcible entry should bee made

made into lands or tenements, or into benefices, or offices of the Church, & complaint therof come to any Iuſtice of the Peace, he ſhould take ſufficient power of the County, and go to the place where ſuch force was made: and if he found any that helde ſuch place forcibly after ſuch entry made, the ſame ſhould be taken and put in the next gaole, there to abide, conuicted by the record of the ſame Iuſtice, till they had made fine and ranſome to the king: And that as well the Sherife, as all others of the Countie, ſhould attend vpon the ſaid Iuſtices, to go and ſtrengthen the ſame Iuſtices, to arreſt ſuch offendours, vpon paine of impriſonment, and to make fine to the king.

But yet againe, foraſmuch as this laſt Statute did not extende to thoſe that entred peaceably, and then held with Force: nor yet reached to the offendors, if they were remooued before the comming of the Iuſtices: nor made reſtitution of the poſſeſſion ſo forcibly gotten: nor gaue any paine againſt the Sherife that did not obay the preceptes of the Iuſtices in this behalfe: it was not onely ordained by a third Act (made 8. H. 6. Cap. 9.) That the ſaide former ſtatutes ſhoulde be holden and duelie executed, But it was adioyned alſo thereunto, If anie from hencefoorth make ſuche forcible entrie into landes, tenements, or other poſſeſsions: or them holde forcibly, after complaynt thereof made

made within the ſame County to any of the Iuſtices of the Peace there by the parties grieued, the Iuſtices (or Iuſtice) ſo warned ſhall in conuenient time cauſe the laſt ſaide ſtatute duely to bee executed at the coſtes of the ſaide party ſo grieued.

And whether the perſons (making ſuch entries) bee preſent or auoyded before the Iuſtices comming: the ſame Iuſtices (or Iuſtice) in ſome good towne next to the ſaide tenements, or in ſome other conuenient place at his diſcretion, ſhall haue power to inquire by the people of the ſame Countie, as well of them which made ſuch forcible entries into landes, or tenements, as of them which helde the ſame with force: And if it be found before any of them, that any doth contrary to this ſtatute, then the ſaide Iuſtices (or Iuſtice) ſhall doe, the ſaide lands or tenements to be reſeiſed, and ſhall put the party (ſo put out) in full poſſeſſion of the ſame. And when the ſaid Iuſtices (or Iuſtice) make ſuch inquiry, they ſhall direct their Precept to the Sherife, commaunding him on the Kings behalfe, to cauſe to come before them and euery of them, ſufficient and indifferent perſons, dwelling next about the ſame lands or tenementes, whereof euery man ſhall haue landes or tenementes of the cleare yearely value of forty ſhillinges at the leaſt; and the Sherife ſhall returne twenty ſhillinges in iſſues

vpon

vpon euery one of them at the firſt Precept returnable, and at the ſecond fortie ſhillings, and at the third fiue pounds, and at euery day after, the double. And euery ſherife of Countie, and bailife of franchiſe, that ſhall not duely make execution of the ſaid Preceptes, ſhall forfeit to the king twenty pound for euery default, and ſhall moreouer make fine and raunſome to the king. And as well the Iuſtices (or Iuſtice) aforeſaide, as the Iuſtices of Aſſiſes, may heare and determine ſuch defaults of ſherifes or baylifes, as well by bill at the ſute of the partie grieued, for himſelfe, as for the king onely by way of Enditement: and vppon ſuch due attainder, hee which ſueth for himſelfe and for the king, ſhall haue the one moitie of the ſaid twenty poundes, together with his coſtes and expenſes: and ſuch Proceſſe ſhall bee againſt ſuch ſo indited, or ſued, as lyeth againſt any perſon indited, or ſued, by writ of Treſpaſſe with force and armes againſt the Peace. And the Maiors, Iuſtices, or Iuſtice of the peace, ſherifes and baylifes, that are in Cities, Townes or Boroughs (hauing fraunchiſe) ſhall haue like power there in the articles aforeſaide, as the Iuſtices of peace, and ſherifes in the Counties haue.

But they which keepe by force their poſſeſſions in any lands or tenements, whereof they or their auncеſtors, or they whoſe eſtate they haue

haue therin, haue continued their poſſeſſion in the ſame by three yeares or more, ſhall not bee endamaged by force of this ſtatut.

This laſt Statute, I haue exemplified the more at large, for that it deliuereth a full direction in this buſineſſe. Beſides the which, ſeeing that I haue met with ſome other notes that doe tend to the explanation of ſundrie points thereof, and ſeeme not vnmeete to bee conſidered, I will not let to beſtow them here alſo.

This ſtatute (8. H. 6.) enableth any one Iuſtice of the peace, to giue remedy in this hurt of Forcible entry and holding: and is made as wel againſt ſuch as enter with Force and hold them peaceably: & againſt thoſe that enter in peaceable ſort, and then maintaine their poſſeſſion forcibly: as alſo againſt as many, as doe both Enter and Hold in forcible maner. Fitzh. Nat. Br. 148. & 3. E. 4. 19.

And therefore, it is expedient for the Iuſtice of the peace to know, firſt, what is a Forcible entrie, and what is a Forcible holding, within the meaning of theſe ſtatutes: and then, howe hee ſhall demeane, and carrie himſelfe in the execution of his office againſt thoſe that ſhall offende herein.

Two ſorts of Force.

Euen as the Ciuilians doe handle two ſortes of Force: of which they call the one, *vim* and *vim ſimplicem*, *priuatam, ſiue quotidianam:* and the other, *vim armatam, atrocem, & publicam,*

becauſe the firſt is void of any feareful outrage, and the latter ſeemeth to kindle the coales of ſedition it ſelfe: ſo likwiſe, our law taketh knowledge of two maners of Force: whereof the one is rather intellectual than actuall, & may therefore be termed, a Force in the conſideration of law, which accounteth al that to be *vis*, which is contrary to *Ius*. But ỹ other is apparant by the act it ſelfe, which alwaies carieth ſome feareful ſhew, and matter of terrour (or trouble) with it.

Howbeit in this wee differ from them, that whereas our law confoundeth the words *vi & armis*, when it meaneth but onely the former force, the Ciuile Law doth ſeuer them, applying *vi* to the former onely, and *armis* to this later.

And therefore, if I doe but hawke, or walke, (for my paſtime, or recreation) ouer another mans ground, hee may haue his action of Treſpaſſe againſt me, *Quare vi, & armis &c.* For, though I meant no harme to him, or his, yet (in iudgement of lawe) I might not (in ſuch caſe) paſſe vppon his ground without licence. But this is not that Force, that needeth the helpe which is prouided by theſe Statutes: for (34. H. 6. 26.) a Writ vpon the Statute, (5. Ric. 2. cap. 7.) was diſallowed, becauſe it contained *vi & armis*, onely.

Againe, if a man doe enter vpon the freehold of another, and do there fiſh the waters with an angle, or cut down the graſſe with a ſithe, or fel

the

the trees with an axe, or take away any of his goods in his absence: this is accounted a disseisin with Force and armes: Lib. Ass. 11. pl. 26. 11. H. 4. 16. Asis. Fitzh. 301. & 21. E. 3. 34. And yet I doubt also, whether any of these bee of themselues Forcible entries, of that nature which these statutes doe take in hand to punish. For, albeit they haue in them more actuall Force, than those other trespasse whereof I spake last before: yet, whilest the doer of them neither executeth apparant violence against any person, nor is furnished with weapon, nor armed with company, that may offer any dreadful disturbance, I see not howe these Statutes (which haue for their only marke, strong hand, and multitude of people) can hurt, or so much as hit him.

So that, if a man were indited vppon this statute (8. H. 6.) for that he disseised another, *vi & armis*, (viz. *gladijs, &c.*) without saying, *manu forti, &c.* or *cum multitudine, &c.* the bill (as I think) would be insufficient: vnlesse it were holpen by concluding afterward, *contra formam statuti prædicti*, or by some other matter that implied so much. Therefore,

Paulò maiora canamus.

If one, or mo persons, shall come weaponed (especially with weapons not vsually borne, as bowes, bils, gunnes, or such like) to a house, or lande, and shall violently enter thereinto, Forcible entrie.

this is a forcible entrie within the meaning of theſe ſtatuts: much more, if he or they ſhal there offer violence, or feare of harm, to the perſon of any that is in poſſeſſion thereof: and moſt of all, if hee or they ſhal forcibly & furiouſly expel, and driue another out of ſuch his poſſeſſion.

In the which conſideration, he that entreth in a peaceable ſhewe (as the doore being either open, or but cloſed with a latch onely) & yet when he is come in, vſeth violence, and throweth out ſuch as he findeth in the place, hee (I ſay) ſhall not be excuſed: bicauſe his entry is not conſummate by the onely putting of his foote ouer the threſhold, but by the action and demeanour that he offereth when he is come into the houſe.

And, albeit that of three (or foure) which come (in one companie) to make ſuch a forcible entry, onely one of them doth vſe force, and violence, yet are all the reſt alſo guilty of this force with him. Fitzh. Impriſon. 22. Neither is it denied (10. H. 7. 12.) to be a forcible entrie, when the maſter entreth, being attended with a greater number of ſeruãts, than vſually do wait vpon him. For, whether a man doe actually vſe force in his entrie, or do come ſo readily appointed, and arayed for it, that other men may reaſonably be afraide that he minded to make his way by force rather than he will faile of his deſired purpoſe, it ſeemeth to weigh to a violent, (or Forcible) entry.

And

And I thinke there bee no great doubt, but that one perſon alone, may commit a forcible entrie, if ſo be that hee doe performe it with offenſiue weapon, or doe vſe turbulent behauiour to the affray of another.

But, what weapons be offenſiue, in theſe and the like caſes, a man ſhall the better diſcerne, if he will take with him theſe few Lines drawen out of M. Bractons booke, fol. 162: *Eſt etiam vis armata, non ſolum ſi quis venerit cum telis, verùm etiam omnes illos dicimus armatos, qui habent quocum nocere poſſunt:* Telorum autem appellatione, omnia in quibus ſinguli homines nocere poſſunt, accipiuntur. *Sed ſi quis venerit ſine armis, & in ipſa concertatione ligna ſumpſerit, fuſtes aut lapides, vis dicetur armata. Si quis autem venerit cum armis, armis tamen ad deijciendum non vſus fuerit, & deiecerit, vis armata dicetur eſſe facta:* ſufficit enim terror Armorum, vt videatur armis deieciſſe.

Furthermore, if a man that hath a rent iſſuing out of the Land, ſhal diſtraine for the ſame with force, this will counteruaile an Entrie with force: and much more, if hee ſhall by ſuch forcible diſtreſſe leuie a rent, that is not due to him, but to another man 20. H. 6. 11. & Lib. Aſſ. 42. pl. 6. for, action vpon the Statute of Forcible entrie lieth for a rent: 22. H. 6. 23.

But now, if diuers perſons ſhall make a forcible entrie to the vſe of another man (which

is not then present with them, but afterward agreeth thereunto) this shall not charge him for the Force, howsoeuer hee may become a disseisor by it: for (as it is said, 2. H. 7. 16.) a forcible entrie cannot be adiudged against a man, without an actuall entrie be also made by him.

Forcible holding.

Thus farre of Forcible entrie, which may somewhat leade a man towards the knowledge of deteining, (or holding) with Force also: but yet, because the matter will best appeare by particularitie, I will ensue that also.

If a Iustice of the Peace come to the house, (that is supposed to bee holden with Force) and there findeth but one person, which obstinately keepeth the doore shut against him, and will not suffer him to enter: this is a Forcible holding, Marrow. So is it, if when the Iustice entreth the house, he shall finde persons harnessed, or in other warlike sorte appointed, or hauing such furniture lying ready in the house to be vsed by them: Marrow. But if a man shall Peaceably enter into a house, wherin he findeth armour, or weapon for the warre, then (as I thinke) the onely suffering of it to remaine there (without the vse thereof) will not charge him as a Forcible holder.

Againe, if a man that is entred into a house, will bestow men with force and armes, in some other house or place (not farre distant) to the intent that they shall bee readie to assault such as

shall

ſhall make any attempt of entrie vpon him: this is a detaining with force, Marrow. And (for the ſame reaſon) it ſeemeth to be a forcible holding, if a diſſeiſor of a houſe, or land, ſhall foreſtall the way of the diſſeiſee (with force and armes) ſo that he dare not enter, or approch for feare of death. Seeing that in either caſe, the lawfull meane of comming to his poſſeſſion, is quite taken from him: Like as if a man haue a rent or commune in Land, and hee is ſo forcibly reſiſted by the Tenant of the Land, that hee dare neither diſtraine for the one, nor vſe the benefite of the other: this is a holding with force, puniſhable by this ſtatute, Marrow: & Lib. Aſſ. 29. pl. 49: Beſides this, ſome haue thought, that if he which hath gained a poſſeſſion, ſhall threaten to kill him (that hath right) if he come to enter, this ſhall amount to a Forcible holding.

But, al that is here ſaid touching this point, muſt be taken to be ſaid of a forcible detaining, of the poſſeſſion it ſelfe, and not of the Perſon. For (as Marr. writeth) if I ſhall take a man (being out of his houſe) and then put into the houſe a ſeruaunt of mine owne in peaceable manner, and holde away the other by impriſonment of his perſon in ſome other place: this is no forcible detaining within the purpoſe of theſe laws but a falſe impriſonmg puniſhable by action at large.

The ductie of the Iustice.

We come now to the office of the Iustice of Peace, in these forcible entries, and holdinges: and that standeth first, either in recording the force by his owne view, or in seeking to vnderstand thereof, by the oathes, and enquirie of other men.

Complaint is not necessarie.

Touching the recording of the force, although both this statute (8. H. 6.) and that other (15. R. 2.) haue mention, That the Iustice shall (vppon complaint, made vnto him by the partie grieued) go to the place &c. yet, ỹ doth not enforce any necessitie of such a cõplaint: for it is holden (7. E. 4. 18.) that a Iustice may Record a forcible entrie and holding, or may enquire of it, & make restitution also, (vpon any information, or knowledge therof whatsoeuer) though no Complaint at all be brought vnto him by any partie grieued therby. And, as the Statute saith, that this ought to be done at the Costes of the party grieued: So Marrow thinketh, that vnlesse those costes be tendered before hand, the Iustice needeth not to stirre about it.

Costes.

But, howsoeuer hee (being then a practiser in the law) might thinke it good to stand vppon his fee: yet I aduise our Iustice of the Peace to go forward, as hauing more regard of his credite, oath, and dutie.

The right is not commonly disputable.

Neither ought hee to stagger, or stay at all, about the right, or wrong, of his Tittle that entreth, or holdeth forcibly. For, considering that the

the ſaid Statute (5.R.2.) doth without exception prohibite all entrie with force, howſoeuer the entrie be otherwiſe lawfull: and ſeeing alſo, that the other Statute (8.H.6.) permitteth no forcible holding, but onely where three yeares poſſeſſion haue gone before: And weighing moreouer, that both they and this other (15.R.2.) doe altogether labour to repreſſe force and violence, and haue alſo made the Iuſtice of the peace their miniſter therein: I ſee no cauſe, why the Iuſtice of Peace (who perhaps ſhall want ſufficient learning in the law to diſcerne of the right, or title, and yet may be both a fit perſon to remoue the force, and able enough to reſtore the poſſeſſion) ſhould be tied to the diſcuſſion of the right or title, of either of the parties.

And this I gather vpon the opinion of all the Court (9.H.6.19.) which was the very next yeare after the making of the laſt of theſe Statute: where it is ſaide, that the Action vpon the Statute (8.H.6.) is for the right onely, & muſt alway ſay, *Illicitè ingreſſus eſt*, or, *vbi ingreſſus nõ datur per legem*: but the enditement is for the force in reſpect of the King, to whom the partie ſhall make Fine, although his right bee neuer ſo good, and ſound.

And thereupon, the booke (22.H.6.18.) admitteth this caſe: that if A. ſhall diſſeiſe B. of his lande, and B. doe enter againe, and put out A. with force: A. ſhall be reſtored to his poſſeſſion

by

by the helpe of the Iuſtices of the Peace, although his firſt entry were vtterly wrongfull: and, (notwithſtanding the ſame reſtitution ſo made) yet B. may well haue an Aſſiſe againſt A. or may enter peaceably vpon him againe.

And therefore the Iuſtice of the Peace may boldly proceed in this buſines, taking with him ſufficient power of the countrey by his diſcretion (and therein the Sherife alſo, if need doe require) as well for the arreſting of ſuch as he ſhal finde to enter, or holde, forcibly againſt theſe Lawes: as alſo for the remouing of the force which they bring, & for the conueying of them to the next Gaole, as perſons thereof conuicted by his owne eye, teſtimonie, and record.

Recording of the Force.

The forme of which record, may ſtand vpon two partes: the one to remaine amongſt the records of the Peace, or to bee certified into the Kings bench: and the other, to bee ſent to the Gaoler, and to lie with him for his better warrant and diſcharge.

The record of the Force.

Kanc. *Memorandum quod octauo die menſis Ianuarij, anno regni Domine noſtre Elizabethæ, &c. Quæſtus eſt mihi* Samſono Lennard, *vni Iuſticiariorum dicta Dom. Regina ad pacem in dicto comitatu conſeruandam aſſignatorum, quidam* A. B. *de* Wrotham *in dicto com.* Yeoman, *quod*

quod C. D. *de* Wrotham *prædicta, & nonnulli alij pacis dictæ Dom. Reginæ perturbatores ignoti, in domum mansionalem ipsius* A. B. *in* Wrotham *prædicta, manu forti ingressi sunt, & ipsum* A. B. *inde disseisiuerunt, ac eandem manu forti & armata potentia adhuc tenent: ac proinde petijt à me sibi in hac parte remedium apponi. Quâ quidem querimonia & petitione audita, ego præfatus* S. L. *immediatè ad dictam domum mansionalem personaliter accessi, ac in eadem domo ad tunc inueni præfatum* C. D. *& quosdam* E. F. *&* G. H. *&c. domum illam vi & armis, manu forti, & armata potentia, viz. arcubus & sagittis, gladijs, pugionibus, galeis, & Loricis tenentes contra formam Statuti in Parliamento Domini* Richar. *nuper Regis Angliæ secundi, anno regni sui decimo quinto tento, prouisi: ac contra formam diuersorum aliorum Statutorum. Ac propterea ego præfatus* S. L. *prædictos* C. D. E. F. *&* G. H. *ad tunc & ibidem arrestaui, proximæque Gaolæ dictæ Dominæ Reg. apud* Maidstone *in dicto comitatu duci feci, vt de dicta manu forti tentione per visum & recordum meum conuictos, ibidem moraturos quousque fines dictæ Dominæ Reginæ pro transgressionibus suis prædictis fecerint. Datum apud* Wrotham *prædictam sub sigillo meo die & anno supradictis.*

Per me præfatum, Sa. Leu.

Ano

And the forme of the *Mittimus* to the Gaoler, may be thus.

Kent. GEorge Chowne, one of the Iuſtices of the Peace of our Soueraigne Ladye the Queenes Maieſtie within her ſaid Countie of *Kent*, to the keeper of her Maieſties Gaole at *Maidſtone* in the ſaide countie, and to his deputie and deputies there, and to euery of them greeting: Whereas vpon complaint made vnto me this preſent day by *A. B.* of *Wrotham*, in the ſaid Countie *Yeoman*, I went immediately to the dwelling houſe of the ſaid *A. B.* in *Wrotham* aforeſaid, and there found *C. D.* *E. F.* and *G. H.* of *Wrotham* aforeſaid Labourers, forcibly, and with ſtrong hand, and armed power, holding the ſaid houſe, againſt the peace of our ſaide Soueraigne Ladye, and againſt the forme of the Statute of Parlement thereof made in the 15. yeare of the reigne of the late K. *Richard* the ſecond. Therefore I ſend you (by the bringers hereof) the bodies of the ſaid *C. D.* *E. F.* and *G. H.* conuicted of the ſaid forcible holding, by mine owne view, teſtimonie, and recorde: commanding you in her Maieſties name, to receiue them into your ſaid Gaole, and there ſafely to keepe thē, vntill ſuch time as they ſhall make their fines to our ſaide Soueraigne Ladie for their ſaide Treſpaſſes, and ſhall be thence deliuered by the

the order of the law of the land. Hereof faile you not, vpon the perill that may follow therof. Yeouen at *Wrotham* aforesaid, vnder my seale, the day and yeere abouesaid.

By me the said G. C.

Enquirie of the Force and restitution of possession.

But now, forasmuch as this law hath prouided restitution for the partie that shall bee put out of possession by such forcible entrie: and for that no restitution can be made by the Iustice of Peace, but onely vppon the finding of the same putting out by the othes of the Enquirors: let vs also consider what is the duety of the Iustice in these two points, of Enquirie and Restitution.

Concerning the Enquirie, Marrow noteth these few things: First, that it is no cause to impeach the Enquirie, though the Iustice do not go to see the place where the force is: and yet the wordes of the statute are, Whether the persons be present, or auoyded before the Iustices comming: Secondly, that albeit the letter of the Statute is, that each Iurour of this inquirie ought to haue lands, or tenements of the cleare yearely value of fortie shillinges: yet if any of the Presentors haue not so much lande, the presentment is good for the Queene: but then (saith hee) the party shall haue no restitution by it, if that matter bee shewed at the time of the restitution to bee made. Howbeit I my selfe

and ſhall haue it againſt the other: becauſe it is by ſeuerall Inquiſitions, whereof the Iuſtices (ſuppoſed to bee ſeuerall) can not take mutuall vnderſtanding: and then ſhall hee bee in the worſe caſe, that hath the firſt reſtitution: for the other ſhall haue him remooued, by his reſtitution that commeth after. So, (by his opinion) if it be founde, that I my ſelfe was ſeiſed, vntill diſſeiſed by A. with force, whom alſo B. diſſeiſed with like force: Here if A. getteth reſtitution againſt B. then may I alſo haue my reſtitution againſt A. But if I firſt obtaine my reſtitution, then hath A. loſt the aduantage of his: becauſe it appeareth by the ſelfe ſame Inquiſition, who had the firſt poſſeſſion. And if it happen two Ioynt-tenants of lande to bee put out with force, and the one of them onely will ſue for reſtitution, hee ought to haue it made vnto him, Marr.

Reſtitution to a Leſſee for yeeres.

But whether a Leſſee for yeares of lande, that is expulſed by force, ſhal be holpen by theſe Statutes, it hath beene a good queſtion. For, on the one ſide it is ſaide, that albeit the preamble of the ſtatute (15. Ric. 2.) hath the worde (poſſeſſions) which may extende to a Leaſe for yeeres, becauſe that of ſuch a leaſe a man is ſaid to be poſſeſſed, euen as hee that hath an inheritance, or freeholde, is ſaide to be ſeiſed: and although alſo the puruiew of the ſtatute (8. Hen. 6.) vſeth the ſame worde (poſſeſſions) alſo, yet

that

that (ſay they) is but onely where the force is to be remoued, and where the offendors are to bee punished by imprisonment and Fine: all which they graunt may bee doone in the behalfe of a Leſſee for yeares: but ſeeing that ſeuerall branch of the ſtatute 8. Hen. 6. (which doth directly prouide the reſtitution) omitteth that word poſſeſsions, therefore (ſay they) none ſhall haue reſtitution but ſuch onely as be put out of lands or tenements: and thoſe words muſt bee vnderſtoode of them onely, that haue inheritance, or freeholde at the leaſt. So that, if ſuch a Leſſee (or any Copyholder) will be aided by way of reſtitution, the Enquirie muſt (by this opinion) finde the Leſſor (or the Lord) to bee forcibly put out, and expulſed: that by his reſtitution, the Leſſee or Copyholder, may be reſtored alſo.

But on the other ſide Marrow maketh no doubt, but that ſuch a Leſſee for yeares may haue reſtitution by the hand of a Iuſtice of the Peace. And (to accompanie him heerein) who can denie, that the ſame inconuenience (which theſe Lawes doe labour to remooue) followeth not equally in either caſe: Beſides that, the verie wordes of that ſpeciall branch are theſe, If it bee found that any doeth contrarie to this Statute, then the ſaide Iuſtice ſhall cauſe the ſaide lands and tenements to bee reſeiſed, and ſhall put the partie (ſo put out) in full poſſeſſion

of the ſame. Upon which wordes it followeth: Firſt, that if he which expulſeth by force a Leſſee for yeares, do contrary to this ſtatute (as it is granted that he doth) then that Leſſee ought to bee reſtored to his poſſeſſion by this branch: and ſecondly, if they will haue the life of the law to reſt only in the bare letters, & ſillables thereof, (a thing which wiſe men doe condemne, and call *verborum aucupium*) then the wordes bee, that he ſhall bee put in full poſſeſsion, which word poſſeſsion agreeth better with a leaſe for yeares (as themſelues ſay) than with a freehold, or inheritance, for which the word ſeiſine is altogether vſed. But the common opinion ſwayeth to the other ſide: therefore leauing this to the iudgement of the better learned, I will returne to the office of our Iuſtice.

After the entrie, or deteining with force ſhal be thus preſented, the Iuſtice of the Peace may either by himſelfe, or by direction of his precept to the Sherife (vnder the Teſte of himſelfe alone) reſtore the partie grieued to his poſſeſſion.

And if vpon a Writ of reſtitution awarded the Sherife ſhal returne, that he is ſo reſiſted that he cannot bring the partie into his poſſeſſion, hee ſhall bee amerced for ſuch his returne, (ſayeth Marrow) becauſe he may take the power of his countie to aſſiſt him therein.

And it is certaine, that if the preſentment be

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ſent into the kings bench, the partie may haue his reſtitution awarded out of that Court by the equitie of this ſtatute: as it is holden 7. E. 4. 18 & 4. Hen. 7. 18. But if it happen that Iuſtice of the Peace (before whome the enquirie was taken) to die before Reſtitution bee deliuered by him, it may bee doubted, whether his fellow Iuſtices (hauing the preſentment brought vnto them) may at their Quarter Seſſions award the reſtitution: becauſe the Statute ſeemeth to referre it to them onely before whom the enquiry was made. It is (I know) the opinion of maſter Marrow that they may: grounding himſelfe (as I thinke) vppon the ſame equitie, by which the Iuſtices of the Kings Bench are enabled to doe it: Howbeit it may appeare (*Collect.* Diar. 187) that the law is otherwiſe taken, both therein, and alſo in the graunting of a *Superſedeas* to ſtay the Reſtitution: becauſe no Iuſtices can doe the one or other, but they onely that were preſent at the Seſſion when the Enditement was found, except thoſe of the Kings Bench, who (for the ſuppoſed preſence of the Prince) doe carrie a ſupreme authoritie in theſe caſes of the Crowne.

But Marrow agreeth, that neither the Iuſtices of the Kings bench, nor any other (beſides him that made Enquirie) can perſonally reſtore the partie, but by way of Precept onely.

Againe, whether (after ſuch a preſentment)

Trauerſe. the partie charged may be admitted to his Trauerſe before the ſame Iuſtice of the Peace: and if not, then wher, or before whom, this Trauerſe is to be made or tendered, I will not take vpon me to reſolue.

This ſeemeth (vpon conſideration of both the ſtatutes) to bee plaine, that ſuch perſons as the Iuſtice of Peace doth finde, and ſee, continuing the force at his comming to the place, them hee may immediatly commit to the Gaole, as conuict of that offence, notwithſtanding any their gainesaying whatſoeuer. But vpon the inquiry, I ſee not that the Iuſtice of Peace hath any other power cõmitted vnto him (by 8. H. 6.) than to make the reſtitution onely, which alſo it ſeemeth that he may make, notwithſtanding this offer of Trauerſe. And if hee will not ſo doe, the ſafeſt way (in mine opinion) is, to deliuer, or certifie the preſentment into the Kings Bench: and ſo, to referre the further proceeding therein to their further power and authoritie.

Aſſeſſement of the Fine. Againe, touching the Aſſeſſement of the fines or ranſomes, vpon the offendours, ſo conuicted by the Record of the Iuſtice of peace, and by his warrant conueyed to the Gaole, ſome men do thinke, that the ſame Iuſtice hath ſufficient authoritie to put them to their Fines, and vpon pledges (found for the payment thereof) to deliuer them out of priſon againe, when hee by his diſcretion ſhall thinke it good. For (as they

they ſay) hee is the onely appointed Iudge ouer this offence, and onely hath the cuſtodie of that Recorde, and knoweth beſt both how to moderate the impriſonment, and to rate the fine, according to the quantity of their treſpaſſe and offence: And, as he is bound by his oath and dutie (in their opinion) to eſtreat all iſſues, and amerciamentes growing to the Queene by his enquiry: So, ought he alſo to eſtreate, and ſend this into the Eſcheaquer: that from thence the Sherife may bee commaunded to leuie it to her Maieſties behoofe.

But (graunting this to bee true) yet, (to auoide all perill, of daſhing againſt the rocke of doubt) I thinke it the better courſe, to referre this ouer alſo, as I aduiſed in the caſe that went laſt before.

Continuance of three yeares poſſeſſion.

Nowe muſt I conclude, as doeth this Statute (8. H. 6) with this prouiſo: that ſuch as keepe their poſſeſſion by force, after that they haue the continuance of three yeares poſſeſſion, ſhall not be endammaged by force of that Statute. And heere the Booke (14. H. 7. 28.) ſtayeth me with one other queſtion: for there it is ſaid, that albeit in an Action vpon this Statute, it bee a good Barre for the defendaunt to plead his three yeares poſſeſſion, though it were altogither by force: yet (vpon an enditement) Twentie yeares poſſeſſion by force ſhall neyther be any Plea againſt the Queene, nor ſhall

hinder the partie grieued from his reſtitution out of the Kings Bench. Vpon this authoritie, ſome haue conceiued this generall opinion: that the continuance of three yeares poſſeſſion will in no caſe protect a man againſt the Queene but onely againſt the partie in his priuate action by way of Barre.

Howbeit, if the wordes of the Prouiſo, and the reaſon of inſerting the ſame, be truly weyed, that opinion will not fall out altogither ſo reaſonable, as it hath the ſhewe to bee faire, and plauſible. For the wordes are, that ſuch an one ſhall not bee endamaged by force of that Statute: and there is no doubt, but that he is deeply endamaged, which is both impriſoned, fined, and put out of his land, that he hath ſo long and quietly poſſeſſed.

Againe, when this Statute had in generall termes brought (within the penaltie of 15. R. 2.) all ſuch as ſhould deteine any lands or tenements with Force after that they had peaceably entred into the ſame: yet was it thought iuſt, and conuenient, to exempt from that puniſhment all ſuch, as (hauing entred in peaceable maner) had alſo continued their poſſeſſion three yeares togither without any forcible deteiner of the ſame. And therfore, it ſeemeth to me, that ſuch perſons be not onely to take the benefite of that prouiſo, in actions vpon the Statute to be commenced againſt them: but alſo to vſe the aduan-

aduantage of the ſame againſt an Enditement for the Queene, to auoide the Impriſonment, and fine, and to debarre the partie of his Reſtitution by the hand of a Iuſtice of the Peace.

And hereupon Maſter Marrow writeth, that if the three yeares poſſeſsion bee founde by the Enquirie, then the forcible deteinors ſhall haue the aduantage thereof againſt the King alſo: which opinion I take to be very reaſonable, not generally vnderſtood, but ſpecially, and where (as I ſaid) the deteinors did enter peaceably. For ſo was the opinion of Hales and Portman, Iuſtices 6. & 7. Ed. 6. Report Daliſon: and ſo likewiſe was the iudgement of all the Court, 22. H. 6. 8.

Neuertheleſſe, the caſe being put (as it is in that Booke, 14. H. 7. 28.) both of a wrongfull, and forcible entrie at the firſt, and then of a forcible deteinor alſo (though ſundrie yeares continued) I doe eaſily agree that ſuch a violent holder ſhould bee denied the protection of this Prouiſo, not only in reſpect of the Queene vppon an Enditement, but alſo in regarde of the partie grieued, touching either his action or reſtitution.

So that the difference will reſt in this (as I thinke) whether that continuall poſſeſſion of three yeares doe immediatly followe a peaceable, or forcible entrie. Continuall I ſaye, becauſe Iudge Brooke (*Tit.* Forcible entrie 29.)

ſeemeth to hold, that if that poſſeſſion by three yeres haue not been continual, and without interruption, then (if he reenter) he cannot holde or deteine with force, be his right or title neuer ſo good, and lawfull. See *Collett.* Diar 141.14.

For the reſolution of ſome part of this Queſtion, and for remedie of a ſpeciall inconuenience that grewe thereby, the Parliament 31. El. Reg. cap. 11. (hauing firſt written and allowed of that Prouiſo in the ſtatute 8. H. 6.) layeth downe a Law in theſe words following: Whereas nowe of late, diuers of her Maieſties ſubiectes, hauing entries made vpon their poſſeſſions (hauing had ſuch long and quiet poſſeſſion) for diſturbing of ſuch Entrers, and for keeping of their poſſeſſion againſt ſuch Entrers by colour of Inditements of Forcible entrie, of forcible keeping of poſſeſſion, found againſt them by meanes of the oathes of ſuch Entrers, haue been remoued and put out of their dwelling houſes and other their poſſeſſions, which they haue quietly helde by the ſpace of three yeers togither, or longer time, next before ſuch Inditements found againſt thē, againſt the true meaning & intent of the ſaid Prouiſo or clauſe contained in the ſaid Act: For remedy of which inconuenience, and for true declaration & explanation of the Law therin, Be it ordeined, declared, & enacted by the authority of this preſent Parliament, that no reſtitution vppon any Indite-

Inditement of forcible entry, or holding with force, be made to any perſon, or perſons, if the perſon, or perſons ſo indited hath had the occupation, or hath bin in quiet poſſeſſiō, by the ſpace of three yeares together next before the day of ſuch inditement ſo found, and his her or their eſtate, or eſtates therin not ended nor determined: which the party ſhal & may alleadge for ſtay of reſtitution, and reſtitution to ſtay vntill that be tried, if the other will denie or trauerſe the ſame. And if the ſame allegation be tried againſt the ſame perſon, or perſons ſo indited, then the ſame perſon, or perſons ſo indited, to pay ſuch coſtes and dammages to the other partie, as ſhall be aſſeſſed by the Iudges, or Iuſtices before whom the ſame ſhall bee tried: the ſame coſts and dammages to be recouered and leuied, as is vſuall for coſts and dammages contained in Iudgements vpon other Actions. 31. Elizab. cap. 11.

And now, theſe things thus peruſed and paſſed ouer, I will for the more complete furniture of the Iuſtice of Peace in this ſeruice (againſt forbidden force) arme him with a fewe Precedents, for helpe in his Enquirie, and making of Reſtitution.

The

The Precept to the Sherife, in nature of a *Venire facias.*

GEorgius Riuers, vnus Iusticiariorum Dominæ Reg. ad pacem in comitatu Kanc. conseruandam assignatorum, vicecomiti eiusdem Comitatus salutem: Ex parte dictæ Dom. Reg. tibi mãdo & præcipio, quòd venire facias coram me apud Ightham *in comitatu prædicto 20. die Septembr. proximo futuro 24. probos, sufficientes, & legales homines de vicineto de* Ightham *prædict, quorum quilibet habeat xl. sol. terrarum & tenementorum vel reddituum per annum ad minus vltra repriſas, ad inquirendum super sacramentum suum pro dicta Domina Regina, de quodam ingressu manuforti facto in messuagium cuiusdam* A. B. *apud* Ightham *præd. contra formam statuti in Parliamento Domini* H. *nuper Regis Angliæ sexti, anno regni sui octauo tento, editi, vt dicit: Et videas quod super quemlibet Iuratorum per te in hac parte impanellandorum xx. solid. de exitibus ad præfatum diem returnes: & hoc nullatenus omittas sub pœna xx. lib. quam noueris te incursum, si in executione præmissorum tepidus aut remissus fueris: Et habeas ibi tunc hoc præceptum. Teste me præfato* G. R. 10. *die Martij Anno regni Dom. nostræ Eliz. Dei gratia Angl. Fran. & Hib. Reginæ, fidei defensoris, &c. 41.*

And vppon default of apparance of theſe Iurors, an alias may bee awarded, and after that pluries

pluries infinite, till they come: but ſo, that at the day of the ſecond Writ 40. s. muſt be returned, at the third Writ 100. s. and at euery day after, the double, as before hath beene touched.

The Inquirie (or Verdite) of the Iurors.

INquiſitio pro dom. Regina capta apud Ightham *in comitatu Kanc'* 29. *die Iulij, anno regni Dominæ noſtræ Elizabethæ, Dei gratia, Angliæ, Fraciæ, & Hybern. Reginæ, fidei defenſoris, &c.* 41. *Per ſacramentum,* A.B.C.D.E.F. &c. *corã* Henrico Palmer Milite, *vno Iuſticiariorũ dicta dom. Reginæ ad pacem in dicto comitatu conſeruandam, necnon ad diuerſa felonias, tranſgreſſiones, & alia malefacta in eodem comitatu perpetrata audiendum & terminandum aſſignatorum: Qui dicũt ſuper ſacramentum ſuum prædictum, quod* C.D. *de* Ightham *prædict.* Yeoman, *diu legitimè & pacificè ſeiſitus fuit in Dominico ſuo vt de feodo de, & in vno meſuagio, &c. cum pertinentijs in* Ightham *prædict. & poſſeſſionem ac ſeiſinam ſuam prædict. ſic continuauit, quouſque* A. B. *de &c. & alij malefactores ignoti primo die Septembr. vltimo elapſo, vi & armis, videlicet, cum baculis, gladijs, arcubus & ſagittis, in meſſuagium prædict. &c. intrauerunt, ac ipſum* C. D. *inde diſſeiſiuerunt, & manu forti expulerunt, & eundem* C. D. *ſic diſſeiſitum & expulſum ab eodem meſſuagio, &c. à*

prædi-

prædicto, primo die &c. vsque ad diem captionis huius inquisitionis cum huiusmodi fortitudine & potentia armata extrà tenuerunt, & adhuc extrà tenent, in magnam pacis dict. Dom. Reginæ perturbationem, ac contra formam Statuti in parliamento domini Henrici nuper Regis Angliæ sexti, anno regni sui octauo tento, in tali casu editi & prouisi: vbi nullus eorum, nec aliquis alius cuius statum ipsi aut aliquis eorum habuerunt, aut habuit, aliquid in eodem messuagio &c. aut in aliqua inde parcella habuerunt, aut habuit, infra tres annos proximos ante ingressum suum prædictum, neque alio tempore præcedente ad notitiam Iuratorum prædictorum.

The Warrant to the Sherife for the making of Restitution, if the Iustice himselfe will not make it.

HEnricus Palmer Miles, *vnus Iusticiariorum, &c. assignatorum: Vicecomiti eiusdem comitatus Salutem: Cum per quandam Inquisitionem patriæ coram me captam apud* Ightham *in comitatu prædicto, 29. die Iulij, &c. super sacramentum* A. B. C. D. E. F. *&c. ac per formam Statuti de ingressibus manu forti factis in tali casu prouisi compertum fuit, quod* A. B *&c. & alij &c. primo die Septembr. &c. in quoddam messuagium, &c.* C. D. *&c. in* Ightham *prædict. vi & armis ingressi sunt, ac ipsum* C. D. *inde tunc manu forti dissei-*

diſſeiſiuerunt & expulerunt, & prædictum C. D. *ſic expulſum à prædicto meſſuagio, &c. à prad. primo die Septemb. &c. vſque ad diem captionis Inquiſitionis prad. manu forti, & cum potentia extrà tenuerunt, prout per Inquiſitionem prædictam pleniusliquet de Recordo: Ideo ex parte dict. dom reg. tibi mando & præcipio, quod (ad hoc debitè requiſitus) vnà cum poſſe comitatus tui (ſi neceſſe fuerit) accedas ad meſſuagium & cætera præmiſſa, ac eadem cum pertinentijs reſeiſiri facias, & præfatũ* C. D. *ad, & in, plenam poſſeſſionem ſuam inde, prout ipſe ante ingreſſum prædictum fuerat ſeiſitus, reſtitui, & mitti facias, iuxta formam dicti ſtatuti: & hoc nullatenus omittas, periculo incumbente. Teſte me præfato, &c.*

I come nowe (at length) to the performance of that promiſe which I made concerning the ſtatute of Northampton: for that alſo is of late dayes frequently put in vre for the punishment of Forcible entries. The execution of a Writ vpon the ſtatute of Northampton

That Law (in effect, and for this purpoſe) is thus: No man whatſoeuer (except the kings ſeruants and Miniſters, in his preſence, or in executing his precepts, or their offices, and ſuch as ſhall aſſiſt them: and except it bee vpon crie or proclamatiõ made for arms, to keep the Peace, & that in places where ſuch acts do happen) be ſo hardy to come before the kings Iuſtices, or other his miniſters, doing their offices, with force and

and armes: Nor bring any force in affray of the countrie: nor goe, nor ride armed, by night, or by day in Faires or Markets, or in preſence of the Iuſtices or other miniſters, nor in any place elſewhere, vpon paine to forfeit his armour to the king, and his body to priſon at the kings pleaſure, 2. E. 3. cap. 3.

Vpon this ſtatute, he that is put out, or holden out of his lande with force, vſeth to haue at this day a Writ directed out of the Chancery, either to the ſherife onely (as M. Fitz. in his Nat. Bre. fol. 249. reheareeth it, for I finde it not in the Regiſter of Writs) or elſe *Cuſtodibus pacis, ac vicecomiti, & eorum cuilibet*, (as the common maner is) commanding that Proclamation bee made vpon this ſtatute: and that if any be afterwarde founde offending againſt the ſame, they ſhall be committed to Priſon (there to remaine vntill that ſome other commandement be giuen concerning them) and that their armour and weapon ſhall be prized, and the ſame anſwered to the vſe of the Queenes maieſtie.

But, foraſmuch as that Iuſtice of Peace, (to whom this Writ ſhall bee deliuered) is to make execution of the ſame, as a Miniſter onely: and is to certifie his doing therein: I thinke good, to lend him theſe few helps towards it.

At his comming to the place, where the force is ſuppoſed by this Writ, hee may cauſe three Oyes

Oyes for ſilence to bee made, with this, or ſuch an other Proclamation.

THE Queenes Maieſties Iuſtice of her Peace ſtraightly chargeth, and in her Maieſties name commandeth, al and euery perſon to keep ſilence, whileſt her maieſties writ vpon the Statute made at Northampton in the ſecond yeare of King *Edward* the third, her noble progenitor (deliuered to the ſaide Iuſtice) bee read, and proclamation bee thereupon made accordingly,

Then may hee reade the Writ, or declare the effect thereof in Engliſh.

After that, let three other Oyes bee made, and thereupon may this Proclamation follow.

HER Maieſties ſaide Iuſtice, doeth in her Highneſſe name, and by vertue of her ſaid Writ, ſtraightly charge and commaund, that no maner of perſon, of what eſtate, degree, or condition ſoeuer, now being within the houſe of *B.* &c, named in the ſaide Writ, ſhall goe armed, nor keepe force of Armour or weapon, nor do any thing there, or els where, in diſturbance of her maieſties Peace, or in offence of the ſaid Statute, vpon the paines of looſing his ſaid armour and weapon, and of impriſoning his body at her Maieſties pleaſure.

God ſaue the Queene.

This

This done, the Iuſtice may enter, and ſearch whether there be any force of armor or weapon worne or borne againſt this proclamation: or otherwiſe he may enquire thereof by a Iurie, for ſo the Writ it ſelfe doth warrant him to doe: and if any ſuch be found, hee ought to impriſon the offendors, and to ſeize and appriſe the armor & weapon ſo found with them. But if (vpon the proclamation made) they doe depart in peaceable maner, then hath he no warrant by the Writ to commit them to priſon.

But now let me ſhew him a Forme of Certificat (or returne) of this Writ into the Chancerie, and then make an end.

Upon the Writ it ſelfe theſe wordes may bee endorſed.

Executio iſtius Breuis patet, in quadam ſchedula eidem Breui conſuta.

And the Scedule may be thus:

EGo *Rogerus Twyſden armiger, vnus cuſtodum pacis Dom. Reg. in comitatu Kanc. certifico, in Cancellariam dict. dom. reg. quòd virtute iſtius Breuis mihi primo deliberati, decimo die Aprilis, anno, &c. publicè proclamari ex parte dictæ Dominæ Reginæ feci, apud* B. *cuius in dicto Breui fit mentio, prout in dicto breui præcipitur: Et quod quidam* A. C. *&* D. E. *de* F. *in comitatu prædict.* Labourers, *prædictam proclamationem paruipendentes, poſt proclamationem prædict.*

prædict. ibidem sic factam armati iuerunt, ac armatam potentiam ibidem duxerunt, scilicet duas galeas, vnum arcum, & decem sagittas, duos gladios, & totidem pugiones, in perturbationem pacis dicta domin. reg. ac terrorem populi sui, necnon in contemptum Statuti in dict. Breui specificati, manifestum: Ac proinde dict. A. C. & D. E. vnà cum armaturis suis prædict. arrestaui ac seisiui & eorum corpora ad proximam prisonam dicta dom. reg. in comitatu prædicto duci feci ibidem moratura donec aliud à dicta domina regina pro ipsorum deliberatione habuero in mandatis. Armaturas etiam eorum prædict. appretiari feci, per A. B. C. D. & E. F. de B. prad. Yeomen, ad hoc iuratos: qui dicunt super sacramentum suum prædict. quod prad. duæ galeæ valent decem sol. Et quòd dict. arcus & 10. sagitt. valent 6. sol. Et quòd gladij prædict. valent 20. solid. Et quòd dict. pugiones valent 5. sol. & sic quod armaturæ prædict. valent in toto 41. solid. de quibus paratus sum respondere secundum tenorem dicti Breuis. In cuius rei testimonium, huic præsenti certificationi meæ sigillum meum appposui. Dat. apud B. prædict. die & anno supradictis.

By this you haue seene, what one Iustice of the Peace ought to doe in execution of this statute as a Minister: and by the same you may also see, what he may doe therein of himselfe, *Ex officio*, as a Iudge, & without any Writ brought vnto him.

For not only by the plaine wordes of the ſtatute of Northampton, the Wardeins of the Peace, haue power (within their Wardes) and are commanded to execute this act vpon a paine: But alſo by good implication in the Commiſſion it ſelfe, euery Wardein of the Peace hath the ſtatute of Northampton committed to his charge. So that both in the matter and maner, the doing is all one, ſauing that (if he do it as a Iudge) he needeth not to make any Proclamation (the ſtatute being a prohibition in it ſelfe) nor yet to ſend any Certificat into the Chancerie, but onely to make his owne Record of that which he ſhall doe in this behalfe, and thereout to ſend ſome eſtreit into the Eſchequer, that the Queene may be anſwered of the Armour, or of the value thereof.

And heere (perhaps) the redemption of the impriſonment, may bee at the diſcretion of the ſame Iuſtice, euen as in the former ſtatutes of 15. R. 2. & 8. H. 6. it ſeemeth to be: but therein mine aduiſe ſhall bee the ſame that I gaue them before: Adioyning this, that in the execution of this ſtatute of Northampton, the Iuſtice of the Peace hath to doe with remouing of the force onely, and may not meddle with any reſtitution of the poſſeſſion.

Of

Of other breaches of the Peace, with a multitude: as by *Riot*, *Rout*, or other vnlawfull Assembly, &c. and what any one Iustice of the Peace may doe therein out of the Sessions.

Cap. v.

OVr Parliament, seeing wel that the assembly of many for breach of the Peace, offereth more daunger and hurt, both generally to the common wealth wherein it happeneth, and particularly to him against whom it is bent, then the force of any one or two turbulent persons can bring, haue no lesse carefully endeuoured to suppresse the one, than wisely foreseen to preuent and punish the other. And therefore, not only the Commission giueth power to enquire of Conuenticles against the Peace, but sundrie Statutes also haue deuised many meanes and paines to meete with, and to punish the same: wheras before, they were punishable onely, as other trespasse, though sometimes by a greater, and sometimes by a smaller fine, as the case it selfe required consideration. Conuenticles.

But vnlawfull Conuenticles bee not all of one sort: for sometimes those are called Conuenticles, wherein many doe impart with others their meaning to kill a man, or to take one an others part in all things, or such like:

Champerties alſo, Maintenances, Conſpiracies, Confederacies, and giuing of Liueries, (other then to Menial ſeruants & Officers, be contained vnder the word Conuenticles, ſaith Mar.

And it appeareth, (27. Lib. Aſſ. pl. 44.) to bee one of the articles enquirable in the Kinges bench, whether any perſons doe take others to their Auowment and protection, and do receiue of them rents (or other giftes) yearely in the name of Chyuage (or rather Cheifage) becauſe they ſeeme to take vpon them to be their Cheifes, heads, or leaders.

Chyuage.

But, foraſmuch as all theſe conuentions may bee without any apparant ſhew of Aſſembly againſt the peace (though otherwiſe they be fineable offences vnder the name & calling of Conuenticles, as Marrow thinketh) I will leaue them, and reſort to thoſe other that the commiſſion ſaith to bee done, *vi armata*, and that doe bring manifeſt terrour vnto the ſubiect.

Of theſe, ſome conſiſt of a number of people, gathered together diſorderly for the cauſe of ſome one, or of a few perſons, and do not breede any generall or preſent daunger to the Eſtate or Gouernement, and yet be againſt lawe, and be called Riots, Routs, and Aſſemblies againſt the lawe: againſt which, the Statutes 13. H. 4. cap. 7. 2. H. 5. ca. 8. & 19. H. 7. cap. 13. were ſpecially prouided: and before that the penaltie of the ſtatute of Northamp. 2. E. 3. cap. 3. was laide

laid vpon them by 2.R.2.cap.6.

But others there bee, that doe sauer of a more generall disobedience, and be (in regard of the number, or quarrell) a very Seede of Rebellion if not the Weede it selfe: and are therefore also sometimes called Rumors, great Ridings, Routs, and Riots against the Peace: 5.R.2.cap. 6. 7.R.cap.2. & 6. sometimes Assemblies of people in great number, in maner of Insurrection: 2.H.5.cap.9. and sometimes Rebellious Insurrections and Rebellious Assemblies, 15. R.2.cap.2.H.6.cap.14. and 1.Mar.Parl.1.cap. 12. Of all which (so farre forth as the Iustices of Peace haue interrest in them) I will intreate, but yet seuerally, and so, as either one, or moe of these Iustices haue to doe with them, and that out of the Sessions.

They of the first kinde bee, as I haue sayde commonly called Vnlawful Assemblies, Routs, and Riots: concerning the proper difference betweene euery of which, al men do not altogither agree. And therefore (reiecting all diuersitie of opinions) I will follow that which I take to be most probable, and at this day most commonly receiued. Wherein neuertheless I submit my pen to the experience of the Star chamber, as to the best guide and direction, that in this case the Iustice of Peace can haue to follow.

An vnlawfull Assembly, is the companie of three or moe persons, disorderly comming to- Assembly.

gither, forcibly to commit an vnlawfull act, as, to beate a man, or to enter vppon his possession, or such like.

Route. A Rout (saith Marrow) is such a companie so assembled, for their owne common quarrell as where the inhabitants of a Township come forcibly togither to throw down a hedge, ditch, or pale, in claiming their Common: or to beate a man that hath done vnto them some publike offence, or displeasure. But the Statute (18. Ed. 3. Stat. 1.) speaking of Routes that are brought into the presence of the Iustices: & the Statute (2. R. 2. cap. 6.) that treateth of ryding in great Routs to make entry into lands, to beat men, or to carry away their wiues, &c. doe seeme to vnderstand the word Rout in a more ample and large meaning. And therefore I will describe it thus: A Rout is a disordered assembly of three or moe persons, mouing forwarde to commit by force an vnlawfull act. For it is a Route, whether they put their purpose in full execution, or no, if so bee that they doe goe, ride, or moue forward after their first meeting *Bro.* Riot 4. & 5. And thereby it seemeth to me to be the very same, which the *Germanes* doe yet call Rot, that is a troupe, or band of men, that do ride or goe forward.

Riot. A Riot, is thought to bee, where three or moe persons, be disorderly assembled to commit with force any such vnlawfull act, and doe accor-

accordingly execute the ſame. This I thinke to be deriued from the French woꝛde Riotter, ſignifying to ſcold (oꝛ bꝛawle) becauſe ſuch maner of actes bee commonly accompanied with woꝛds of bꝛawle.

And thus (vpon the whole reckoning) an vnlawfull aſſembly is the firſt degre oꝛ beginning: a Rout, the next ſtept, oꝛ pꝛoceeding: and a Riot the fulleffect and conſummation of ſuch a diſoꝛdered and foꝛbidden action.

But howſoeuer that ſtand, two ſpecial things there are, that bee common and muſt concurre, both in the Vnlawfull aſſembly, rout, and riot, the one, that three perſons (at the leaſt) be gathered togither: foꝛ ſo it is cõmonly holden at this day, as I haue learned: the other, that their being togither doe bꝛeede ſome apparant diſturbance of the Peace, either by ſignification of Speach, ſhewe of Armor, turbulent Geſture, oꝛ actuall and expꝛeſſe Violence: ſo that either the peaceable ſoꝛt of men bee vnquieted and feared by the Fact, oꝛ the lighter ſoꝛt and buſie bodies be emboldened by the Example.

Things that be common to Riots, Routs, &c.

And in theſe matters, not onely the Fact it ſelfe, but alſo the Maner of doing the ſame, falleth ſometime iuſtly into conſideration: in ſo much as, the lawfulnes, oꝛ vnlawfulnes of the thing it ſelfe that is done oꝛ intended, doth not alwaies excuſe oꝛ accuſe the parties to a Riot, route, oꝛ vnlawfull aſſemblie, but ſo, that the

Thinges that be conſiderable in Riots, Routs &c.

Manner and Circumſtance of the doing, muſt alſo be brought into iudgement with it.

The maner. And therefore (ſaith M. Marrow) the maner of the doing of a lawful thing, may make it vnlawfull: As, if many in one companie (riding or going, to the Seſſions, Faire, Market, or Church it ſelfe) wil ride, or go armed, to the terror of the people. For although it be not only lawfull, but meet, and neceſſarie alſo to go to the church and Seſſions: yet, to go in ſuch a ſhewe, it is altogether needles, diſordered, and againſt the Law.

So, if three (or mo) ſhall enter into land with force, where their entrie is otherwiſe lawfull. And contrariwiſe, an Aſſembly to doe a wrong (ſaith he) may be ſo handled, that it ſhall prooue none of theſe offences: as, if I gather meet companie together, to carrie away a peece of timber (which wil not be mooued without a good many) wherto I pretend right, though in law it be an other mans.

And ſo alſo to doe an vnlawfull thing: as if many do meet to play at bowles, tables or cards, and doe vſe no miſbehauiour againſt the peace, they are not puniſhable in this degree. And yet, if he that carrieth the peece of timber away, wil vſe dreadful words, as to ſay that he will carrie it in ſpight of him that hath it, or that hee will haue it, though he die for it, or ſuch like: his doing may then become a Riot. Mar.

The purpoſe. Furthermore, the intention and purpoſe, of thoſe

those that be assembled, is worthy the weighing. For, to use harnesse on Midsomer night in *London*, or on May day in the country (for sport only) is no such offence; seeing no terrour followeth of it: and the words *in terrorem populi*, seeme to be materiall in an Inditement of this kinde.

So if the Sherife or his Bailife doe leuie people to serue the Queenes Writs of *Capias*: or if a Constable doe gather assistance of men with weapon to part an Affray, it maketh no riot. 3. H. 7. 1. & 10.

So if a man (hearing that another will fetch him out of his house and beate him) doe assemble companie with force, it will be no vnlawfull assemblie: for his house, is his Hold and Castle. But, if he be only threatned, that he shalbe beaten if he goe to the market, then may he not assemble company for his aide: because he needeth not to go thither, and hee may prouide for himselfe by Suertie of the Peace. 21. H. 7. 39. Fineux.

And if many be assembled, and none of them knoweth to what end, it can make no Route, nor Riot (as M. Marrow thought) till the intent be knowen. For if the maister intend to make a Riot, and take his vsuall seruaunts with him, not foretelling them what he intendeth to doe, and then committeth an outrage with them, this is no Riot in them: for although hee shall

be

bee punished, they shall be excused. But otherwise it is, if he make them priuy to his purpose, for then they also shall bee punished: Marrow and Report Dalison. And in the former case it is not materiall, whether his number of seruants be aboue his degree or no, so long as they be his Menials, or household men. Dalison.

If many be at an Alehouse, a Christmas dinner, or Churchale, & (without any intention of an Affray) they sodainely fall together by the eares, and make it *Lapitharum conuiuium*, yet this is no riot, but a sodaine affray, because they had no such intention: But if (in that affray) they shall betake themselues to sundrie parts, it may become a riot, as Mar. thinketh: for then it is not the first, but a new assembly, (as it were) in his meaning.

And if 12. Iurors (being committed to their keeper) doe fall out and fight, fire against fire, this maketh no riot (saith Mar.) because they were lawfully assembled, and were compelled to be in company together.

But, if a number of women (or children, vnder the age of discretion) do flocke together for their owne cause, this is none assembly punishable by these statutes, vnlesse a man of discretion moued thē to assemble for the doing of some vnlawfull act, as M. Marrow writeth.

Yet I remember well, that (not many yeares ago) sundry women were punished in the Starre Chamber,

Chamber, and that worthily: because, putting off that shamefastnesse which beseemeth their sexe, they arrayed themselues in the attire of men, and (assembling in great number) they most riotously pulled downe a lawfull inclosure.

Finally, Marrow noteth, that if the Maior & Communaltie of a towne do assemble and make a route in their common quarrell, this offence shall bee iudged and punished in their Naturall persons, and not in their body politicke.

Thus farre you see, what these offences be, & in what maner they may bee committed: nowe therefore behold what power one Iustice of the Peace hath ouer them.

One Iustice of the Peace, can neither make enquirie of a rout or riot when it is done, nor assesse any fine, nor yet award any processe for it, nor otherwise meddle with it (in the very nature of a rout or riot) but onely as a Trespasse against the Peace, or vpon the statutes of *Northampton* or of Forcible entries, whereof I haue before treated. The power of one Iustice of the Peace in Riot, &c.

And therefore, if he heare of any rout, or of any intention of a riot, hee alone (or with his seruaunts) may goe to the place, and such as hee findeth riotously assembled and armed, hee may arrest to finde Suertie of their Good abearing, and may commit them to Warde, if they refuse to giue it, and may take their weapons from them:

them: And if he come to the place, and doe not find them yet commen thither, he may leaue his ſeruaunts there, to make ſuch arreſt when they ſhall come: So alſo, if he be ſicke, hee may ſende his ſeruants to the place to arreſt them.

And this is the iudgement of all the Court, in that caſe of Sir Thomas Greene, 14 H. 7. 8. in the booke at large: grounded vpon the words, both of the Commiſſion of the Peace, and (as I take it) of the Statute, 34. E. 3. cap. 1. For, that which is founde in the repoꝛt of that ſame caſe (made by Fitzher. *tit. iuſt. del* Peace 9.) hauing many other matters (not extant in the booke of the Termes) ſeemeth rather to pertain to the ſtatute 13. H. 4. cap. 7. then to this Statute of E. 3.

Recoꝛd a Riot

But, if one Iuſtice of the Peace alone, will take vpon him to Recoꝛde a Riot that hee ſeeth, the party ſhall not be concluded thereby: foꝛ hee may trauerſe it: and if the Iuſtice will commit one to Ward, pretending vntruely that hee did a Riot, where he did none, an Action of treſpas lieth foꝛ the partie againſt him. *Tit.* Fitzh. *Inſt. del* P. 9.

So that (vpon the whole matter) one Iuſtice of the Peace alone may doe ſomewhat to preuent a Roue oꝛ a Riot, befoꝛe it be done, and foꝛ the ſtay of it whileſt it is in doing, but nothing (in effect) to puniſh it as a Riot, oꝛ Rout, when it is committed and done. For (as Iudge Fi-

neux

neux ſaith) in that caſe of Sir Tho. Greene, the Statute (which I take as I ſaid to be that of 34. of E. 3. rather than 13. H. 4. which by expreſſe words requireth the preſence of two Iuſtices at the leaſt) was giuen as a haſtie remedie, and for to preuent a miſchiefe being imminent and before the eye: and therefore the Law ſhall largely conſtrue the authoritie of a Iuſtice of Peace in that behalfe: So that he ſhall neither need to make any Precept in writing, nor to expect the comming of his Companions, nor to be preſent in his owne perſon, but may vſe all reaſonable meanes for preuention and ſtay of the euill. And yet the ordinarie power of puniſhing Routs, and Riots, reſteth not in his hand alone, but rather belongeth vnto two Iuſtices of the Peace, as it ſhall hereafter appeare.

In the meane while, it ſhall not be amiſſe to adioyne ſomewhat for ſupply out of the Statutes of our owne age: the which, ſeeing further into the perilles that inſue of theſe diſordered companies, haue alſo prouided further, as well in policie to preuent, as in ſeueritie to puniſh them.

The ſtatutes (1. Mar. Parl. 1. cap. 12: & 1. El. c. 17.) do make three degrees of Riotous and Seditious aſſemblies, in certaine ſpeciall caſes: the firſt, conſiſting of the common number of three perſons, and being vnder the number of twelue: the ſecond of twelue perſons or more: and

Rebellious and vnlawfull aſſemblies.

and the third of fortie persons and vpward: All which are to be punished diuersly, according to the number, intent, act, and obstinacie of the parties assembled: wherein there is some imitation of an ancient Lawe that king Ina made against theeues, whose degrees in offence he also seuered & punished by their nũber, saying thus:

Ðeofar þe hat þ oððe reofan menn; fram reofan hloþ. oþ rif ⁊ þrit tig; ⁊ ryððan here; that is, Theeues we call them, vntil the number of seuen men: from seuen, a Troupe, vntil 35: and an army, aboue that number. But I will proceede.

Proclamation

One Iustice of the Peace therefore, may (by vertue of these statutes) make or cause to bee made, a Proclamation in the Queenes name, (aftee three Oyes) thus: The Queene our soueraigne Lady chargeth and commandeth all persons beeing assembled, immediately to disperse themselues, and peaceably to depart to their habitations, or to their lawfull busines, vpon the paines contained in the Act lately made against vnlawfull and rebellious assemblies: And God saue the Queene.

And hee also may (at his discretion) assemble her Maiesties subiects to take them: and may take them indeede if they disobay: and shall bee vnpunished for the hurting, maiming, or killing of any of them, if they make resistance. He also is to take the declaration of any person, that (being

moued

moued to any ſuch aſſembly) will within foure and twenty houres after reueale the ſame vnto him.

Now muſt I here ſtay, and (for a time) goe no further with theſe aſſemblies: becauſe the power of one Iuſtice of the Peace faileth mee, and extendeth no further in them: therefore the reſt ſhall be diſcloſed, when order ſhall leade vs to intreate of the authoritie of two Iuſtices.

What other things any one Iuſtice of the Peace alone may do out of the Seſſion, by vertue of Statutes mentioned in the Commiſſion.

Cap. VI.

BEfore that I ſhall deſcend to ſhew ſuch further parts of power as bee giuen to one Iuſtice of the Peace by latter Statutes, it ſhall not bee amiſſe to take in my way, that remnant of his authoritie which lieth cloſed in the firſt *Aſſignauimus* of the Commiſſion, and hath not beene yet fully applyed to the practiſe.

Statutes lying cloſe in the Commiſſion.

The whole conſiſteth of ſuch members as I haue already ſhewed, namely, of the Statute made at Wincheſter, 13. E. 1. of the ſtatute made

made at Northampton, 2. E. 3. ca. 3. the ſtatute made at Weſtminſter, 5. E. 3. ca. 14. and the ſtatute made at Cambridge, 12. Ric. 2.

Of that Statute at Northampton I haue heretofore ſaid what I thought. Concerning Wincheſter and Weſtminſter, and the reſt I ſay ſhortly nowe, that by the forme of the commiſſion one Iuſtice of the peace may put the articles of them in execution: Firſt, by commaunding freſh ſute, hue and crie, and ſearch, to bee made by the Sherifes, Bailifes, and others, after thefts and robberies: by enioyning watches to be kept for arreſting of ſuſpected perſons, and of night-walkers: and highwaies to be enlarged: Then by ſeeing, that two Conſtables be choſen in each Hundred and Franchiſe: by forbidding Faires and Markets to bee holden in Churchyards: by compelling ſuch as be betweene the age of fifteene yeares & threeſcore, to be ſworne to the peace, for that alſo is in the Articles vpon the ſtatute of Winton: and laſtly, by charging the Conſtables to arreſt ſuch as ſhall bee ſuſpected to be Drawlatches, Waſtors, or Robertſmen, that is to ſay, either miching, or mightie theeues: for the meaning muſt remaine, howſoeuer the word be gone out of vſe.

And I doe not thinke, that any other manner of execution of theſe lawes (by one Iuſtice of the Peace) ought to bee gathered by the generall words of the firſt *Aſſignauimus*.

I

I know, that M. Fitzh. (in his Nat. Bre. fol. 82.) ſaith, that albeit a Iuſtice of the Peace hath none expreſſe authoritie within his Commiſsion to take a Recognuſance of the Peace, yet of Congruence it followeth, that hee may take it, becauſe hee hath authoritie in plaine wordes, to cauſe the Peace to bee kept, and to compell men to find Suertie for the ſame: and it is a rule of law, *Conceſſo vno aliquo, etiam id concedi videtur, ſine quo prius conceſſum haberi nequit:* but howe farre theſe things may bee drawen, I wil not determine, remembring that this alſo is another rule, *In generali conceſſione non veniunt ea, quæ quis non eſſet veriſimiliter in ſpecie conceſſurus.*

Aduice to the Iuſtices of peace.

This (to bee plaine) I doe not like, that one Iuſtice of the Peace ſhould take vppon him to bind an offendor against any Penall Law, (being within the power of Iuſtices of the Peace, but yet neither comprehended in the Commiſsion, nor committed to the charge of any one of them) to appeare at the Seſsions, to anſwere to his fault. For, although I haue ſeene ſundrie old Precedents of Attachmentes made from one Iuſtice of the Peace againſt Labourers, to bee before the Iuſtices at their Seſsions, to anſwere to their contempts: yet I am not perſwaded, that the like may be done againſt the offendors of other ſtatutes, vnleſſe it bee ſpecially there-

in ſo appointed: no more then it might haue bin done in that caſe of Labourers it ſelfe, had not the ſtatute of Labourers (25. E. 3. cap. 6.) expreſly commanded it.

And I doubt not, but they of the late Parliament were alſo of this minde with me: For, if they had thought it generally lawfull ſo to do, they would not haue ſo ſpecialy prouided for it, as you ſhall anone ſee in the notes of the Statutes 5. El. touching Seruants, and (23. Eli.) againſt Slanderous newes, and againſt the taking of Pheaſants and Partriches.

And ſurely much harme followeth of it: for it falleth out moſt commonly in experience, that thoſe Iuſtices which be moſt buſie to take ſuch bonds, be no leſſe readie to releaſe them: and ſo (playing faſt and looſe) they keepe (as it were) priuie Seſſions within their owne houſes, in which, both the Queene looſeth her Fine, and the common-wealth an example: and if the offendour looſe alſo, then that (belike) falleth to the ſhare of him that worketh the deliuerance.

And therefore, it were better (as I weene) that ſuch offendors were firſt indicted, and then that Proceſſe were orderly awarded againſt them, vntil that either they yeelded themſelues, or were taken, or outlawed: the which manner of doing, as it is better warranted of the twain: So doth it recompence the delay of the puniſh-

ment

ment with the weight of the paine, and shall profit more then the former.

There is no other thing also, whereof I thought meet to admonish our Iustice of peace in this place. Many of them doe vse to giue out their Preceptes to attach persons suspected of Felony, to the end to haue them brought before them: which thing is neither newly deuised by them, nor done without colour: for they haue such a precedent in the old booke of Iustices of the peace, Fol. 41: and there is no doubt, but that if a Felonie be done, euerie man may arrest whomsoeuer he suspecteth of it. But for al that, the whole Court (14. H. 8. 18.) condemneth such precepts: because, if the Bailife, which serueth the warrant, haue suspition in the partie, hee may of himselfe (without the warrant) arrest him: and if he haue not, then is the warrant of a Iustice of Peace no warrant to arrest him, vnlesse he be indited before.

What other thinges one Iuſtice of the Peace may do, out of the Seſſions, by the power of other Statutes, not mentioned in the Commiſsion, and therewithall of Manſlaughter, and all other Felonies.

Cap. vii.

Any one Iuſtice of the peace.

SEing the whole power of one Iuſtice of the Peace (as wel in the very buſineſſe of the Peace it ſelfe, as in the execution of ſome ſtatutes implied in the Commiſſion) hath nowe at length beene rehearſed: It is conuenient to ſumme vp ſuch other parts of authoritie alſo, as other ſtatutes haue put into his hands: which done, wee will no longer treat of one Iuſtice alone, but wil aſſociate ſome other vnto him.

Conſeruator of Riuers.

Euery Iuſtice of the peace is a Conſeruator of Riuers within his county: & (when hee may attend it) ought to ſuruey the Weares in riuers, that they be of reaſonable widnes: and ſhal ſuruey the offences of taking Salmons in any waters (out of the county of Lancaſter) betweene the natiuitie of the virgin Mary, and S. Martins day, and (there) betwene the feaſt of S. Michael and the purification of the ſaid virgin: & of taking yong Salmons at mil pooles, or other places, from the midſt of April til Midſummer, & of caſting nets into any waters, (by which the frie of any fiſh may be taken) & may puniſh the ſame by

by burning of their nets & engines. *Weſtmonaſt.* 2. cap. 47. 3. R. 2. cap. 19. & 17. R. 2. cap. 9.

Any one Iuſtice of the Peace may take vpon him to heare & order the controuerſies, betweene maſters and ſeruants, touching their departure and may allow of the reaſon, and ſufficiencie of the cauſe, for which a maſter may put away his retained ſeruant, or for which the ſeruant may depart before the end of his terme: & hee may in (hay time, or harueſt) vpon requeſt, & for the ſauing of corne, graine, or hay, cauſe ſuch Artificers, & perſons (as be meete to labor) by his diſcretion, to ſerue by the day, for the getting, cutting, ioining, or carrying thereof, according to the ſkil and qualitie of the perſon: and may vpon his refuſal) impriſon him in the ſtockes, by the ſpace of two daies and one night. And his teſtimonial vnder his hand and ſeale to ſuch as may paſſe in hay & harueſt time, from one ſhire to another, is ſufficient. And he alſo vpon complaint made, may commit that partie to warde, that in his iudgement ſhalbe thought meete, & yet ſhall refuſe to be bound as an Apprentice, according to the intent of the ſtatute, there to remaine vntil he be contented ſo to be bound. And hee alſo may by his diſcretion vpon the complaint of the Apprentice, take order betweene his maſter and him, and for want of conformitie in the maſter, may binde him to appeare at the next Seſsions before the Iuſtices, 5. El. cap. 4. Apprentices ſeruants and Labourers.

Hunting. Upon information to any Iuſtice of Peace, of any vnlawfull hunting by night, or with painted faces, or other diſguiſing (in Foreſt, Parke, or Warren) of any perſon to be ſuſpected therof, that Iuſtice may make a warrant to the Sheriffe, Conſtable, Bailife, or other Officer, to take the partie, and to haue him before him, or any other Iuſtice of the Peace in that countie, who may examine him of that hunting, and of the doers in that behalfe: and if he do wilfully conceale that hunting, or any perſon with him defectiue therin, then the ſame concealement ſhal be Felonie in ſuch conceallor: but if he confeſſe the trueth of all that he ſhalbe examined in that behalfe, then his offence of hunting ſhall be but Treſpaſſe, and finable at the next generall Seſſions of Peace there, 1. H. 7. cap. 7.

Vnlawfull games. Euerie Iuſtice of the Peace, may (as well within Liberties as without) enter into any common houſe or place, where any playing at the bowles, coites, cloſh, cailes, halfe bowles, tennis, dice, cardes, tables, or at any other game prohibited by any former Statute (of which ſorte bee foote ball, and caſting of the ſtone, by 12. Rich. 2. 10.) or playing at any vnlawfull game (alreadie inuented, or hereafter to bee inuented) ſhall be ſuſpected to be vſed againſt this Statute: and may arreſt as well the keepers of ſuch places, as the Players there, and impriſon them vntill thoſe keepers finde

find Suerties to the Queenes vſe (to bee bound by a Recognuſance, or otherwiſe) no longer to occupie any ſuch play or place: and that the perſons founde there playing, bee in like ſorte bound by themſelues, or with ſuerties (at the diſcretion of the taker) no more to play, or haũt, at, or to any of the ſaide places, or at any of the ſaide games. And euery Juſtice of the Peace, finding or knowing any perſon (not excepted by this Statute) to vſe any vnlawfull game, contrarie to this Act, may commit him to warde, there to remaine without Baile or Mainprize, vntill hee become bound by Obligation to the Queenes vſe (in a ſumme to bee thought reaſonable to that Juſtice) that hee ſhall not from thencefoorth vſe ſuch vnlawfull games 33. H. 8. cap. 9.

Any one Juſtice of the peace (by the large words of the Statute) may enquire, heare, and determine by his diſcretion, as wel by examination as otherwiſe, the offences committed in Tilemaking, and aſſeſſe the fine therein limited. And may call before him (at any time or place) ſuch as haue beſt knowledge in Tilemaking, and appoint them ſearchers of the ſaid defaults, 17. Ed. 4. cap. 4. But learne whether it be ſo to be taken, or no. Tile.

If any Souldiour, ſeruing the Queene in her warres, doe ſell, giue away, wilfully purloine, exchange, alter, or put away, any horſe, Souldiours ſelling horſe, or harneſſe.

gelding, mare, or harneſſe, wherewith hee ſhall be ſet forth, or which (being taken from any other ſouldiour) ſhalbe appointed vnto him, and doe eſcape the puniſhment, which the Lieutenant, high Admirall, the Kings Deputie, the Viceadmirall, Wardein, and Captaine, and their Deputies, in their abſence may lay vppon him, by this Statute: then vpon complaint and due proofe of the offence to be made by the owner, his executors or adminiſtrators, to any Iuſtice of Peace, where ſuch offendour ſhall bee found, he ſhall by him bee committed to warde, (ther to remaine without Baile or Mainprize) till he ſhall haue ſatiſfied the owner, his executors, or adminiſtrators, of ſuch horſe, gelding, mare, or harneſſe ſo ſolde, giuen away, &c. vnleſſe he bring with him before the ſame Iuſtice ſufficient teſtimonie from the ſaid Lieutenant, or any of the perſons aboue named (in writing vnder their Seale) teſtifying, that the ſaid horſe or harneſſe was loſt in the Queenes ſeruice againſt the will of that ſouldiour, or was taken by any of them from him for any reaſonable reſpect, and appointed to ſome other to ſerue with all 2. & 3. E. 6. cap. 1.

Agnus Dei. If any perſon (to whome anie *Agnus Dei*, Croſſe, Picture, Beade, or ſuch ſuperſtitious thing from the ſee of Rome, or the authoritie thereof, ſhalbe offered or deliuered) doe diſcloſe the name and dwelling (or place of reſorte) of ſuch

ſuch offerer or deliuerer, to anye Iuſtice of the Peace of that Shire, where he to whom ſuch offer or deliuerie is, ſhall be reſiant: then that Iuſtice muſt (within fourteene dayes nert after) declare the ſame to ſome one of the Queenes priuie Counſell 13. Eliz. cap. 2.

Slanderous newes.

Euery Iuſtice of Peace may (within one moneth after the ſpeaking or repoꝛting, &c.) commit to ward, any perſon, being vehemently ſuſpected of ſaying, or repoꝛting of any ſlanderous newes or tales, againſt the Queenes maieſtie, (vnleſſe hee do put in Sueꝛties to appeare at the nert Quarter Seſſions, or Gaole deliuery) there to remaine, till he ſhall finde Sueꝛties foꝛ ſuch his apparance. And may alſo (within one moneth after ſuch ſpeaking, or repoꝛting) receiue the accuſation thereof, and put the ſame, and the names of the witneſſes in wꝛiting, and certifie it at the nert Quarter Seſſions, or Gaole delluery 23. Eliz. ca. 2.

Diſturbe Preacher.

If any offendour (contrary to the ſtatute pꝛouided againſt the diſturber of any Preacher) ſhall be arreſted and bꝛought beforꝛe a Iuſtice of the Peace, then hee (vpon due accuſation thereꝛvpon had by the ſaid arreſtoꝛ, or other perſon) ſhal foꝛthwith commit the party ſo taken to ſafe cuſtodie, by his diſcretion 1. Mar. Parl. 1. cap. 3. But enquire, if all this Statute be not repealed by 1. Eli. cap. 2. in generall woꝛdes at the latter ende thereof.

Euery

Egyptian. Euery Iuſtice of the Peace may (within one moneth after the arriuall) ſeaze all the goods of any outlandiſh perſons (calling themſelues Egyptians) that ſhall come into this realme: and may alſo keep the one moitie thereof to his own vſe, making account to the Queene in the Eſchequer for the other moity. And euery perſon that can proue by two credible witneſſes before him that ſo ſeizeth, that any of thoſe goods were craftily, or feloniouſly taken from him, ſhall bee incontinently reſtored thereto before the partie that ſo ſeiſed them, vpon paine of the double value thereof to be forfeited to ſuch prouer, 22. H. 8. cap. 10. But note, that (after the moneth) the offence is made Felonie, and then it ſeemeth, the Queene is to haue the goodes wholly, 1. & 2. Phil. & Mar. cap. 4.

Inrolment. If any one Iuſtice of the Peace do ioyne with the Clarke of the Peace, in taking the Inrolment of an Indenture of bargaine and ſale of landes, tenements, or hereditaments, lying in that county where he is Iuſtice, it is ſufficient, as it ſeemeth by the wordes of the Statute, 27. H. 8, cap. 16.

Worke of waxe. Euery Iuſtice of the peace may examine and ſearch (by his diſcretion) ſuch as doe ſell or ſet forth to be ſold, any Candles, or other works of Ware, at higher price than after the rate of foure pence the pound, ouer the common price of plaine Ware, betweene merchant and merchant:

chant: and may alſo puniſh them by forfeiture of the worke ſet forth to ſale, and of the value of that which is ſolde, and by fine to the king, 11. Henr. 6. cap. 12. as it ſeemeth by the large words of that Statute.

Assise of fewell.

Any one Iuſtice of Peace, is warranted to ſet on the Pillorie in the next market Towne to the place of offence, any perſon that hath broken the aſſiſe of Fewell, and is conuicted thereof, and is not able to pay the forfeiture, there to be at eleuen of the clocke on the market day, with a Billet, or Fagot, bound to ſome part of his body: 7. E. 6. cap. 7. but conſider, whether a Iuſtice of Peace may conuict him of the ſaid forfaiture, or no: for it ſeemeth by the wordes of the Statute, that he is rather a Miniſter, than a Iudge in that caſe.

Repaire to the Church.

If any perſon (aboue ſixteene yeares of age) do by the ſpace of twelue moneths, forbeare to repaire to ſome Church, Chappell, or vſuall place of common prayer, contrary to the tenour of the ſtatute (1. El. cap. 2.) then any Iuſtice of Peace of the County where ſuch offendour ſhall dwell or bee, may make Certificat thereof in writing into the Kings Bench, to the ende that the offendour may thereupon be bound in 200. li. at the leaſt, with ſufficient ſuerties to the good Behauior, for that his ſo long obſtinacie, beſides the other penalties 23. El. cap. 1.

Any Iuſtice of Peace within that Countie,

in

Ieſuites and Seminaries &c.

in which any Ieſuite, Seminarie Prieſt or other Prieſt, Deacon, or Religious, or Eccleſiaſticall perſon (mentioned in this Statute) ſhall arriue or land, may within three daies after, take the ſubmiſſion, oath, and acknowledgement of him, touching his obedience to the Queens maieſty, and to her lawes and ordinances prouided in cauſes of religion 27. El. cap. 2.

And euery ſubiect, hauing vnderſtanding that any ſuch Ieſuite, Seminarie Prieſt, or other the aboueſaid, ſhall bee within any the Queenes dominions, contrary to the meaning of this ſtatute, ought to diſcouer the ſame vnto ſome Iuſtice of the peace (or other higher officer) within 12. dayes after ſuch his knowledge, vnder the paine of a Fine and impriſonment: And that Iuſtice of peace ought (within 28. daies after ſuch diſcouery made vnto him) to giue information thereof to one of the Queenes priuy Counſell, vnder the paine of 200. marks 27. El. cap. 2.

Pheſants and Partriches.

Euery Iuſtice of Peace may examine offences againſt the Statute made for preſeruation of Pheſants and Partriches, and againſt hawking in corne (if the ſame offences bee not before lawfully heard, or determined otherwiſe) and may take bond of the offendour with good ſuerties for his apparance at the next generall Seſſions of the Peace, to anſwere to the ſaide offence, and to pay the penaltie, or to receiue the puniſhment due therefore: and may alſo after con-

conuiction and punishment of such offendour in taking or killing Phesants or Partriches, take like bond of him and suerties, that (for the space of two yeares) hee shall not offende against the said Statute 23. El. cap. 10.

It seemeth that one Iustice of the peace, may (vpon complaint of the party grieued) examine the Sherife, Vndersherife, and Plaintife, concerning the taking or entring of plaints in their County Courtes and Bookes against the Statute: and if hee finde thereby any fault or offence committed, that shall stand for a sufficient conuiction and attaindour, without any further enquiry or examination: So may hee also examine the Bailife of the Hundred, for not warning of the Defendant in such a plaint, according to his Precept from the Sherife or Vnder-Sherife, and if thereby he find any default or offence, that also shall stande for a sufficient condemnation. And the said Iustice must certifie those examinations within a quarter of a yeare into the Eschequer, 11. H. 7. cap. 15. Plaints in the County Courts.

The Certificat of one Iustice of Peace (ioyned with the Customer of the place) of the vnlading and selling of corne, graine, or cattell, caryed by water from one place to another of this realme, vnto the Customer and Controller of the place where the same was imbarked, is sufficient and inough vppon the statute of forestalling, 5. Ed. 6. cap. 14. & 13. Eli. cap. 25. Certificat of selling Corne.

One

Sanctuary person.

One Iuſtice of Peace may take out of ſanctuary certaine perſons abiured thither, and others being indited of ſome kind of offences (mentioned in the ſtatute) done after they become Sanctuary men: and may commit them to the gaole in the County where the inditement is founde, till they be tryed, 22.H.8.cap.14.

Robberie.

No perſon ſhall (after that he ſhall be robbed) bring any action vpon any the ſtatutes concerning Huy and Cry, except he ſhall firſt (within twenty dayes next before ſuch action brought) be examined vpon his corporal oath before ſome one Iuſtice of the Peace of the County wherein the robberie was committed (inhabiting within or neere the Hundred where the robberye was committed) whether hee doe know any of them that did the Robberie: and if vpon ſuch examination hee doe confeſſe that hee knoweth any of them, then alſo ſhall hee (before ſuch action bee brought) enter into Recognuſance before the ſame Iuſtice effectually to proſecute ſuch perſons (ſo knowen) by Enditement, or otherwiſe, according to the due courſe of the lawes of this realme, 27.El.cap.13.

Malt.

If any Bailife or Conſtable, of any Borough, or other Towne, ſhall find any Malt, made contrary to the Statutes (2.& 3.E.6.ca.16.& 27 Eliz.cap.14.) then, with the aduice of any Iuſtice of Peace within that ſhire, hee ſhall cauſe the ſame to be ſolde, to ſuch perſons, and at ſuch rea-

reasonable prices (vnder the common price of the market) as to his discretion shall seeme conuenient.

The partye conuicted and committed to pri- Malt.
son, by the Iustices of peace, for not obaying this restraint of conuerting Barley into Malt, must there remaine three dayes, and after that vntill hee shall become bound in Recognusance of forty pound to the Queenes vse before any Iustice of the peace, to obay such his restraint 39. El. cap. 16.

Euery Iustice of the Peace (as it seemeth) Watermen.
within the shires next adioyning to the riuer of Thamis, within his seuerall iurisdiction hath power (vpon complaint made vnto him) by the ouerseers and rulers of the Watermen and Whirrymen (or two of them) or by the masters of any such seruants, both for to examine, heare, and determine, all offences against the Statute, and to set at large him that shall bee imprisoned by such ouerseers or rulers (if there bee iust cause) and also by his discretion to punish those ouerseers and rulers, that shall vniustly punish any person, 2. & 3. Phil. & Mar. cap. 16.

Any Iustice of Peace (within fiue moneths Stolen Horse
after the sale in market ouert, of any stollen horse, mare, gelding, colt, or fillie) may take the claime, and heare the proofe of the right proprietarie thereof, 31. Eliz. cap. 12.

Any

Seditious Sectarie.

Any one Iuſtice of the Peace may within three moneths after the conuiction of any ſeditious Sectaries (deſcribed in the ſtatute 35. Eli. cap. 1.) require the ſubmiſſion of him to conformitie, and in default of ſuch ſubmiſſion, may require him to abiure this Realme, 35. Elizab. cap. 1.

Not come to Church.

Euery Iuſtice of peace alſo may giue notice to any perſon to forbeare to relieue, or keep ſuch as ſhall obſtinately refuſe to come to the Church by the ſpace of a moneth together. 35. Eliz. cap. 1.

Rogue.

Any Iuſtice of the Peace may appoint anye perſon to bee openly whipped naked vntill his or her body bee bloodie, that ſhall be taken Begging, wandering, or miſordering him or her ſelfe, and is declared by the Statute (39. Eliz. cap. 4.) to bee a Rogue, Vagabond, or ſturdie Beggar. And ſhall cauſe ſuch perſon ſo whipped to be forthwith ſent from Pariſh to Pariſh by the Officers of euery the ſame, the next ſtraight way to the Pariſh where ſuch perſon was Borne, if that may bee knowen by the parties confeſſion, or otherwiſe: and if not, then to the Pariſh where ſuch perſon laſt Dwelt before that puniſhment by the ſpace of one whole yeare, there to Labour: Or (not being knowne where ſuch perſon was borne, or ſo dwelt,) then to the Pariſh through the which ſuch perſon laſt paſſed without ſuch puniſhment. And

ſuch

ſuch Iuſtice ſhall vnder his hand and ſeale make a Teſtimoniall witneſſing ſuch puniſhment, and the day and place thereof, and mencioning the place to which ſuch perſon is limited to goe, and by what time, at his or her perill. And in caſe ſuch place of birth, or laſt dwelling bee not knowen, then ſuch perſon ſhall by the Officer of the Village (through which he or ſhe laſt paſſed without puniſhment) bee conueyed to the houſe of correction of the limite wherein that village is, or to the cõmon Gaole of that place or Countie, there to remaine in worke til ſuch perſon be placed in ſeruice for one yeares continuance: Or (not being of able bodie) till ſuch perſon ſhall be placed in ſome Almes-houſe of that place or Countie. 39. El. ca. 4.

The forme of which Teſtimoniall, may in effect be the ſame, which was lately in vſe by the Statute. 22. H. 8. ca. 12. now repealed, viz.

I *Iohn at Style*, a ſturdie vagrant beggar, of low perſonage, red-hayred, and hauing the nayle of his right Thombe clouen, was this *ſixt* day of *Aprill*, in the *fortie* & *one* yeare of the Reign of our Soueraigne Ladie *Queene Elizabeth* o- *Kent.*

penly whipped at *Dale* in the ſaid Countie, for a wandring *Rogue*, according to the Law: and is aſſigned to paſſe forthwith from pariſh to pariſh by the Officers thereof, the next ſtraight way, to *Sale* in the Countie of *Middleſex*, where (as he confeſſeth) he was borne (*or dwelled laſt by one whole yeare &c.* if the caſe be ſuch) and he is limited to be at *Sale* aforeſaid, within *tenne* dayes now next enſuing, at his perill.

By the occaſion of this Teſtimoniall (or paſſe) I thought it ſeruiceable to aduertiſe, that it is needefull, both in this, and in all other Teſtimonialls, Certificats, Safe-conduits and Paſſeports whatſoeuer, to annote and ſpecifie expreſly, ſome aſſured markes of the partie, as his ſtature, colour of haire, complexion, or (if it may bee) ſome apparant skarre, or other Note, by which hee may bee infallibly diſtinguiſhed and known from others: leſt (as I haue often found) both himſelfe take the benefite thereof, and hee alſo communicate the vſe of the ſame to others, in abuſe of him that made it.

And by occaſion alſo of this power giuen to one Iuſtice for correction of Rogues, I truſt that I may (without offence to any) make publique vſe of thoſe graue reſolutions and aduices, that beeing in the hands of ſundry men a-

broade,

broade, are commonly aſcribed to her Maieſties Iuſtices at Weſtminſter, and doe tende much to the right execution of this and the other Statute (39. Elizab. Reg.) concerning Rogues and the poore, which onely (of all our lawes) haue moſt Chriſtianly and ciuilly giuen order in that behalf, and are therefore with ſo much the more care and dilligence to be put in vre amongſt vs, as they will not onely deliuer vs of the preſent burthen, but alſo deſtroy the very broode, of this vnruely people.

Thus they ſtand in my Copie, *viz.*

A Rogue affirmeth, that he was born in ſuch a towne in ſuch a County: then ought he to be ſent thither, if it may not otherwiſe appeare ỹ he was born elſe-where: & if he were not born there in truth, then is he to be ſaide an incorrigible Rogue, and is to be ſent thence to the houſe of correction in the County to which he is ſent; and if there be none there, then to the Gaole, vntill the next Seſſions, there to be dealt with according to the Statute.

2 The ſame courſe is to be obſerued, if it appeare not where he was born, or if he vntruly affirme

firme that he was last dwelling in such a towne, in such a Countie, by the space of a yeare, and was not.

3 If the Husband or Wife haue a house, and the Husband or Wife Rogue about, they ought to be sent to the Towne where that house is, and so of an Inmate.

4 The Wife and Children (vnder seauen yeares of age) being vagarant, must goe and be placed with the Husband; if the Husband bee dead, then with the Wife where shee was borne, or dwelt. And the vagarant Children (aboue seauen yeares of age) must bee sent to the place of their Birth; and if the vagarant Parentes with their children (vnder seauen yeares) bee placed at the place of Birth of the Parents, or at the place of last dwelling (as the case shall fall out) if afterwarde the Parents or either of them dye, or runne away, yet the Children once setled must remayne there still, and may not be sent to their place of birth, though after they growe aboue the age of seauen yeares.

5 The Wife beeing a vagarant Rogue, ought to be sent to the Husband, though hee be but a seruant in another Towne.

6 The

6 The Rogue whose place of birth (or dwelling) cannot be known, hath wife and children vnder seuen yeares of age: they must goe with the husband to the place where they were last wilfully suffered to passe without punishment: where the children must bee relieued by the worke of their Parents, though the parents be committed to the house of Correction.

7 If any (not being Rogues) shall trauaile with their children through a Towne, and the Father or Mother die, or run away, the Towne is not bound to keepe them where they die, nor to send them away, but onely in charitie, except they become wandering Beggers.

8 If the parents be able to worke, and may haue worke, they are to finde their children by their Labor, and not the parish: But if they bee ouer burthened with Children, it shalbe a verie good way, to procure some of them to be placed Apprentices, according to the statute.

9 Noe man is to bee put out of the Towne where he dwelleth, nor to be sent to their place of Birth (or last habitation) but a vagaraunt Rogue, nor to be found by the Towne, except the partie be impotent, but ought to set them-

ſelues to labour, if they bee able, and can get worke, if they cannot, the Ouerſeers muſt ſet them to labour: And ſo of them that haue or ſhall haue Houſes, when their eſtates bee expired: And Seruants whoſe times of ſeruice are ended, though they cannot get houſes, for they muſt prouide themſelues houſes anewe, if they be not impotent.

10 Such perſons as bee of any Pariſh, and haue able bodies to worke, and be no wanderers abroade out of the Pariſh, though they refuſe to worke at ſuch wages as is tared (or commonly giuen) in thoſe partes, are notwithſtanding not to be ſent to their place of Birth, or laſt dwelling by the ſpace of an yeare, but to the houſe of Correction, vpon conſideration had of both the Statutes of the Poore and Rogues. But if they haue any lawfull meanes to liue by, though they be of able bodies, and refuſe to Worke, yet are they not to bee ſent to the houſe of Correction.

11 Such as will Remoue or put any out of their Pariſh, that bee not to be put out, this is a gainſt the ſtatute, concerning the reliefe of the poore, and vnable: And if any haue bene ſo ſent, they may be ſent backe againe.

12 If

12 If any be ſent to a Towne whereto hee ought to be ſent, and is refuſed (being a Sturdy or an impotent Rogue) the perſons refuſing ſhall forfeit fiue pound, and he that is ſo to bee ſent, is to bee offered to the Church-wardens and Ouerſeers.

13 To ſend the Rogues by a generall Paſporte, without conueying them from Pariſh to Pariſh, is a let to the conueying of Rogues according to the Statute, and ſo a forfeit of fiue pound vpon them. And, to goe with ſuch a Paſport, is but ſtill to continue a Rogue, to bee puniſhed by whipping.

14 If the Officer will not receiue a Rogue, to conuey him to the place wher he was borne, (or dwelt) this is a forfeiture of fiue pound in the Officer, that ſhall not receiue the partie, to conuey him or her ouer.

15 None, may be ſuffered to take reliefe at any mans dooze, though within the ſame Pariſh, vnleſſe it be by the order of the Ouerſeers, according to the Statute, neither may any bee ſuffered to begge by the High-waies, though in their owne pariſh.

16 By

16 By this word Parents, is vnderſtoode a Father or a Grandfather, Mother, or Grandmother, being perſons able.

17 Within the word Children, is included any childe, or Grand-childe, being able.

18 Parſons, or Vicars, &c. bee bound (as Inhabitants) to the relief of the poore, as well as others that inhabite within the Pariſh.

19 Euerie one that hath Tithes impropriate, Coale mines, or lands in manuel Occupation, &c. is chargeable. And ſo for ſuch as haue Saleable-woods, proportioning the ſame to an Anuall benefite.

20 If there be but one Church-wardein in the Pariſh, hee ſufficeth with the other fower Ouerſeers.

Logwoode. Vpon Information giuen to any Iuſtice of the Peace, againſt any perſon ſuſpected to offend this Statut, concerning Logwood (alias, Blockwood) ſuch Iuſtice may by his Warrant, or other Commaundement, cauſe to come before him, and examine (by Oath, or otherwiſe) the ſeruants, or workemen of ſuch Suſpect, or other

other persons, able to disclose the offence: & vpon finding the same, to bind with suertie, to the next Gaole deliuerie, or Quarter Sessions, of that county, as wel such Suspect, as Examinats, and to send thither the said Examinations also. And if such Suspect shall refuse to be so bounde, then may such Iustice sende such Suspect to the next Gaole, there to remaine, till he, or shee shall become so bounden, 39. Eli. cap. 11.

Northren cloth.

Euery Iustice of the Peace, of any of the Counties, on the North side of the Riuer of Trent, hath some power in searching out the deceite of Straining or Streatching those countrie Clothes, Kersies, Cottons, &c. contrarie to the statute, 39. Eli. cap. 20.

Examinations of felons.

Euery Iustice of the peace, before whom any person (arrested for manslaughter, or Felony, or suspition thereof) shal be brought, ought (before he commit him to prison) to take the examination of such prisoner, and the Information of those that bring him, and to put the same (or so much thereof, as shall be material to prooue the Felony) in writing within two daies after: and to take bond of all such as do declare any thing (materiall to prooue the offence) to appeare at the next generall gaole deliuerie, and to giue euidence there against the offendor 2. & 3. Phi. & Mar. cap. 10.

Here you may see (if I be not deceiued) when the examination of a Felon beganne first to bee

warranted amongſt vs. For at the common Law, *Nemo tenebatur prodere ſeipſum*, and then his fault was not to be wrung out of himſelfe, but rather to be diſcouered by other meanes and men.

And heere againe, am I iuſtly occaſioned to draw the threede of my ſpeech a good deale further, before I can conclude this part concerning the power of any one Iuſtice of the Peace.

For whereas this lawe requireth, that hee ſhould not onely take the Examination of the fact, and bond of the Informers, but alſo that he doe therewithal make choiſe of ſuch things as be material to moue the ſuſpition, or to proue the offence: It ſeemeth neceſſarie to me, both to ſhew him the manner of the Examination, and forme of the Bond, and withall to let him ſee, what things be material to induce this Suſpition, and what ſorts of Felonies there are wherewith he hath to deale, to y̆ end that he may both diſcerne them from other facts that carrie only ſome reſemblance of them: and alſo the better vnderſtand, when to commit to priſon the party accuſed before him, and when he ſhall not neede to trouble himſelfe ſo farre with him.

Examination vpon oath.

And firſt, becauſe ſome Iuſtices of Peace, doe vſe to take this Information (of the bringers) vpon their othes, and ſome others do receiue it without any oth at all: Let vs ſee, what is wont to be ſaid on either ſide, that euery man may the better

better see what way to incline and followe.

They which make this Information, or Examination (for this Statute doeth vse both the words indifferently) without any oath, doe say, that if the makers of this statute had meant that an oath should bee taken, then would they haue expressed so much: euen as the statuts for Bankrupts (34. H. 8. ca. 4. & 13. Eli. cap. 7.) the Statute of Accountants (5. R. 2. cap. 13.) the statute of Laborers (2. H. 5. ca. 4.) and the statute of chooſing Knights of the Parliament. (8. H. 6. cap. 7.) haue done before: in all which and some other statutes, examination vpon oath is giuen by expresse and plaine words.

But they of the contrarie side do strongly defend their exacting of an oath, by the example of the Iustices of the higher Courts: & do alleadge that whereas the Statute (5. H. 4. cap. 8.) did ordaine (without any mention of oath) that in an action of Debt vpon the arrerages of an account, the Iustices should haue power to examine the Attournies, and others: the Iustices of the Bench doe vse in that case to minister an oath vnto the examinates, as it appeareth, 19. H. 6. 4 & 35. H. 6. 5.

The like (say they) is dayly done and practised in all the Examinations of Summoners, Viewers, Sheriffes, Clearkes, and other Officers, that doe happen in the higher Courtes at Westminster. And M. Brooke (*tit.* Examina-

tion 32.) is of the opinion, that euery examination is to be handled vpon oath. And therefore (belike) the Statute (2. E. 6. cap. 13.) giuing power to the Ordinary to examine a man for his personall tithe, excepteth an oath, as though otherwise he might haue required it of him.

Besides all this, they adde for reason, that if these informers bee examined vnder oath, then although it should happen them to die before the prisoner haue his Triall, yet may their information bee giuen in Euidence, as a matter of good credite: whereas otherwise, it would be of little or no weight at all, and thereby offendors should the more easily escape.

To this latter opinion I my selfe am readie to subscribe, as well because I haue heard some Iustices of Assise deliuer their minds accordingly, as also for that I haue found by experience, that (without such an oath) many Informers will speake coldly against a felon before the face of the Iustice, hauing (belike) first made their bargaine with the offendor (or his friendes) before that the Iustice did heare of the cause.

The taking of the bond.

The Bond (spoken of in this Statute, and in some others) seemeth to bee meant of a Recognusance acknowledged vnto the Queenes vse, and conditioned for the performance of that which the statut appointeth. For (as before hath beene said) euen as in the case of Suertie of the Peace and Good Abearing, the Iustice of the

Peace

Peace taketh vſually a Recognuſaunce, and is warranted ſo to doe, being made a Iudge of Record as touching matters of the Peace, though he hath no full words for it either in any ſtatut, or in the Commiſſion: So, being authorized by this Statute to deale in this matter, he may be wel ſaid to haue therein implied (by good Congruence) a power to record the acknowledging of a ſumme of money, forfaitable to the Queene for not performing the Condition of the ſame.

The Partie therefore that informeth againſt the *Priſoner*, may be thus bound *in a ſingle* Recognuſance.

Memorandum quòd tertio die Aprilis, anno regni domninæ noſtræ Elizabethæ, Dei gratia, &c. 41. D. E. *de* Braſted, *in comitatu prædicto* Yeoman, *perſonaliter coram me* Tho. Potter, *vno Iuſticiariorum &c. ad pacem, &c. aſſignatorum conſtitutus, apud* Braſted *prædict. recognouit ſe debere dict. domin. Regin. decem libras bonæ & legalis monetæ Angl. de bonis & catallis terris & tenementis ſuis fieri & leuari ad opus dictæ dominæ Reginæ hæredum & ſucceſſorum ſuorum ſi defecerit in conditione indorſata,* *Kanc.*

Th. P.

And with ſuch a Condition.

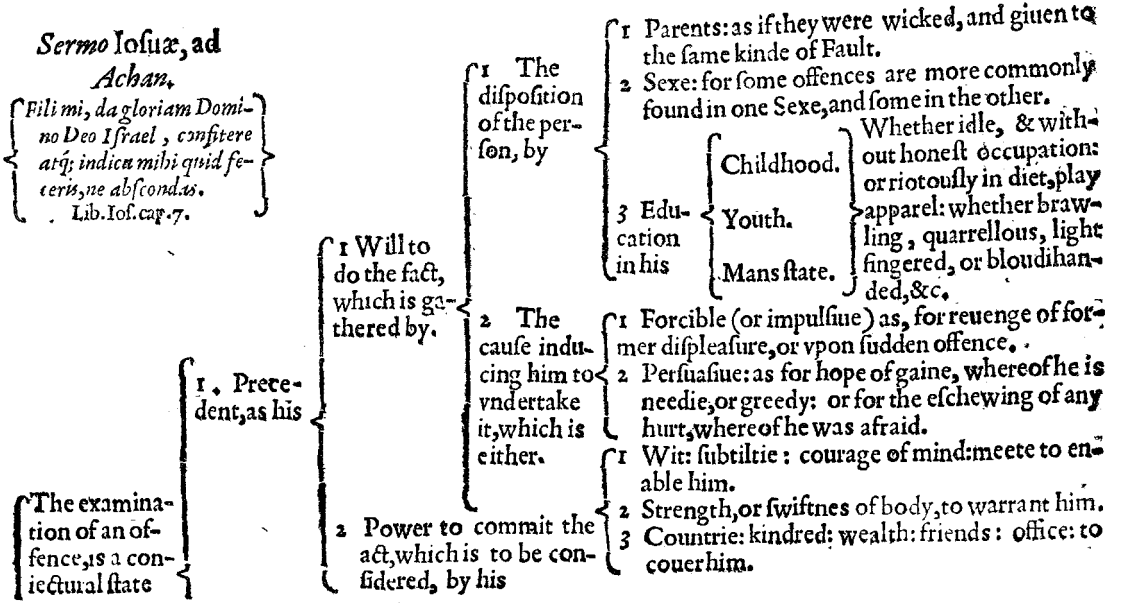
THE Condition of this Recognuſance is ſuch: whereas one *A.B.* late of *G.* Labourer, was this preſent day brought before the ſaid Iuſtice by the aboue bound *D.E.* and was by him charged with the Felonious taking of xx. ſheepe of him the ſaide *D.* and thereupon was ſent by the ſaide Iuſtices to the Queenes Maieſties Gaole: If therefore hee the ſaide *D.* ſhall and will at the next generall Gaole deliuerie (to bee holden in the ſaide Countie) preferre or cauſe to bee framed and preferred, one bill of Inditement of the ſaide Felonie, againſt the ſaid *A. B.* and ſhall and will then alſo giue euidence there concerning the ſame, as well to the Iurours that ſhall then enquire of the ſaide Felonie, as alſo to them that ſhall paſſe vpon the Trial of the ſaid *A.B.* That then, &c. Or elſe &c.

The cauſes of ſuſpition.

Touching the pointes that may ingender Suſpition, I neede not to ſay muche, knowing that I ſpeake to men of diſcretion & wiſedome, to whome *Omne mendacium eſt pellucidum*: And yet, ſeeing that *Initia debent ab arte proficiſci, quanquam cætera facilè comparabit exercitatio:*

I

I take it not vnſeruiceable to inſert here, ſuch a Briefe (or minute) thereof as I haue collected out of Cicero, and others, whereunto all the reſt (which the wit of man may inuent) will eaſily be referred.


Sermo Ioſuæ, ad Achan.
Fili mi, da gloriam Domino Deo Iſrael, confitere atq; indica mihi quid feceris, ne abſcondas. Lib. Ioſ. cap. 7.
The examination of an offence, is a coniectural ſtate
1. Precedent, as his
1 Will to do the fact, which is gathered by.
1 The diſpoſition of the perſon, by
1 Parents: as if they were wicked, and giuen to the ſame kinde of Fault.
2 Sexe: for ſome offences are more commonly found in one Sexe, and ſome in the other.
3 Education in his
Childhood.
Youth.
Mans ſtate.
Whether idle, & without honeſt occupation: or riotouſly in diet, play apparel: whether brawling, quarrellous, light fingered, or bloudihanded, &c.
2 The cauſe inducing him to vndertake it, which is either.
1 Forcible (or impulſiue) as, for reuenge of former diſpleaſure, or vpon ſudden offence.
2 Perſuaſiue: as for hope of gaine, whereof he is needie, or greedy: or for the eſchewing of any hurt, whereof he was afraid.
2 Power to commit the act, which is to be conſidered, by his
1 Wit: ſubtiltie: courage of mind: meete to enable him.
2 Strength, or ſwiftnes of body, to warrant him.
3 Countrie: kindred: wealth: friends: office: to couer him.

- of a cauſe: and it is to bee weighed by matter, either
  - 2 Preſent, or inſtant, as the
    - Time: as being very early or late: which be fit for the doing of euill that will not abide the light.
    - Space ſufficient to performe the feate.
    - Place, conuenient & meete for the act: as Wood, Dale, houſe, or other place of aduantage.

    } and his being then there.
    - Occaſion, rightly taken, as which being omitted, the fact could not follow.
    - Compariſon, as that none but hee, or none ſo commodiouſly as hee, coulde commit the fact.
    - Hope, to haue it concealed by theſe aduantages, or to eſcape with it.
  - 3 Subſequent, as
    - Common voice and fame, againſt him, that he did the offence.
    - Witneſſes, that prooue it, either probably, or neceſſarily.
    - Signes, which diſcouer him: as by hauing blood, or the goods about him: his flying away: his bluſhing, or change of countenance: his being in company with other offendors: his offer of compoſition: the meaſure of his foote: the bleeding of the dead body, &c.
    - Confeſſion, as his owne doubtfull, or inconſtant ſpeaking: his repugnancie with others ſpeech, &c.

The *Mittimus* of the Prisoner, after his examination taken, may stand thus.

Kent. IOHN SCOT Knight, one of the Iustices, &c. to the Keeper of her Maiesties Gaole at *Maidstone* in the saide Countie, &c. greeting. I send you herewithall the bodie of *A.B* late of *C.* Labourer, brought before me this present day, and charged with the Felonious taking of twentie sheepe, which also hee hath confessed vpon his examination before me. And therefore these are (on the behalfe of our said Soueraigne Ladie) to commaund you, that immediatly you receiue the said *A.B.* and him safely keepe in your said Goale, vntill that hee shall be thence deliuered by due order of her Maiesties lawes. Hereof faile you not, as you will answere for your contempt at your owne peril. Yeouen at, &c.

The diuision and discourse of Felonies.

The Examination of the Prisoner, the bond of the accusors, and the Notes of suspicion, thus bewraied, It followeth that I enter into the diuision and discourse of the Felonies themselues. For the better vnderstanding whereof, I will heere deliuer (so shortly as I can) such helpes as haue come to my handes, for the knowledge of all maner of Manslaughters,

ters, and other Felonies that either were at the Common lawe, or haue beene ſince declared by whatſoeuer Statutes.

But before I ſteppe any further heerein, I am to pray pardon of the Reader, if I ſhall neither ſet Manſlaughter before Felony, as this ſtatute doth: nor ſhall vſe either of both thoſe words in ſo narrow a ſignification, & meaning, as commonly other men doe take them. For, howſoeuer the courſe of theſe offences may fall out, to him that ſhall conſider how much the one of them exceedeth the other in grauitie and degrees of hainous offences: yet to me, that am deſirous to follow ſome order, and Methode of diſcourſe, the generall muſt alwaies goe before the particular: and therefore, refuſing the common vſe of the wordes at this day, I will (for orders ſake) take them in their owne more ancient, and proper ſignifications, vſing Felonie, for the *Genus* (or generall) to all thoſe other fell, and hainous offences, that our law (for the moſt part) doth puniſh by the paines of death: and vſing Manſlaughter, as a ſort of Felonie, that comprehendeth vnder it all maner of felonious Homicide whatſoeuer.

The right vſe of the wordes, Manſlaughter and Felonie.

And yet, to proone that I doe not heerein ſwarue, either from the naturall ſignification of the wordes themſelues, or from the ancient vſe and acceptation of them, I ſay, that firſt thoſe hainous offences, are called Felonies, becauſe they

they be committed *Felleo animo*, with a fell, furious, and mischieuous mind and intent.

And, that before the Statute (13.R.2.cap.2.) a pardon of all felonies, was auaileable both for murders, and for some Treasons also: as may appeare, Lib. Ass. 22. pl.49. 1. Edw.3. 24. Stanford 102. *& Commentar.* 502. And, that the Statute of Marlebridge (cap. 25.) speaketh plainely heerein, saying: *Locum habeat murdrum, de interfectis per feloniam tantùm.*

Againe, as touching Manslaughter, that worde (as euery man may see) doth most aptly, and significantly render vnto vs, the Latine *Homicidium:* which worde, both M. Bracton, and M. Stanford doe rightly vse, as the generall, as well to Murder as to the rest: howsoeuer vnskilfull men will needs restraine it (nowe a dayes) to man-slaughter by Chance-medley alone.

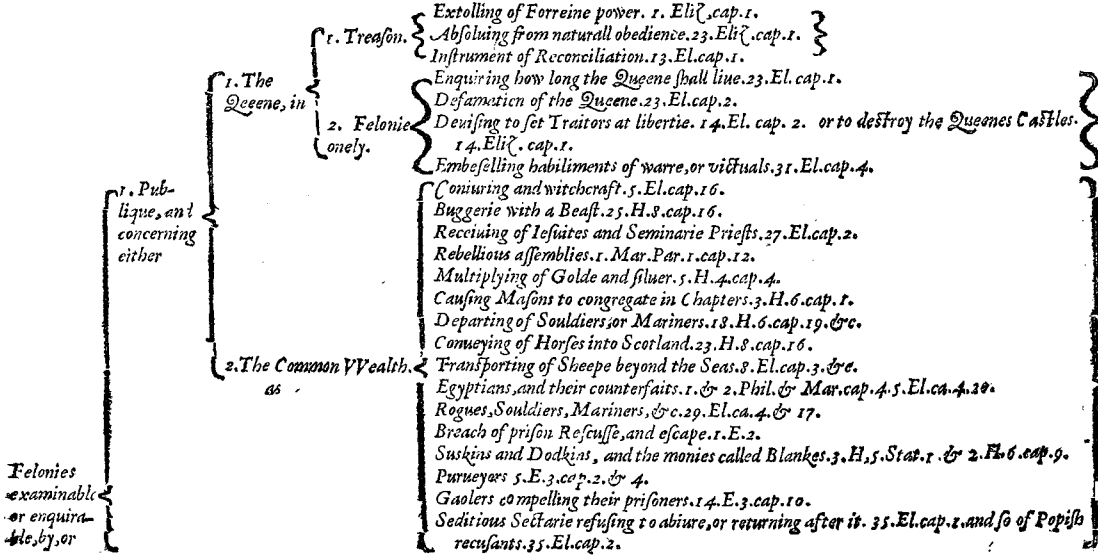
Neither doe I doubt, but that this present Statute, when it sayeth, (Man-slaughter, and other Felonies) doeth thereby make Manslaughter a sort of Felonie, (for so the worde other doth imply) and doth also therewithall comprehende Murder vnderneathit: seeing it cannot bee thought, but that this statute requireth examination, as well (if not more) in the case of Murder, as it doeth in the other lesse hatefull Homicides.

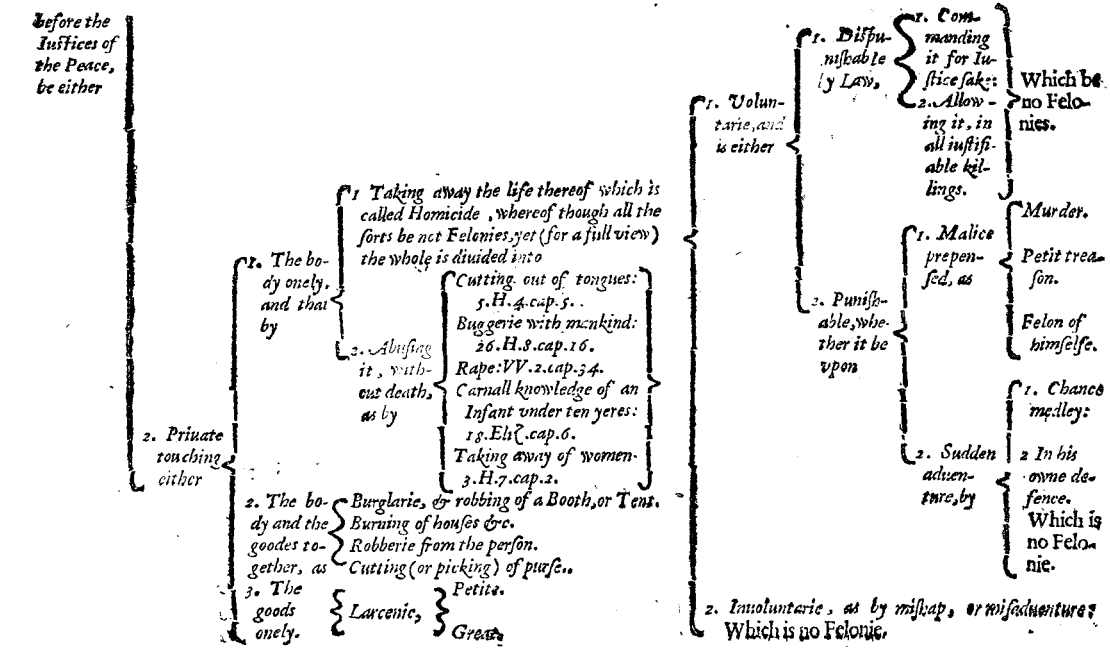
This

This excuſation thus prepared, I will nowe aduenture (vnder the name of Felonie) to run thorough all the ſortes of Man-ſlaughters and Felonies within the meaning of this Statute, according to the Order of mine owne Diuiſion: which (for the more light) I haue beſtowed in this proiect (or Table) following.

The

The Diuiſion of thoſe *Felonies*, wherein *Iuſtices* of the Peace are authorized.




Before the Iustices of the Peace, be either
2. Priuate touching either
1. The body onely, and that by
1 Taking away the life thereof which is called Homicide, whereof though all the sorts be not Felonies, yet (for a full view) the whole is diuided into
2. Abusing it, without death, as by
Cutting out of tongues: 5.H.4.cap.5.
Buggerie with mankind: 26.H.8.cap.16.
Rape: VV.2.cap.34.
Carnall knowledge of an Infant vnder ten yeres: 18.Eliz.cap.6.
Taking away of women. 3.H.7.cap.2.
2. The body and the goodes together, as
Burglarie, & robbing of a Booth, or Tent.
Burning of houses &c.
Robberie from the person.
Cutting (or picking) of purse.
3. The goods onely.
Larcenie,
Petite.
Great.
1. Voluntarie, and is either
1. Disputnishable by Law,
1. Commanding it for Iustice sake:
2. Allowing it, in all iustifiable killings.
Which be no Felonies.
2. Punishable, whether it be vpon
1. Malice prepensed, as
Murder.
Petit treason.
Felon of himselfe.
2. Sudden aduenture, by
1. Chance medley:
2 In his owne defence.
Which is no Felonie.
2. Involuntarie, as by mishap, or misaduenture: Which is no Felonie.

Publike Felonies.

By Publique Felonies, I doe heere in this Table meane those offences, that do not so much touch any particular (or priuate) person, as the vniuersall common wealth it selfe: either in the head thereof (which is the Queene) or in the body, which is framed of all the Subiects within the Realme: Betweene the which twaine, there is such a neare Sympathie and mutuall feeling, that whensoeuer the one is offended, the other is also hurt and doeth suffer with it.

Felonies against the Queene.

Of these (which immediatly do concerne the Queene and the Estate) some bee called Treasons: and other be named Felonies, after the vsuall vnderstanding of that worde. And albeit, the Iustices of Peace may deale with all Traitors, as with persons that offend against the peace of the Queene, and of the land: yet not in the very point of their offence, sauing that in some they haue a special power to enquire of them, and to receiue enditements onely.

Of this latter sort, is the Treason of extolling forreine power: 1. Eliz. cap. 1. the Treason of absoluing (or withdrawing) her Maiesties subiects from their naturall obedience, 23. Eli. ca. 1 and the Treason of putting in vre any instrument of reconciliation, gotten from the See of Rome 13. El. cap. 2.

Those Felonies concerning the Queene, arise thus: first, the felonie of seeking by vnlawfull

full meanes to know how long ſhe ſhall liue, or who ſhall raigne after her, 23. El. ca. 1. then the ſetting forth in writing of any falſe and ſlanderous matter to the defamation of her 23. El. ca. 2. and the deuiſing to ſet at libertie any perſon endited of treaſon concerning the Queenes perſon: or to take or keepe from her, or to deſtroy, any of her owne caſtles 14. Eli. cap. 1. & 2. And the embezeling of any her habiliments of war, or of any Victualles prouided for her Souldiours Mariners, Gunners, or Pioners, 31. El. cap. 4.

Hitherto of Felonies concerning the head of the common-wealth: now follow thoſe that are againſt the body of the ſame. Coniuration of wicked ſpirits and witchcrafts, againſt the law of God and the ſtatut 5. El. cap. 16. The ſinne of Buggerie committed with a beaſt, againſt God, nature, and the law, 25. H. 8. ca. 16. Receiuing of Ieſuites, or Seminarie prieſtes, contrarie to the ſtatute 27. El. ca. 2. The refuſall of ſeditious Sectaries, and of Popiſh Recuſants, to abiure the realme, and their return after abiuration made, againſt the ſtatutes 35. Eliz. cap. 1. & 2. Rebellious aſſemblies againſt the Law, 1. Mar. Parli. 1. cap. 12: practiſing in the Arte of Multiplication of Golde or Siluer, condemned by the Act, 5. H. 4. cap. 4. The cauſing of Maſons to congregate themſelues in Chapiters, reſtrained by a ſpecial law 3. H. 6. cap. 1. The departing of Souldiours, Mariners, or Gunners, from their

Felonies againſt the Common-wealth.
Coniuration.
Buggerie.
Ieſuites.
Rebellious aſſemblies.
Multiplication.
Maſons.
Souldiors.

Captaines, prohibited by the ſtatutes 18. H. 6. ca. 19. 2. & 3. E. 6. ca. 2. 4. & 5. Phil. & Mar. cap. 3. & 5. Eli. cap. 5. The conueying of horſes into Scotland, & the ſecond offence of tranſporting ſheepe beyond the ſeas, againſt the lawes, 23. H 8. ca. 16. 8. El. ca. 3. & 1. Eli. cap. 8. The diſguiſing life of the Egyptians, the returning of a dangerous Rogue, that was baniſhed: & the idle wandering of Souldiers & Mariners, togither with the forging of any Teſtimoniall, or carrying the ſame when they know it to bee forged, forbidden by the Acts 1. & 2. Phil. & Mar. cap. 4 5. El. ca. 20. & 39. Eli. cap. 4. & 17. All theſe (I ſay) be Publike Felonies, whereby the vniuerſal cõmonwealth, doth (or may) receiue detriment, and for which hardly any one ſingular perſon can commence his priuate ſute, or action.

Horſes. *Sheepe* *Egyptians.* *Rogues* *Souldiers.* *Mariners.*

Breach of priſon.

And of like condition to theſe, bee thoſe Felonies that do grow by the breaking of impriſonment for any Felony: the which alſo are grounded chiefly vpon the ſtatute 1. E. 2. *De frangentibus priſonam*, and are ſo reſtrained to Felony by it, whereas (at the common law) hee was generally a felon that brake the priſon, although the cauſe were no Felony for which hee was committed thither.

For, Impriſonment is the putting of a perſon from his owne liberty, into the cuſtody of the law, to anſwere to that which is obiected: and therefore to breake the priſon, is to flie from the trial

trial of law, and is worthyly adiudged a Publique felonie.

Out of this one fact, ther groweth somtimes a treble offence & felony: namely, one in the prisoner himselfe, which is most properly called the breach of prison: another in him that helpeth ỹ prisoner to get away, which is cõmonly termed Rescusse: & a third, in the officer, or party whatsoeuer, by whose wilful default he is suffered to go, and that is named an Escape 10. Ed. 4. 17. Rescusse.

The breach of prison, and Rescusse do many times concur, & now and then an escap doth appeare without the company of any of them both.

Now, (as to this purpose) it is called a Breach of prison, whether it bee an escape, out of the Gaole, or out of the stockes, or out of the possession of any person that hath the keeping of the partie arrested for Felony, although he bee not therof endited before. *Coron.* Fitz. 158. Collect. Diar fol. 99. & 312: and so is it, if a man take the sanctuarie of the Church for a felonie, and do then flie from it: for he is there in the custody of the towne. *Coron.* Fitzh. 290. But if the gaoler, or any other that hath a Felon vnder arrest, doe willingly suffer him for to go at large, then resteth the felony in them onely, and not in the prisoner: who can not be said to breake the prison, out of which he is freely dismissed. Stanford vpon the case, *Coron.* Fitz. 149. Escape.

On the other side, if a straunger doe either

breake the prison, and let out one that is there for Felonie, or doe rescusse such an one as is vnder arrest for Felonie, then is it Felonie as well in the stranger, as in the prisoner himselfe. *Coron.* Fitzh. 48. 134. & 158: Howbeit, if that stranger shall but offer disturbance onely before the arrest, so that the arrest is hindered thereby, then will it proove no Felonie in him: because the other was no more a prisoner, than if hee were attached onely, and were not yet brought vnder hand *Coron*, Fitzh. 333. & Stanf. 31. & lib. Ass. pla. 9. against the opinion of M. Fitz. in his Iustice of Peace.

And for the same reason, if a man receiue a Felon, knowing the Felonie, and then do willingly suffer him to escape, this sufferance to escape is no Felony of it selfe, howsoeuer the receiuing of him may make him an Accessarie 9. H. 4. 1. & Stanf. 33.

Neither is it Felonie for a man willingly to suffer one to escape that is arrested for an act, which was not then Felonie, but by matter consequent fell out so to bee: As, if Iohn strike Richard, for which the Constable arresteth him, and afterwardletteth him go, and then Richard dieth of the blow within the yeare, *Commentar.* 401. 11. H. 4. 11: much lesse, to suffer one to escape, that is arrested for the killing of another, *Se defendendo*, or by misfortune, or for petite Larcenie, or that hath his iudgement to bee deliuered,

liuered, paying his fees: becauſe none of theſe doe amount to Felonie.

But now, to purſue thoſe Publique Felonies that doe yet remaine. Thoſe Felonies of Gally-halfepence, Sulkins, and Dodkins, 3. H. 5. Sta. 1: and of Blankemonies, 2. H. 6. cap. 9: whereof there is little (or none) vſe at this day amongſt vs, may ſtand in this Regiſter of publique Felonies. And albeit the embezelling of any Record, doeth immediatly touch ſome one particular mans intereſt: yet knowing that when it is once a Record, euery other man hath acceſſe vnto it, and may vſe the helpe of it, I would reckon that offence (adiudged felonie by the Statute 8. H. 6. ca. 12.) amongſt the reſt of publike Felonies, if the Iuſtice of Peace had to do with it. Money. Records.

There may be more doubt of the Felonies by purueyours, abuſing their office againſt the ſtatutes, 4. E. 3. cap. 3: 25. E. 3. cap. 15: 30. E. 3. cap. 4: 26. E. 3. ca. 5. & 6. & 7. R. 2. ca. 8. and likewiſe of thoſe Gaolers, that (by hard and cruell cuſtodie) compell their priſoners to become Approuers, againſt the act, 14. E. 3. cap. 10. becauſe in all theſe, ſome particular perſon is chiefly pinched: But yet, foraſmuch as they doe it by colour of their offices (which are Publike) I can bee contented to range them amongſt publique Felons alſo. Purueyors. Gaolers.

From theſe Common and farre ſpreading offences, I muſt fall to thoſe that I called Priuate

Priuate felonies, and their diuision.

uate, in respect that particular men are immediatly (and almost only) wronged by them, sauing that the law doth also take some auengement of the crime, lest impunitie in the offendors, should embolden others to commit the like.

These (as appeareth in the Table before) doe either runne to the body alone, or to the bodie and goods together, or else to the goods onely.

Againe, seing that the body is either touched in the point of life, or by other violent or fleshly abuse that bringeth not death, I am first to entreat of Homicide, which I called Manslaughter, and therein to note some few things that be common thereto, and afterwards to draw it into the sundrie sorts, or kinds also.

Homicide

In all these sorts of voluntarie Manslaughter, being exempted from the fault of Felonie (as that is, which we say to be done *Se defendendo*) there is no person to be punished, to whome the law hath denied a will, or minde to doe the harme: as a mad man: hee that is borne both deafe, and dumbe: nor an infant vnder the age of 12. yeares, vnlesse it may by some euident token appeare, that hee had vnderstanding of good and euill: for then, in him *Malicia supplebit ætatem:* and to these (by the opinion of M. Bracton) you may adde the Lunatike during that disease for a fourth, *quem tuetur* (as hee saith) *consilij inopia*, ?. H. 7. 1. 21. H. 7. 31. *Coron.* Fitzh. 193. & lib. Ass. 26. pl. 27.

Moreouer,

Moreouer, to hurt a woman great with child, whereby the child either dieth within her body, or shortly after that shee is deliuered of it: or to strike any person, so, as he dieth not thereof, till the yeare and day be fully past: will not wrap a man within the danger of these Felonious manslaughters: lib. Ass. 3. Pl. 2. 1. E. 3. 24. 3. H. 7. ca. 1. & *Coron.* Fitz. 303. For in the former case, the child is not reckoned to be *In rerum natura*, vntill it be borne, though M. Bracton (fol. 121) taketh it to be Homicide if the blowe bee giuen *Postquam puerperium animatum fuerit*: And in the latter case, it cannot reasonably be alleaged, that the man died of that blow, which he receiued a whole yeare before.

Lastly, if any person shall be brought before a Iustice of the Peace, and charged with any of these Homicides (except that which is done in the orderly execution of a iudgement) it shall be his part (as I thinke) to commit him to prison, or at the least (if the cause will so suffer) to ioyne with some other Iustice in the Bailment of him: to the end, that the party may be discharged by arraignement and Trial: without the which (or other finding of the truth before the Coroner, or otherwise) I see not how the Iustice of Peace may safely dismisse him. And for this purpose, I referre you to the Statute of Glouceſter cap. 9 and *Coron.* Fitz. 288.

But now to the sortes of Homicide: Not

Homicide commanded by the law.

euery Manſlaughter (ſayth M. Bracton) deſerueth puniſhment: for it may bee done for Iuſtice ſake, and then it is no fault at all, ſo it bee done ſincerely, and without delight in ſhedding of bloud.

And therefore, neither the Iudge that by order of Iuſtice condemneth the guiltie man to death: nor the officer that orderly executeth that iudgement according to his warrant: is guiltie of any offence, for which vpon examination hee ought to be committed to priſon: Seeing they haue done no more than law commanded.

Homicide allowed by law.

Next vnto this, is the caſe of thoſe whome lawe alloweth to ſlay a man, and holdeth them vnpuniſhable for it: whether it bee vpon a certaine neceſſitie for the aduancement of Iuſtice, or for the defence of his houſe, or goods, or for the more terrour againſt offendours. And therefore, the ſherife, bailife, or any other, that hath a Warrant to arreſt a man endited of Felonie, may iuſtifie the killing of him, if otherwiſe they cannot take him, 22. lib. Aſſ. pla. 55: and ſo may any other man, that followeth Felons vpon the Huy and Cry raiſed, if they will not yeeld themſelues, but ſtand at defence, or flie away: by the opinion of Thorpe, *Tit. Coron.* Fitzh. 261: and ſo is it alſo, if a man that is arreſted for felonie, do (as he is in carrying to the Gaole) offer reſiſtance, and flie: for then thoſe that haue the conduction of him, may without blame kill, if they

cannot

cannot otherwiſe recouer him, *Coron.* Fitzherb. 288, & 328.

And if the Iuſtices of Peace come to arreſt Riotters, and they reſiſt, whereby one of the Riotters is ſlaine by any of the Iuſtices or their ſeruaunts, or by any other comming in their aide, that is iuſtifiable, and allowed by lawe: becauſe in this, and the former caſes, the killing proceedeth vppon a neceſſity for the execution of Iuſtice, which otherwiſe ſhould be left vndone.

Of like account is it, when a Gaoler doeth ſlay any of his vnruely priſoners that ſhall aſſault him, lib. Aſſ. 22. pl. 55. But whether this rule will holde, when the arreſt is only for debt, or ſuch like, it is good to be aduiſed.

If the Iuſtices of the Peace, or any other (lawfully authoriſed) doe aſſemble any number of men for the ſuppreſſing of any perſons vnlawfully aſſembled contrary to the Statute (1. Mar. Parl. 1. ca. 12.) and bee driuen to ſet vppon them, and thereby any of the offendors be ſlaine, this ſlaughter is warranted, both in the Iuſtices themſelues, and for euery other of their company, by the ſame Statute.

And if any Forreſter, Parker, or Warreiner, or ſuch as bee in their company for their aide (after huy and cry made vpon offendours within their charge to yeelde themſelues, which neuertheleſſe will make reſiſtance, or flie) do without former malice kil any of them, they are neither

ther to bee imprisoned nor to forfait any thing for it. *Stat.de malefactoribus in parcis*, 21.Ed.1. So if any do attempt, to robbe, or murder any person, in his dwelling house, or in (or nigh) any common high way, cart-way, horse-way, or foot way, or feloniously to breake into his dwelling house in the night time: and in this attempt the party or his seruants then with him, do kill any of the misdoers, he, or they shall forfait nothing thereby 24.H.8.cap.5. and so (in effect) was the common law before that statute, as may appear 26.lib.Ass.pl.32. & *Coron.* Fitzh.330.305.& 261. and so also was the Roman Lawe of the twelue Tables: *Nocturnus fur quoquo modo, diurnus autem si se telo defenderit, impunè occiditor.* For, of necessitie men must either defend themselues, or bee oppressed by these and such other wrongfull inuasions.

And therefore, if there be malice between A. & B. so as they haue fought together: & afterward they meete sodainely, in the highway, or in the street of a towne, or city, & A. draweth his weapon, and challengeth B. to fight; B. saith that he will not haue to do with him, & goeth to the wal from him, and thereof taketh witnes of the standers by: and yet notwithstanding A. followeth, and striketh at B. and then B. striketh againe, and killeth him: in this case, it was adiudged (15.El.Reg.) that B. shall goe quite by this statute, without any forfeiture. Report Crompt.

We

We come now to Manſlaughter vpon premedi- Murder.
tate malice, whether it be executed vpon others, or vpon the party ſelfe. That which is generally committed vpon any other, betweene whom and the ſlear, there is no ſpeciall ligeance (or ſoueraignty) is now called Murder, and the other petite Treaſon.

In the old time, euery killing of one man by another, was (of the effect) called Murder, becauſe death inſued of it. For (as *Poſtellus* noteth) of the hebrew word *Moth*, came the latin *Mors*, and thereof our elders (the Saxons) called it Morð, and Morðor as we now ſound it.

Afterward (about the time of M. Bracton) murder was reſtrained to a ſecret killing onely: and therefore hee in the definition of Murder ſaith, that it is *occulta occiſio*, *&c.* with whome Britton agreeth alſo. But ſince the ſtatute (14. Edw. 4. cap. 4. by which the preſentment of Engleſherie was taken away) Murder is taken in a middle degree, neither ſo largely as it firſt was, nor ſo narrowly as it afterward became to be. For, Murder is now conſtrued to be, where one man of malice prepenſed killeth another felonioufly, that liueth within the realme, vnder the protection of the Queene, whether it be openly, or priuily, and whether the party ſlaine be Engliſh, or alien. Wherein it is carefully to be obſerued, that the words (of malice prepenſed) doe make the true difference betweene

this,

this, and the other voluntarie Manſlaughters: ſo that to make the offence Murder, it is of neceſſity, that there be a precedent malice, and the ſame either apparant, and bewrayed by the partie himſelfe, or elſe implied and ſupplied by the vnderſtanding of the law.

And therefore, if two perſons doe mutually beare malice the one againſt the other, & (meeting by chance) they agree to goe into the fielde to fight together, and thereby the one of them is ſlaine, this is manifeſtly Murder in the other: Report Dalyſon.

So, if two (of malice forethought) lie in awaite the one to kil the other, and therby the one of them doth kil the other, this is Murder in the killer, without reſpecting which of them gaue the firſt blow, by the opinion of ſir Robert Catlin late chiefe Iuſtice, as Crompton reporteth.

And if a man of premeditate malice, ſtriketh at another, and after in the fight flieth to a wall (beyond which he cannot go) the other purſueth him to the wall, and is there ſlaine by him that began the affray: this ſeemeth to bee Murder, notwithſtanding his flying to the wall, by the opinion of Catlin chiefe Iuſtice and others: for he ſlew the man in the ſame malice, wherein hee did aſſault him, Report Crompton.

And if Iohn and William doe fight together (by agreement) vpon their former malice, and Iohn wounds William: and afterward) they meete

meete againe vppon the ſodaine, and falling to fight) William ſlayeth Iohn: that is Murder in him, by the opinion of Catlin chiefe Iuſtice, as Crompton reporteth.

Now, as all this is meant, where the former malice is apparant: So, many times the lawe doth (by the ſequele) iudge of that malice which lurked before within the party, and doth accordingly make imputation of it. And therefore, if one do (ſodainly, and without any outward ſhew of preſent quarrel or offence) draw his weapon, and therewith kil an other that ſtandeth by him: the lawe iudgeth it to haue proceeded of former malice meditated within his owne minde, howſoeuer it bee kept ſecret from the ſight of other men. Daly ſon.

The ancient law that meaſured the fault, not by the euent, but by the intent, will, and purpoſe of the offendour, tooke it for Felonie (ſaith W. Stanford. fol. 16. out of the booke 3. E. 3.) in the owner of a beaſt that killed a man, if ſo bee that the owner did knowe it to be accuſtomed to doe harme, and did not tie it vp, or otherwiſe reſtraine it: but that caſe (3. E. 3. which you may ſee *Coron.* Fitzh. 311.) goeth not ſo farre (as I thinke) but only ſaith, that if the owner were aliue, he ſhould be arraigned of the death, and amerced towardes the king. Againe, Brytton (fol. 14) hath the caſe, that if one which is not a Phyſition or Surgeon, will take vppon him

to

to cure a ſicke or wounded man, which dieth vnder his hand, it is Felonie: and Thorp (43. E. 3. 33.) ſaith that hee knewe one to be endited accordingly: But the ſtatute (34. H. 8. cap. 8.) leaueth ſo great a libertie of ſuch practiſe to vnſkilfull perſons, that it will be hard now to make any felony in ſuch a caſe. Howbeit if any of theſe two latter offences ſhould be drawen to Felony, then I ſee not but that the ſame muſt be accounted murder, in reſpect either of the bolde preſumption, or of the will to do harme, which doth amount to malice.

And it hath beene adiudged Murder, when a man hath drawne his weapon, and killed either a known officer, or one that had and ſhewed ſufficient warrant to arreſt him for debt onely.

So, if a harlot will take the child whereof ſhe is newly deliuered, and couer it with leaues, and let it lie abroad, whereby vermine deſtroyeth it: and ſo likewiſe, if the ſonne will take his ſicke father againſt his will out of his houſe, and carry him in the cold aire to another place, whereof he dieth. *Fitz.* enditement 3. or if the ſame officer wil behead him that is adiudged to be hanged: or if a priuate man will kill him without any warrant, 35. H. 6. 58. & 27. lib. Aſſ. pl. 41. or if a Gaoler kill his priſoner by ouer-hard keeping Britton fol. 18.

Againe, it is taken for a rule (by M. Brooke 4. & 5. Phil. & Mar.) that whereſoeuer a man goeth

goeth about an vnlawful act, as to beate a man, or to diſſeiſe him of his landes, &c. and doe (in that attempt) kill him, it is murder: becauſe the Law preſuppoſeth that he carrieth that malicious minde with him, that hee will atchiene his purpoſe though it bee with the death of him againſt whom it is directed. And therefore if a thiefe doe kil a man whom he neuer ſaw before, and whom he intended to robbe onely, it is murder in the iudgement of lawe, which implieth a former malicious diſpoſition in him rather to kill the man, than not to haue his money from him, *Coment.* 474.

And if a man commaund his ſeruant to beate another man, which doth it in his preſence, and the party dieth thereof, it is murder in them both, *ibid.* 475.

It appeareth in M. Daliſons Report (4. & 5. Phil. & Mar.) that a Precedent was ſhewed to the Iuſtices, that whereas a man entred into an other mans Orchard of his own head, and there tooke Peares from a tree, and in the dooing killed the owner that rebuked him, it was adiudged murder, and he was hanged for it. And of like ſort is it, if Riotters, or ſuch as be otherwiſe vnlawfully aſſembled, doe kill any of thoſe that come in aide of the ſherife or Iuſtices of the Peace, for the repreſſing of them.

Furthermore, the lawe (not thus contented) doth many times extende this murdering ma-

lice,

lice, towardes other perſons then the offendour may ſeeme to bende it: yea, and to puniſh it in ſome, that haue a ſhew to be very farre from it. And therefore, if a man (of his former malice againſt one) doe ſhoote at him, and thereby killeth another, with whom hee was not offended, yet is hee a Murderer, for the minde that hee bare to murder him, againſt whom he drew his arrow, *Comment.* 474. So, if two fight vppon premeditate malice, and the one of them ſlayeth the ſeruant of the other that fighteth in defence of his maſter, he is guilty of Murder: and yet he had no former malice againſt the ſeruant, *Comment.* 101.

And if two fight vpon malice fore-thought, & in their fight a ſtranger is killed that laboureth to depart them, it is Murder in him that killeth him, if it may bee diſcerned: and if not, then in them both, *Coron.* Fitz. 262. & Daliſon, & *Collect.* Diar 228.

But (to go further) the huſband meaning to be rid of his wife, offereth her a poyſoned apple to eate, and ſhee (not ſeeing the danger) giueth part thereof to her little daughter that ſtandeth by, in the preſence of the huſband, who (to auoid the ſuſpition) ſuffereth her to eate thereof, and ſhee dieth: this was iudged Murder in the huſband, for his wicked intent againſt his wife: and yet the caſe was, that hee loued his daughter dearely, *Comment.* 474. & Stat. 1. E. 6. cap. 12.

by

by which, all wilfull killing by poiſoning, is adiudged Murder of malice prepenced.

So, if a man lie in wait by the way to kil A. and (miſtaking the man) he killeth B. as he commeth the ſame way, this is Murder, *ibidem.*

Againe, all ſuch as be preſent, (and aiding, abetting, or comforting him that committeth a Murder) be principall Murderers in the eye of the lawe, as well as hee is by doing the deede, though they ſtrike neuer a ſtroke therin: for the law drawеth the ſtroke of the murderer to bee the ſtroke of them all that be preſent, and do aſſiſt him, 4. H. 7. 18. & *Comment.* 100.

And therefore, if hunters doe enter into a parke, and do agree to kill any man that ſhall reſiſt them, and one of them (being out of the ſight of his fellowes) doth runne vpon the keeper, and killeth him: this will make all the reſt of ỳ Hunters to be principall Murderers, as well as him that gaue the deadly blow, Daly ſon.

And (to giue one example of both theſe laſt Rules) the Caſe was (4. & 5. Ph. & Ma.) that George (hauing conceiued a diſpleaſure againſt Richard) aſſembled ſundrie perſons, and came in ryotous ſort to the houſe of Richarde, of purpoſe to fight with him, but not with the minde to kill any man: and vſing there ſome quarrelous ſpeeches togither, a kinſwoman to them both trauelled indifferently to appeaſe them, and was ſodainely ſtricken on the head with a

ſtone that was threwen ouer a wall by one of the ſeruants of George, whereof ſhe afterward died. And (by the opinion of all the Iuſtices, and others) it was declared, vpon long aduiſe, that if ſhe came on the part of Richard, and not as a ſtranger to the matter, then this killing of her was Murder in George and in all his complyces: but if ſhe came as a ſtraunger, and indifferent to both the parties, yet by the better opinion it was thought to be Murder in George and all his companie, becauſe they came with a malice againſt the perſon of Richard, and in the execution of that malice this death enſued. Report Dalyſon: with which ſir James Diar in his Collections doth not altogether agree.

Petite treaſon. Now followeth to ſpeake of wilfull Manſlaughter committed by treaſon which is a ſort of Murder: and therefore, howſoeuer it exceede Murder in the grauitie of the crime (as I ſaid) yet in Methode, and true order of handling, it muſt come after it, as being the leſſe generall.

It is of 2. ſorts, whereof the firſt is called high, in reſpect of the Prince which is the higheſt perſon: and thereof I ſhal not neede to intreate further than I haue ſpoken already.

The other is termed petite, in regarde of the inferiority of the perſons againſt whom it is cõmitted: if they be either Eccleſiaſtical or Lay: as it is declared by the ſtatute 27. E. 3. ca. 2. which is but an affirmation of the common law.

So that, if a Clarke doe maliciously kill his Prelate (or ſuperior) to whom he oweth obedience: or a wife, her husband: or a ſeruant the maſter, or miſtreſſe (who haue a ciuile ſoueraignty ouer them:) this will be Petite treaſon lib. Aſſ. 12. pl. 30. & 22. plac. 49. *Coron.* Fitzh. 383. 19. H. 6. 47. & 25. E. 3. ca. 2.

And albeit there be a naturall obedience, due from the childe to the parent, whereby it might ſeme, that the wilful & malicious murder of the parent by the hand of the child ſhould as wel be ſorted in the range of petite treaſon as the reſt: yet by the opinion of Bromley chiefe Iuſtice: & Portman. 1 Mar. (as Daliſon reporteth) it is not petite treaſon for the ſonne to kill his father or mother, vnleſſe he take meate, drinke, and apparell (or wages) of them, and doe their buſineſſe for it, as a ſeruant.

I know, that the imprinted booke at large 21 E. 3. fo. 17. hath (*Mere*) ſhortly, & corruptly written, for *Meiſtre*, which did, & may deceiue ſome Reader: but Fitz. *Coron.* 447. and Statham alſo (which doe abridge that caſe) haue it pleinely *Meiſtre*, to take all doubt away from it.

But (to goe forward on our way) there is none other difference betweene the offence of Murder and petite Treaſon, but this onely, that Murder is more generall, and may be executed againſt euery ſtraunger, whereas petite Treaſon is reſtrained to theſe narrow boundes

of priuitie, that I haue ſet downe before you.

And therefore, if the wife & a ſtranger do ioine in killing, or poiſoning the huſband: or a ſeruant and a ſtranger in deſtroying the Maſter or miſtreſſe of that ſeruant: this is petite Treaſon in the wife and ſeruant, and Murder in the ſtrangers. And (by the way) that wife may for the poiſoning either be touched with petite Treaſon at the common law, or with Murder by the new Statute, 1. Ed. 6. cap. 12. Dalyſon. But if the wife and ſeruant do conſpire to kil the huſband, appointing the time and place therefore, & the ſeruant doth execute the ſame accordingly in the abſence of the wife: then is it petite Treaſon in them both: whereas if it had beene done by a ſtranger, ſhe ſhould onely haue beene acceſſarie to it, as to a Murder, Collect. Diar. fol. 332 pl. 25. & 254. pl. 103.

Now therefore (to auoide al needeleſſe multiplication of particular caſes) I may leaue you this one generall and ſhort Rule for the better vnderſtanding of al the reſt of petite Treaſons: namely, that whatſoeuer act will proue Murder betweene ſtranger, the ſame will alſo make petite Treaſon betweene theſe forenamed priuies. Only I wil adde this one caſe, which hath an extraordinarie relation therein: the ſeruant (being departed out of ſeruice) killed his late maſter, for the malice which hee had premeditated againſt him during the time that he was his ſeruant:

ſeruant: and this was taken to be petite Treaſon, lib. Aſſ. 33. H. 7.

For an end of malicious killing, we are come to him that killeth himſelfe: and is therefore called *Felo de ſe*: for the lawe deemeth that hee doth it *Felonicè*, and with a meditate hatred againſt his owne life. And although this fault is neuer imputed (as I ſaide) to him that is not *compos mentis*, or (as wee ſpeake) *non ſanæ memoriæ, de die in diem*: yet if hee haue *lucida interualla*, his death ſhall yeelde that forfeiture which belongeth to the fault: as M. Stanf. gathereth by the booke, *Coron.* Fitzh. 324. And ſo it was accounted of him, that in a furious heate ſtriketh another to the ground, & withall draweth his dagger to kill him, but whileſt the other that lieth on the ground draweth his weapon, and holdeth it before him, he in haſte to kill the other, falleth vpon that weapon & is ſlaine himſelfe: For the booke (44. E. 3. 44.) adiudgeth that he is *Felo de ſe*, and that the other ſhall forfeit nothing for it: But M. Stanford (fol. 16.) taketh it for Chance medley, and that he (in a maner) killed himſelfe. Felo de ſe.

There doe yet remaine two ſorts of voluntarie homicide (but without preceding malice) the one commonly called Manſlaughter, but more properly Homicide by Chance medley: the other *Se defendendo*, that is, in his owne defence: the former is fitly named Chaunce Homicide, by Chance medley.

medley, for that in it men are medled (or committed) togither by meere chaunce, and vppon some vnloked for occasion, without any former malice or euill mind in one, to offer hurt to the person of the other. And in this offence, our law doeth remit somewhat of her seueritie against the former faults: so that bearing (as it were) with the infirmitie of mans nature, it seemeth no lesse to allow of manhood here, than to haue abhorred malice before. But I will exemplifie it by particular cases.

If the master and his seruant fight against one, towards whom the master hath malice, and telleth not his seruant thereof, and in that fight the seruant killeth the other man: howsoeuer this be Murder in the master, yet is it but homicide by Chance medley in the seruant, *Commentar.* 101. for hee could not come to execute the malice of his master whereto hee was not made priuie. So, if Richard and Robert fight together vpon premeditate malice, and a stranger (hauing no malice) doth sodainely take the part of Richard whereby Robert is slaine: this is but Chaunce medley in the straunger, *Commentar.* 100.

And if two play at the bucklers together without former malice, and the one slayeth the other, this is reputed to bee done by Chaunce medley, if it bee not before the Queene, and by her commandement, or proclamation: and if it so

be

be, then it is not punishable at all, as Iustice Fineux did hold, 11. H. 7. 23. But M. Brooke *Coron.* 228. noteth, that the Iustices in the time of H. the 8. were of another opinion.

In some case, the killing of a man may ensue vpon the maintenance of an iniurious act, and yet shall bee deemed but Manslaughter by Chance medley, as thus: Robert entreth forcibly with his companie into the house of Richard, and putteth out the wife and family of Richard: the next night after Richard commeth with a great companie weaponed to the house, to recouer his possession, and setteth an outhouse thereof on fire: which when one espied that was in the principall house, hee shot off a gun and therwith killed one of them that came with Richard: now vpon this fact, Robert and his complices were arraigned of Homicide by Chaunce medley, 23. Eli. Report Crompton: for it cannot be taken to be a iustifiable killing, since the other side came not to rob, or kill, but to recouer the possession of that which was in a forcible Riot taken from them: neither ought it to bee construed Murd[illegible] when a man in the night season shooteth at aduenture to kill him that setteth a part of his house on fire, not knowing whether it be any man against whom hee hath former malice: and least of all can it bee misaduenture, seeing he that shot, had a purpose to hurt, or kill withall.

More plainelye is it Manſlaughter, by Chance medley, where Henrie was in poſſeſſion of a houſe diuers yeres together, and William (pretending title to that houſe) commeth thither with a ſtraunger, and he ſhooteth an arrow at Henry that was in the houſe, whereupon Henry diſchargeth a croſſebow, and with an arrow therof killeth the ſtranger: and ſo it was taken, 5. Elizabeth Report Crompton. For this was a ſudden quarrell for the Title to the houſe, without any vnlawfull act preceeding on either ſide.

If two fight vpon ſudden offence, and without any precedent malice: and in the fight the one runneth away, and the other goeth into the next houſe, and their catcheth a ſtaffe and purſueth and killeth him which fled: this was taken to be but manſlaughter by Chance medley, for the continuance of the furie, which was (at the firſt) without malice, and could not in ſo ſhort time be appeaſed 18. El. Report Crompton.

So, if the one of them had broken his ſword in that fight, and had run home to his houſe (not being far diſtant) and fetched another weapon, and had therewith killed the other: and ſo, if two haue borne malice mutually, and be reconciled together, and then afterward they meete, and the one chargeth the other with words of miſreport, whereupon by agreement they goe immediatly together out of the houſe into the field

to

to fight, and there the one slayeth the other: for, these and such like haue beene taken to be manslaughters only: vnlesse the respite and distance of time haue beene such, that (by reasonable coniecture) the heat of the first anger might in that meane while haue beene asswaged.

Richard and Robert fight together vpon former malice, and Richard woundeth Robert, and so they depart for that time: afterwarde they meete vpon the sodaine and fight againe, and Richard killeth Robert: this (by the opinion of Catlin chiefe Iustice) seemeth to be by Chance medley: for that the former malice of Richard shall be thought to be appeased, by the hurt that he first did to Robert: and on the other side, if Robert had then killed Richard, it should be taken to bee Murder, by the malice that Robert shall be thought to beare, for the hurt that he receiued, Report Crompton. Hitherto of the principall parties to the fight, nowe of others that happen to haue to do therein.

If two fight by occasion of the euill words of a woman that is present, and the one killeth the other without any other malice: this is manslaughter by Chance medley in the woman, as well as in the slayer himselfe, *Coron.* Fitzherb. 331.

And if two fight vppon the sodaine without former displeasure, and a stranger commeth to part them, and is slaine by the one of them:

this

this is manſlaughter by Chance medley, *Coron. Fitzherb.* 180. So, if two fight vpon the ſodaine without former malice, & the one of them breaketh his ſtaffe: and a ſtander by which is not of their company lendeth his ſtaffe vnto him, with which hee killeth the other: this ſeemeth to be manſlaughter by Chaunce medley in the ſtander by, Crompton.

Homicide, in his owne defence.

The laſt member of voluntarie Homicide, is where one man killeth another in his owne defence: and this is neither felonie, nor yet any iuſtifiable killing: but euen as the law of nature (as Cicero in his defence of Milo ſaid) doth allow vnto man, *Omnem honeſtam rationem expediendæ ſalutis:* So the lawes of men do ſometime reach vnto him, *gladium ad occidendum hominẽ.* And therefore, our Lawe alſo is a Sanctuary for the life & lands of him that killeth another in the neceſſitie of his own defence, if he cannot otherwiſe eſcape with his life from him.

But hee muſt knowe, that it is not all one to haue to do with a thiefe, or murtherer, and with a loyall ſubiect. For albeit he may boldly defend himſelfe, his goodes, or his houſe againſt a murtherer or theefe, on euen hand (as it were) and without any ſhrinking from him: yet, if hee bee aſſailed by another maner of man, he muſt flie ſo far as he may, and till he be letted by ſome wall, hedge, ditch, preaſe of people, or other impediment: that his neceſſitie of defence may be eſteemed

med altogether great & ineuitable: and yet ſhall he be committed till the time of his triall & ſhall then looſe his goodes, and ſeeke his pardon, for taking away the life of his fellow ſubiect, Stat. Glouc. cap. 9.

M. Stanford fol. 15. deſcribeth this maner of Manſlaughter by this example. A. ſtriketh at B. with his weapon, and B. goeth from him ſo farre as hee may for the ſafetie of his life, ſo that he commeth to a ſtrait, beyond the which he cannot flie: A. ſtill purſueth the aſſault, and then B. ſtriketh alſo, and killeth him, or holdeth out his weapon, whereupon A. runneth, and is ſlaine, this (ſaith hee) is taken to be done, *ſe defendendo:* whereas if B. had not ſo fled, but had ſtriken againe when A. ſtroke at him, and had thereby killed A. it had bin felony in him. But yet if A. had ſtriken at B. as before, and B. had ſtriken at him diuers blowes alſo (without giuing him any deadly wounde) and then B. had fled to the ſtrait, & being purſued ſtill by A. had then killed A. this would be deemed to be done by B. in his owne defence: becauſe (ſayeth M. Stanford) it is ſufficient for B. that he fled to the ſtrait before hee had giuen to A. any deadly wounde; and this hee gathereth by the bookes, lib. Aſſ. 43. pl. 31. & *Coron.* Fitzherb. 284. 286. 287. 295. & 297. And it is not materiall in the firſt caſe, though there were former malice betweene A. and B. vnleſſe B. doe lie in await for

A.

A. or do agree with him vpon the place for fight, or do ſtrike the firſt ſtroke at A. in all which caſes, the flying of B. afterward to the ſtrait, will not auaile, or helpe him at all.

So, if a man do aſſault one in his houſe vppon a ſodaine quarell, and is thereby killed, this is taken to bee done by the other in his owne defence, *Coron. Fitzh. 305. for ita fugias, ne prater caſam*, as the Comicque ſaide: and our law calleth a mans houſe his Caſtell, meaning that hee may defend himſelfe therein.

Homicide by miſaduenture.

Hauing thus peruſed theſe kindes of Homicide that are willingly (though not all alike wilfully) committed, and done, we muſt come to that which happeneth cleane beſides the will & purpoſe of him that doth it. And therefore according to the law of God (which iudgeth him not worthy of death that ignorantly killeth another, but protecteth him in the cities of refuge) our law ſaueth vnto ſuch a one his life & lands, but yet taketh his goods, and giueth him a pardon of courſe without any ſpeciall ſuite to the Prince for it. So, that if a labourer doe worke with an Axe, and (in the fetching of his ſtroke) the heade of the Axe happen to flie off from the helue, and doe kill one that ſtandeth by: or if a man doe throw a ſtone at a bird, or ſhoote a arrow at a fowle, or at a marke (without euill intent) & an other man is ſlaine vnwares therby: or if (in the felling of a tree) he giueth loud warning,

ning, when the tree is ready to fall, and yet it falleth vpon another man that ſtandeth, or paſſeth by: Or if a Tiler throweth down the tiles from a houſe that hee is to amend, and giueth warning thereof, and another man commeth vnderneath is ſlaine with a ſtroke of a tile: Or if a ſchoolemaſter doe moderately correct his ſcholler, and he dyeth thereof. In all theſe, and the like caſes, it is to be adiudged Manſlaughter by miſſortune: Stat. Marlbridge ca. 25. 2. Henr. 4. 18. *Coron. Fitzh.* 302. 354. and 398: and *Comment.* 19.

But here the diſtinction (taken by M. Bracton and allowed by M. Stanford) in this caſe of Miſaduenture, is worthy recitall. *Diſtinguendum eſt* (ſaith he) *vtrùm quis dederit operam rei licitæ, an illicitæ: vt, ſi lapidem proiiciebat quis verſus locum per quem homines conſueuerunt tranſire: vel dum inſequitur equum, vel bouem, & aliquis alius ab equo vel boue percuſſus fuerit: hic imputabitur ei. At ſi magiſter cauſa diſciplinæ diſcipulum verberauit: vel ſi quis dum fænum de curru deponebat, vel dum arborem incidebat, & adhibuit quam potuit diligentiam, ſcilicet, reſpiciendo & proclamando, neque id nimis tardè aut dimiſſè, ſed tempore congruo & ita clamoſe, vt alter fugere aut ſibi præcauere potuiſſet, non imputabitur ei.*

Thus haue the felonies appeared, that doe kill the body: it is now time to ſpeake of thoſe

Felonies touching the body

that

but without the death therof.

that abuſe the bodye without deſtruction of it. And here firſt offreth it ſelfe, that felonie, which (of ſet purpoſe, & prepenced malice) cutteth out the tongues, or putteth out the eies of any of the Queenes ſubiects, 5. H. 4. cap. 5. next the ſin

Buggery.

of Buggerie that is cõmitted with man, againſt the order of mankinde, 26. H. 8. cap. 16. after that, the taking of any maide, widowe, or wife,

Taking away of women.

vnlawfully againſt her will, that hath landes or tenements, goodes or chattels, or is heire apparant to her anceſtor (except it be by ſuch as ſhall claime her for their warde or bondwoman) declared to be felonie (by the Statute 3. H. 7. ca. 2.) if he that tooke her, doe afterward marry, or deflowre her: for ſo was that Statute conſtrued, 3. & 4. Ph. & Ma. Report Dalyſon: and by the ſame ſtatute, they be principal felons, that do procure or abet the felony, or that (knowing thereof) do receiue the ſame woman. Then followeth the felonie of the carnall and vnlawfull abuſe of the body of any woman (or rather a woman childe) being vnder the age of ten yeares, the which, for reſolution of the doubt that maſter Diar noteth, (14. Eliz. Reg.) was declared to be felonie (by the Statute 18. Eliz. cap. 6.) whether ſhee conſent, or no, ſince the Lawe iudgeth her vnable to conſent at her ſo tender age.

Rape.

And laſtly, commeth the rauiſhing of any woman againſt her will, where ſhe neither conſented before, nor after: and the rauiſhing of her by

by force, though she consented after: which was ordained to bee felonie (by the statute of Westminster the 2. ca. 14.) ten yeares after such time as the imprisonment of two yeares laide vppon the offendour (by Westminster 1. ca. 14.) was not found sufficient to represse the fault: which maner of punishment also, M. Stanford thinketh to haue beene rather a mitigation, than any increase of those paines, that the elder lawes did lay vppon rauishment: and whereas that Statute of Westminster 2. in the first branch thereof, vseth the wordes thus: Rauish, where shee doth not assent, &c. and in the second branch thus, Rauisheth with force: I suppose that the word force is but declaratory in that place, and set downe to none other end but to signifie, that all rauishment is accompanied with force and therewith agreeth the Etymologie of the word Rauishment it selfe, which is deriued from the Latine *Rapere*, that is, to take, catch, or snatch, by force or violence.

But here, if the party complayning to be rauished, shall thereby conceiue a child, then Britton taketh it to bee no Rape at all: because her conception proueth her consent. So, if she were kept, and vsed by the rauisher, as his concubine, Master Bracton fol. 148. thinketh that hee cannot be said to haue rauished her: yet, if shee were an harlot to an other man, the rauisher shall not be excused thereby (as it there seemeth) because

ſhee conſented not to him: And howſoeuer the wicked man force her, yet can it bee no Rape in him, vnleſſe that either hee take carnall knowledge of her, or be preſent and aiding to another, that ſo forceth, and abuſeth her, 11. Hen. 4. 13. and Stanford fol. 24. and 44.

Felonies touching the body and goods.

Thus farre wee haue dealt with the body alone: now muſt we ioyne the body and the houſe (or the goods) together: and within this meaſure, there fall two diuers faults, whereof the one is called Burghlarie, and the other, Robberie: ech of them the more hainous in the ſight of law, becauſe not onely the houſe is inuaded, and the goods ſought for there, but alſo a great terrour, and dreadfull daunger is often brought thereby to the body and perſon. And ſeeing that feare is moſt fearefull in the time of ſleep, when wee leaſt thinke of it, and can worſt auoyde the danger, let vs begin with the night theefe that committeth Burghlarie.

Burghlary, and the circumſtances thereof.

Burghlarie ſeemeth plainely to take the name of Burghlar; which is deriued of Bowr (a chamber, or inner roome) and laron (a thiefe.) So, that Burghlary is the theft done by entry into a dwelling houſe. And Britt. (fol. 17.) deſcribeth a Burghlar. (whom his printed booke calleth a Burgeſſor) to bee one, that felonioufly in the time of peace breaks open churches, or houſes, or the walles (or gates) of Cities or Boroughs, in which hee reſpected not the time of night.

But,

But, as the lawe is commonly taken in our time, there are foure ſpeciall things that muſt concurre to make this felonie: that is to ſay, the time, the place, the manner of the fact, and the end for which it is committed.

The time is not in the time of peace alone (which is noted of this ancient writer onely to ſhew, that in the time of ciuile and intеſtine war ſuch breaking of a houſe againſt rebelles is iuſtifiable enough) but in the time of peace, it muſt be in the time of night alſo. For (as M. Stanf. fol. 30. truly obſerueth) the Inditements of Burghlarie bee alwaies of this forme, *quòd noctanter fregit*: and therewithall agreeth a report of 4. E. 6. in M. Brooke, *Coron.* 185.

But in this part, it ſhall be good to enquire, whether all that time, which is betweene the ſunne ſetting and the ſunne ryſing, ſhall bee accounted vnto the night for this purpoſe; or whether that time of light which is in the Euening, betweene the ſunne ſetting and night, and likewiſe in the morning betweene the night and ſunne ryſing (whereof the one is called *Aurora*, and the other *Crepuſculum*, and the beginning of the one, and end of the other, as by Ptolome ſaide to be when the ſunne is eighteene degrees vnder our Horizon) ſhall bee taken from the night, and be added to the day. The time.

For, as the booke *Coron.* Fitzh. 293. taketh the euening (that is after the ſetting of the Sun, &

before the departure of his light) to be a part of the day, in respect of an amerciament to be laide vpon a towne for the escape of him that killed a man within that time: So, the statute of Winchester 13. E. 1. (speaking of the watch) saith, that it shall continue all the night from Sunne setting, to sunne rising: by which words (as you see) it comprehendeth both *Auroram* and *Crepusculum*, within the night.

The place. Concerning the place, it may either be Publique, as the Church for prayer, and the walles (or gates) of townes, (or cities) for defence: and then you may number those acts amongst Publike felonies: or els it may be priuate, as a dwelling house: and then it seemeth to be no Burghlarie, vnlesse some person be at that time within it: because (as I said) the law in this offence beholdeth the place and the person together.

But, although this offence bee not committed in the verie body of the dwelling house, but in a stable that is parcel thereof, and neare vnto it, yet will it be taken for Burghlarie, as Master Brooke *Coron.* 180. doth write: and seeing like reason begetteth like law, so must it be, if the offence bee perpetrated in a barne of the house, or other out house that is so adioyning.

Ech Colledge in the Vniuersitie, each Inne of Court and Chauncerie, and euerie other like place, that is distributed for the seuerall lodgings of sundrie particular persons, is but one entire

entire dwelling house for this purpose. So that if any chamber (or lodging) there, be broken vp in the night season for the doing of a Felonie, it will worke to Burghlarie, though no man bee then in it, if so be that any person be within any other part of the whole Colledge, Inne, or such other house. But if a man doe in the night season breake into anothers close, *ad ipsum interficiendum*, that is no Burghlarie, because it is not into any house, 13. H. 4. 8.

The maner of the burghlary consisteth, partly in the breaking of the house, and partly in the entry into the same. For, if a man breake the house to do a felony, and enter not, it will be no burghlarie, Stanf. fol. 30. and Collections Diar. 99. But yet, it seemeth by Shard (lib. Ass. 27. pl. 38.) that he which is taken in the only attempt of a Burghlarie, shalbe hanged for it, although he haue not put the thing thorowly in vre. The maner

And of the same opinion (as Crompton reporteth) was both sir Anthonie Browne, sir Edward Mountague, and sir Robert Brooke, late seuerall chiefe Iustices of the Common place: the first of them holding, that if one do but make an enterprise (by night) to enter into a house to robbe there: the next, that if hee shall but onely turne a key, being on the inner side of the locke of the doore: and the third, that if vppon an attempt of Burghlarie, they within the house, shall cast out their money for feare, and the at-

tenptors take it away: that in euerie of these cases, it is a full & complete Burghlary.

Hee also reporteth that Iustice Portman, 3. Ed. 6. did execute one for Burghlarie, which was taken in the night, putting back the leafe of a window with his dagger: and the like is to be thought of him that shall be taken drawing the latch of a doore, that is not otherwise fastened.

But admitting that those doe amount vnto breaches, and entries in Law onely: and that a breaking with an actuall entrie is requisite, in the case of Burghlarie: Let vs consider, what other acts shalbe taken for sufficient breakings and entries.

If one doe breake the glasse windowe of a house by night, and then with a hooke draweth out any goods: or doe breake a hole in the wall of any house by night, and shooteth in thereby with a gunne or bowe, at one that is within the house, to kill him, and yet misseth him: or doe in the night season come into the house, by the help of a key, to steale any goods there: or do sodainly come into the house by night (the doore being open) whereby the owner flieth to his chamber for feare, crying for help, and shutteth the doore, and the offendour is taken shouing at the chamber doore: in euery of these cases also, it hath beene taken to bee Burghlary, Report Crompton.

In like sort is it, if the goodman of the house (perce-

(perceiuing that theeues are without) will open the doores, and goe out against them: and whilest hee is in hand with some of them, one of their companie stepeth to the doore, and stretching his hand ouer the threshold (but not setting his foote ouer it) dischargeth a dag against one of the seruants that standeth to defende the entrie, 26. Eliz. *idem.*

And albeit, the first entrie into the house were lawfull, or standing with the good liking of the owner: yet by matter subsequent it may become a breach and entrie that shall amount to Burghlarie.

As, if theeues shall come into a Towne by night with Huy and Cry, pretending that they be robbed, and shal pray the Constable to make search for the Felons: and whilest he goeth with them into some mans house to search, the theeues, bind and robbe both the Constable and the goodman of the house, for, in such a case, the entrie shalbe deemed Felonious, euen from their first comming.

But, if the case be so, that theeues doe enter into a house by night (with a minde to steale) thorow a hole in a wall that was broken before, or thorow a doore then standing open, and doe then depart without doing any other harme, and be taken vpon pursuite: it is good to bee enquired, whether such a manner of entrie will make them Burghlers.

But if diuers come to doe a burghlarie, and but one of them entreth & committeth it, the reſt of them ſtanding neare to the dooze, oz about other parts of the houſe, oz a good ſpace off (as at a lanes end, oz at ſome oꝛchard gate, oz fielde gate) to watch that no helpe ſhall come: yet is it burghlary in al that company, 11.H.4.13. Hul.

The ende. The laſt of theſe points that muſt meete in the making of a burghlarie, is the ende, and intent foꝛ which the offendour commeth: which of neceſſitie muſt bee, either to kill, oꝛ robbe ſome perſon, oꝛ to doe ſome other Felonie, lib. Aſſ. 22 Pla. 95.

Foꝛ if a man ſhould breake, and enter a houſe by night, of purpoſe onely to beate a man, that is but treſpaſſe, Stanf. 30, but if it be to kil him, then it will be burghlarie, although he do not ſo much as touch him. *Coron.* Fitzh. 267, & 13.H. 4.7. And ſo is it alſo, if the purpoſe be to rob, although he taketh away nothing at al with him, *Coron.* Fitzh. 185, 264. lib. Aſſ. 22. pl. 39. But if the intent were to perpetrate a Rape (which was not Felony, at the common lawe, as ſome haue thought) then is there ſome doubt & queſtion made vpon it.

Robbing in a houſe, boothe oꝛ tent. Thus much of burglarie: whereunto thoſe offences be ſomewhat neare, that are ſet fooꝛth by the ſtatutes, 23.H.8. cap. 1. & 5.E. 6. cap. 9. to this effect following, viz. If any perſon ſhal robbe an other, in any part of his dwelling houſe

houſe, or place (the owner, or dweller, his wife, children, or ſeruants being within the ſame, or within any place within the precinct of the ſame, and being either ſleeping, or waking) or ſhall robbe any perſon in any Tent, or Boothe, in any faire or market (the owner, his wife, children, or ſeruants, or ſeruant, being within the ſame, ſleeping or waking) he ſhall bee a felon. Betweene the which offences, and burghlarie, the difference ſtandeth thus: Firſt, that theſe may bee done by day, whereas burghlarie is by night only: and then, that in theſe there muſt be a Robbery, or taking away of ſome thing, whereas in burghlarie the offence may be perfourmed, though the offendour take nothing away with him. And (by the report of M. Daliſon) the ſtatutes ſhal be ſtraitly conſtrued, (in fauour of life) and according to the bare letter: ſo that, if the robbery be done by day, and ther be in the houſe but one ſeruant onely: or there bee in the houſe, boothe, or tent, but a ſtranger, or ſoiourner only: the fact ſhal not bee adiudged an offence againſt theſe ſtatutes. To theſe commeth now to be added, the Felonie of breaking a houſe by day, and taking thence mony, or goods, to the value of v. ſ. or more, in any part of any dwelling houſe, or outhouſe (belonging, and vſed to and with any dwelling houſe,) though no Perſon ſhal be then therein, which offence (being formerly taken for a common Felony, to which clergy was allow-

ed) is now made equal to Burghlarie, by the denial of Cleargie, and (in a point or twaine,) is more penal then Burghlarie it selfe was. For to that Burghlarie it is required, that some person be in the house, which is not material here, and this may be committed in such an Outhouse, as would not make vp that ancient Burghlarie 29. Eli. cap. 15.

Burning of houses.

There is yet also one other Felonie concerning houses: For Master Bracton saith, that if one doe burne a dwelling house maliciously, hee shall die the death for it: and Britton fol. 16. describeth the manner, writing that hee shall be burned for it: besides the which, Westminst. 1. cap. 15. forbiddeth the Repleuin (or bailement) of such an offendor. And the burning of a house *Felonice* (saith M. Brian 3. H. 7. 10.) was felonie at the common law.

So is it, to burne a barne (in the night) that is adioyning to a dwelling house, 11. H. 7. 1. Cur: or to burne a barn (in ỹ day) that hath any corne (or grayne) in it, although it doe not so adioyne.

Now, if the wicked purpose of a man bee, to burne the house of A. only, and yet by that fire the house of B. is burned also: then is the burning of this last house Felonie: because it followed of the fire that was maliciously kindled to burne the first, *Comment.* 475.

Robberie.

But, to leaue the house, and to come to the goods that do accompanie the person, wee must

bewray

bewray the violent robber, ſo called, either by corruption of the latine *Raptor*, from which our tongue will eaſily fall to robber: or els of robe, becauſe he that after this forcible & feareful maner ſpoiled another, did vſe to take his robes (or clothes) from him. After the which ſence, & like Etymology, the Grecians called ſuch offenders λωποδύτας and the Latines *Expilatores*: that is to ſay, Fleeſers, or flawers of men. And in this kinde of felonie, the lawe regardeth not ſo much the value of the thing robbed, as the feare that the robber bringeth with him to the perſon of him that is inuaded. So ỹ if hee take any thing at all, it will be robbery, though it be not worth ſo much as one peny: *Corone* Fitz. 115. & 178. & *lib.* Aſſ. 22. pl. 39. And hereof M. Bracton, and Iuſtinian doe terme this offendor, *Furem improbum, & prædonem, qui rem alienam rapit.*

So that, Robberie, is the felonious (or theeuiſh) taking of any mans goods from his perſon, to his feare & againſt his will, to the end to ſteale them. And in this deſcription, the worde (taking) is largely extended againſt the offendour: in ſo much that it may prooue robberie, though the owner may (in ſome caſe) rather ſeeme to haue deliuered the goodes, than the theefe to haue taken the ſame from him: if ſo it proceede and be done by feare and menacing.

And therefore, if the theefe doe aſſault a true man, and threaten him, that (if hee will not de-

liuer

liuer his purſe) hee will kill him; by meanes whereof hee deliuereth his purſe vnto him with his owne hands: yet this is plaine Robbery, becauſe he doth it for the feare wherwith the theef hath ſtricken him: Stanf. 27.

So, if the theefe doe (without any expreſſe wordes of threatning) onely aſſault a true man for his purſe, who (fighting with him, & finding himſelfe too weake) throweth downe his purſe, & the theefe taketh it. 20. Eliz. Report Crompt.

So, if theeues take a man, and compell him (by menace of killing) to ſweare vpon a booke to bring vnto them a certaine ſumme of money, or other goods: & therupon he goeth, & bringeth the ſame vnto them: this is adiudged Robberie: 44. E. 3. 14. & yet he was once at liberty and out of their hands, ſo as hee might ſeeme to be freed of all the feare wherein he ſtood by them. But yet, who ſeeth not, that the ſame fear that made him to take the oath, did ſtill follow him euen to the performance of that which hee had ſworne and promiſed.

And ſo is it, if theeues aſſault me for my purſe, & I (in the flight from them) drop it down into a buſh, vpon hope to haue it againe if I may eſcape them, and they eſpie it, & take it away with them: for, had they not put me in feare, I would not ſo lightly haue throwne my mony from me.

Neither is the worde perſon ſo nicely to bee conſtrued in this deſcription, that (to make vp Robbe-

Robberie) the goods muſt needs be annexed (or fastened) to the body of the perſon. For M. Stanf. (fol. 27.) reckoneth it to be Robberie, if one ſhal take my goodes openly againſt my will, in any place wherein I am preſent, though the goodes be not vpon my perſon at all: which ſeemeth to be good reaſon, ſeing that in both caſes, the loſſe is the ſame, and the feare is alike.

But now withall, ſome thing muſt (in ſome ſort) be taken from the perſon: or els the fact wil proue no robbery: for, if a man doe lie in awaite to robbe me, & (drawing his ſword vpon me) he willeth me to deliuer my mony: & I likewiſe betake me to my weapõ, & therby repel him & take him, either by fight, or by Huy & Cry made after him: this will not bee Felonie at this day (ſaith M. Stanford, agreeing in opinion with Ienney. 9. E. 4. 26.) becauſe he tooke nothing from me: & yet in the olde time (when the will & the act, were of like account in felony) it was otherwiſe holden, as it may appear. li. Aſſ. 27. pl 38. & 25. E. 3. 42.

Againe, a man may take ſome thing from the perſon of another without title to it, & by force, & to his feare alſo, & yet it may be doubted, whether the act will amount to robberie: as for example, it happened (26. Eli.) that one came to a Fiſherman that trauelled by the high way with fiſh to ſell: and praied to haue fiſh of him for money: the Fiſherman refuſed to ſell vnto him: & he

with

(with ſorce and feare) tooke ſome of the fiſh, & gaue him money (to the value and aboue) for it & of this caſe the Iuſtices of the Seſſiõ thought good to be aduiſed. Report Crompton.

For an end of Robbery: two theeues attempted to rob a true man, who fled from them, the one of the theeues followed him in chaſe, and the other eſpying another true man in the ſame high way (but out of the ſight of his fellowe theefe) rid towardes him, and robbed him: and then returned to his fellow, from whom the firſt true man had in the meane while eſcaped: this was adiudged robberie in both the theeues. Report Crompton: & yet the one of them was neither within the ſight of ỳ robbery, nor aſſented to it: But becauſe they both came to rob & (at ỳ ſame time) this fact was committed by the one, it is worthily to be imputed to the other alſo.

Cutpurſe. Amid & betweene the violent Robber that taketh from the perſon by force, and the myching theefe that ſtealeth when the perſon (or the owner) is abſent, ſtandeth the crafty cutpurſe, or pickepurſe, that taketh goods (or money) from the perſon by ſleight onely, the owner neither being made afraid, nor witting of it.

This fact as it is no robbery, becauſe it is void of aſſault, force, & feare: So, neither is it any felony vnto death, vnleſſe the thing taken be of more value than xii. ð. in money. *Collect.* Diar. fol. 224.

And

And in this kinde of offence, it is thought neceſſary, that the theefe haue an actuall poſſeſſion of the thing, ſeuered from the perſon of him frō whom it is taken. So that, if the offendor cut a mans girdle, at which his purſe hangeth, & the purſe falleth to the ground, and hee bee deſcried before he take any hold of it: this will not make felonie: But if he take the purſe in his hand, and then cut the girdle, and afterward let them fall, that will proue him a felon; becauſe hee had a manuel poſſeſſion of the purſe, remooued from the perſon: Crompton. And now I am (by the courſe of mine owne order, and diuiſion) drawn from the body, and driuen to take in hande that felonie that worketh vpon the goods alone.

This doth M. Stanford call Larceny: a name fetched from the Latin *Latrocinium*, which language would as ſoone haue knowen it to be her owne, if wee had called it *Latrocinie*, but thee muſt be contented to beare with our cuſtome of clipping whatſoeuer we doe borrowe from her. M. Bracton calleth it *furtum*, and Varro ſaide, that *fur* was deriued *à furuo*, (that is, darke) becauſe theeues doe willingly worke by night, as hating the light of the Sunne that may bewray them. But Gellius noteth him of errour, and thinketh that *fur* came of the olde Greeke word φώρ, which ſignified a theefe (or a ſtealer) ſo named (as Iuſtinian writeth) of the word *fero*, which is both Greeke and Latine, and ſignifieth Larceny.

eth to cary, or beare away: which is the very end for which the thief commeth.

M. Bracton defineth it thus: *Furtum est contractio rei alienæ fraudulenta, animo furandi, inuito domino:* which definition is tollerable, although M. Stanford do not like it. For, Bracton meant thereby to describe all maner of theft, whether it were robbery it self, or great or petite Larceny; euen as the Ciuilians do vse to teach.

But, because I haue taken another way in felonies, I will (for mine owne purpose sake) describe, Larcenie to be a felonious and fraudulent taking of another mans personall goodes (remoued from his body, or person) without his will, to the end to steale them.

Petite Larcenie. And, albeit petite Larcenie be not punishable by death (as the greater Larcenie is) yet be they both felonious & fraudulent takings, &c, for, the enditement of petite Larceny (saith Iudge Fitz. 27. H. 8. 22.) must be *Felonicè cepit*, & he shal forfait his goods for such a felony. So that there is no difference either in the nature of the offence, or in the minde of the offendor, but onely in the value of the thing that is taken, which also maketh the degrees of the punishment.

And therefore, if it bee found by the Iurie to exceed xii. d. in value, he shall die for the fault: & (if it be of, or vnder that worth) hee shall be corrected by the discretion of the Iustices that may heare and determine it: *West.* 1, cap. 15. Brit fol.

21.

21. *Coron.* Fitz. 404. and 406.

But here on the one ſide, if a mã cõmit diuers petit Larcenies, which (in al) do exceed the value of xii. d. then may they bee put together into one Enditement, & he ſhal ſuffer the paines of death therefore. *Coron.* Fitz. 415. & on the other ſide, if two or mo perſons, doe ioyne in the ſtealing of goods that doe ſurmount xii. d. they all muſt die for the fault, *ibid.* 404. for (as ſaith M. Stanford) that felonie is ſeuerall in Law, euen as thoſe others were ſeuered in act, and deed.

But for the more clear vnderſtanding of Larcenies, I wil firſt ſhew of what things Larceny may be committed: & then, after what maner, & with what minde, the ſame may bee performed: for, as touching the perſons that may be charged with ỳ fault, they wil be ſhortly comprehended. *Of what things Larcenie may be.*

It is felonie therefore, to ſteale any the moueable goods of any perſon: but becauſe it may in ſome caſes be doubted, whether the things ſo taken are to be nũbred amongſt moueable goods, or no, I will proceed in particularitie.

Money, plate, apparell, houſhold ſtuffe, Corne of any ſort (or hay, or fruit) that is ſeuered from the ground, horſes, mares, colts, oxen, kine, ſheep lambs, ſwine, pigges, hens, geeſe, ducks, peacocks, turkies, & other beaſts, & birds of domeſticall (or tame) nature, are ſuch, as felonie may be committed in the taking of them.

It may be felonie alſo, to take ſome that be of

a wild nature: as to take yong pigeons, or yong hawks out of their nests (or airies) before that they can flie. So, to take fishes that be kept in a trunke, stewe, or pond, 10.E.4.15.18.E.4 8. *lib.* Ass. 22. pl. 98. & 18.H.8.2. For, as a man hath a propertie in those first thinges that bee domesticall, and therefore it is plainely theft to take them: So in these latter, hee hath such a possession of them, that the one sort for weakenesse, and the other for the restraint, cannot (without helpe) vse their nature, and forsake him: & therefore it is like iniurie to steale them also.

But otherwise it is of doues, or hawks, that can flie at libertie: and of fishes that liue abroad in riuers, or streames: because they are *nullius in bonis:* and therefore *occupanti conceduntur.* And yet, by Statute law there is one exception: For if a man finde a Falcon, Tarcelet, Lanor, Laneret, or other Falcon that was lost, and doe not forthwith bring it to the Shirife to bee proclaimed, but do steale, and carry away the same, it is declared to be felonie: 34.E.3.cap.22.& 37.E.3 cap.19.

But, to goe forwarde: To take Pheasants, Partriches, Hares, Conies, Herons, Swans, or Deere, that are abroade: or to take Dogges of any kinde, Apes, Parats, singing Birdes, or such like, (though they bee in the house) is no felonie: because these latter bee but for pleasure onely, and are not of value: and those

thoſe former be of wilde nature, as thoſe others are wherof I ſpake before, 18.H.8.2. And therfore, Iuſtice Hales (7.E.6.) thought it no felony to take a diamond, rubie, or other ſuch ſtone (not ſet in gold, or otherwiſe) becauſe they bee not of price with all men, howſoeuer ſome doe holde them both deare and pretious.

And here againe, is ſome exception: for to take a tame deere is Felonie, if at the leaſt the taker know it to be tame, 10.Ed.4.15. & Stat. 25. And the Statute 1.H.7.ca.7. maketh it felonie to hunt deere, or conies (after ſome ſort) in a forreſt, parke, or warren.

Furthermore, to take the fleſh of any tame, or wild foule or beaſt (that is dead) out of the poſſeſſion of another man, is felony, Stanf. 25. So, to take the wooll from the ſheepes backe, or to take the ſkin, and leaue the body behind, will be felony, Report Dalyſon.

And now, you muſt remember, that in the deſcriptiõ I ſaid, of an other mans perſonal goods: for, to take chattels reals, will not amount to felony: as to take ỹ charters of a mans land, in, or without a box, or to take an infant in ward, can be no felonie: becauſe they be reall, and not perſonal chattel, 10.E.4.15. And yet the ſtatute (5. Eli. cap. 14.) toucheth them in felony, that ſhall ſecondly offend in forging deeds concerning another mans land, &c. by which they indeuour to ſteale (as it were) his inheritance from him.

¶ Againe,

Again, to ſteale fruit that hangeth on the tree, or to cut downe & cary away the tree it ſelfe, or to take the lead from a houſe, or church, wil not worke to any Felony: becauſe theſe things bee part of the freehold, til they be ſeuered, & cannot therfore be reputed for any chattels. *Coron.* Fitz. 119. and 256. and Report Crompton.

But if I gather mine apples, or cut downe a tree of mine owne: then may another become a felon by ỹ taking away of either of thẽ, Stan. 25.

And (by ỹ opinion of Mar.) if a man cut down a tree of mine this day without title, and fetch it away to morrow, that will proue him a felon, becauſe it was a chatel ſeuered when he took it.

Moreouer, to take treaſure that was hidden, or goods or cattell that bee wained, or wrecked, or ſtraied, is no Felony, *Coron.* Fitz. 187. & 265. and Stan. 25. becauſe it doth not yet appere who is the owner of them, and the words of the deſcription be an other mans goods: And it is not like, as where the goods may be ſaid to be, *Bona capellæ, bona parochianorum, bona cuiuſdam mortui ignoti*, or *bona domus, aut eccleſiæ* in the time of vacation: for in all theſe caſes, ther be *domini*, or owners of them to ſome purpoſe, Enditment Fitz. 15: yea, if a man do baile (or lend) his goods to another, and doe afterward felonioufly take them againe, this ſhall charge himſelfe in Felonie: for, albeit hee were owner of them, yet had the other therein a ſpeciall propertie alſo, by which

which hee might haue an appeale or action of Treſpaſſe, againſt a ſtranger that ſhould ſteale, or take them, 7. H. 6. 43. And agreeably to this, the Ciuilians do adiudge it theft, if one (that layeth his goods to pledge) doe embeſel them from the partie to whom they were engaged.

So, (by the opinion of Marr.) if I lende my plate to one that melteth it, & I take that mettall felonioully, it is Felony in me, becauſe the propertie is altered by altering of the faſhion.

In what maner Larceme is committed.

Thus far of the things that are ſubiect to this Felony. Now let vs ſee what maner of act & demeanor is requiſit to make the fault full. Two things muſt concurre, namely, to take and to carie away (or remoue) the thing take, with a purpoſe to ſteale the ſame. For ỹ Enditement muſt alwaies be, *cepit & aſportauit*, or *cepit & abduxit*. And in either of theſe two, the letter & word is not ſo much to be regarded, as the meaning & ſenſe therof, for the more ſeuere and aſſured ſuppreſſion of offendours. For, as it is clearely *Felony*, if a man take my goodes (with a minde to ſteale them) without any deliuery by me: ſo may it proue Felony alſo, though he come firſt vnto them by deliuery from mine owne hand.

And therefore, if a Tauerner deliuer a goblet to one to drinke his wine, and he carry the goblet away, it is Felony, becauſe the Tauerner gaue him no poſſeſſion therof, but the vſe for the time onely, 13. Edw. 4. 10. So, if I deliuer to a man

certaine bales of Dade, or a tunne of Wine, to carrie to Canterburie (giuing him money for the carriage thereof) and hee carrieth them to Yorke, & there breaketh vp the bales or tunne, and conuerteth part of the Dad or Wine to his owne vse, it is Felonie in him, *ibidem.*

But if I deliuer my goods to a man to keepe, and he fraudulently consumeth them, or otherwise conuerteth them to his owne profit, it is no felony, *ibidem*: for, that booke agreeth, that if the other had conuerted al the Wine, or all the Dad (as he receiued them) to his own vse, it had been no Felonie by reason of the deliuerie: but heere may it be truely said vnto him, that neither the Dade nor Wine were deliuered to him in that plight wherto himselfe hath brought them, and so (vpon the matter) he had no deliuerie of them, but a bargaine to carry them.

And if my Cooke, Butler, or horse-keeper, shall goe away with any of my vessell, plate, or horses, which they haue in their keeping, it is felony, because they haue no deliuerie: insomuch that whilest those things were in their handes within my house, the possession of them is continually remaining in my selfe, and not in them: But (3. H. 7. 12.) their is some strong opinion against it.

If I deliuer my goods to one to carrie to a place in London, & he carieth them accordingly, and then conueieth them away, & selleth them, it will

it will be Felony, becauſe the priuitie of the deliuerie was determined ſo ſoone as hee came to the place. Stan. 25. & then he hath no more a deliuerie, then if I ſhould giue to one the keye of my chamber, & he would therwith open ỹ dooze, & take the goods that are therin frõ me, Stan. 25

A man may gather by Glanuile, that the ancient law gaue no iudgement of Felony againſt him that came to the poſſeſſion of the goods by the hand of the owner: for hee ſaith (lib. 10. cap. 13.) *Furtum non eſt, vbi initium habet ſuæ detentionis per dominum rei:* and therupon grew thoſe differences of opinions concerning goods in the charge of ſeruants: for the appeaſing whereof (in ſome part) the Statuts (21. H. 8. ca. 7. & 5. El. ca. 10) do declare it to be Felony, if any ſeruant of the age of 18. years (other than an Apprentice, which alſo is to bee vnderſtood of him that is bound by Indenture, by the name of an apprentice) ſhal go away with, or conuert to his owne vſe, any money, iewels, goods, or cattels of his maiſters, or maiſtreſſes, and of his or her deliuerie to keepe, of the value of xl. ſhil. to the intent to ſteale the ſame.

But euen as to labor to take away al doubts in law, is nothing els, but *Hydræ caput amputare:* So, within forty yeares after that Statute (which was made for the reſolution & clering of thoſe former doubts) ſundry queſtions did grow vpon the conſtruction of this lawe it ſelfe.

First, if a man deliuered an Obligation to his ſeruant to keepe, and he tooke vp the mony due thereby, and went away with it: and then, if a man deliuer to his ſeruant wares to be ſold at a faire (or market) & he ſelleth them there, and goeth away with the money: whether theſe offences be within that ſtatut, 21. H. 8. And it ſemeth by the better opinion, that they are not: for in the firſt caſe the money was not deliuered, but the Obligation: and then the ſeruant ſtole not that which was deliuered, but another thing, & that alſo a thing in action only, and ſo of no value at all. And in the latter queſtion, the firſt part of the former reaſon holdeth alſo.

Howbeit, if the ſeruant receiued xx. li. in gold, which he changed into ſiluer mony, and then ran away with that, his fault wil riſe to felony, becauſe, that gold and ſiluer were both but mony, though diuers mettals, Collect. Diar. fol. 5. & Report Crompton 27. El. And it ſeemeth by Dyar there, that if one ſeruant do deliuer to his fellow ſeruant, the goods of their maſter to keepe, and he goeth away with them, this ſhall be felonie within the meaning of that ſtatut, becauſe it ſhal be ſaid to be the deliuery of the maſter himſelfe.

An other felony there is alſo declared by the ſtatut (33. H. 6. ca. 1.) againſt the houſhold ſeruants, that do take and ſpoile the goods of their deceaſed maſter: But that Felony groweth vpon their default of apperance in the kings bench, after

after proclamation, and therefore our Iuſtice of the peace cannot well take knowledge of it.

The other point, that (as I ſaide) muſt concurre to make vp this Felonie, is the carying away, or remotion of the thing that was feloniouſly taken. In which part alſo, it is not of neceſſitie, that it be cleane caried out of the place where it was, but it ſufficeth that it be ſo far remooued, or ſtirred, that the euill mind of the taker may plainely appeare. As if a gueſt wil take the ſheets out of the chamber where he lodgeth, and then goe towardes the ſtable for his horſe, with a minde to ſteale the ſheetes, and is taken with them, this maketh his Felonie full, although he hath not carried them quite out of the houſe, lib. Aſſ. 27. pl. 39. And like law is it, if a man do take a horſe in an other mans cloſe with felonious intent, & bee deprehended in the fault before that he haue led him out of the ſame cloſe Report Dalyſon.

What perſons are chargeable in Larceny.

Touching the perſons that may be charged with Larceny, they ſhall beſt appeare by a Negation, or handling of thoſe which can not bee charged with it. And for that purpoſe, if the huſband and the wife, doe commit a Larceny together, it ſhalbe imputed to the huſband onely *Coron. Fitz.* 160. Neither is ſhee chargeable if the huſband compell her to commit the Larceny alone, lib. Aſſ. 27. pl. 40. But if ſhee doe it by his only commandement, without other conſtraint,

then M. Bracton affirmeth it to bee Felonie in her, and M. Stanford doubted of it.

And the wife shall not be accounted a Felon for stealing of the goods of her owne husband: yea, although an other (that knoweth it) take them of her, yet is he no felon for it, *Coron.* Fitz. 455: & Stanf. 27. But a wife may become a felon by her owne act, the husband not knowing thereof: as if shee steale another mans goods, or receiue the theefe that stealeth them: & in such case if the husband know not thereof, or (knowing it) doe forthwith forsake his house, and her companie, he shall not bee charged for her offence, *Coron.* Fitz. 383. The infant, the furious man, the lunatike, and the dumbe and deafe person, are chargeable in Larcenie, after the same sort, as they be charged in Homicide before.

Accessories to Felons, by the common lawe.

The principall felons of all sorts being thus perused, we are now to consider of their Accessories, for they be felons also. It may plainely be collected by Bracton, & by the statute of Westminster, 1. ca. 15. that in ancient time the Law tooke knowledge of three sorts of Accessories: some before the felony done, as commaunders thereof: others at the very time of the felony, as those that (being present) gaue force by ayde thereunto: & others after the felony committed, as those which receiued or comforted felons knowing of the offences that they had made.

And M. Stanford (fol. 71) saith, that all Abbet-

Abbettors, conſenters, and procurers, be taken to bee within the reach and meaſure of acceſſaries before the offence committed.

But, forasmuch as it is euident by many bookes, (and namely by 7.H.4.27. 11.H.4.13 10.E.4.14. 21.E.4.71. & *Corone* Fitz. 309. 314. 350. 433. and others) that the Lawe is otherwiſe taken at this day touching them of the ſecond ſort, that bee of ſocietie with the principall, and be alſo preſent with him at the doing of the felony, (whether it bee Murder, Robberie, Burghlary, or Larcenie) inſomuch, as it adiudgeth them principals no leſſe than him that doth actually perpetrate and worke the offence (as it may ſufficiently appeare by that which is ſaide before) I am eaſed of the labour to deale with them, and ſhall not neede to handle any other ſorts of acceſſaries, but thoſe only, that be either before, or after the time of the felonie done and committed.

And heere (at the firſt) I am fallen vppon a two-folde queſtion: the one, whether there may may be any Acceſſaries to ſuch felonies as were not at the common lawe, but were afterwardes created felonies by ſtatutes, vnleſſe the ſame ſtatutes doe ſpecially ſo appoint it: and if there may bee ſuch acceſſaries before the offence, yet then whether there may bee any Acceſſaries to ſuch a felonie after the offence alſo. Acceſſaries by ſtatutes.

And, albeit the firſt of theſe queſtions might haue

haue receiued the more easie resolution: for that all such as doe will or procure any felonie to bee done, are the very cause thereof, so as without them it is to be thought that it should not haue beene committed: yet they of the Parliament house haue (in the making of sundry newe felonies) thought it conuenient for the auoyding of all doubt, to comprehend in plain speech the Accessaries, both before and after. For so you may see it done, by the seuerall statutes, 1. Mar. cap. 12. made against Rebellious Assemblies: 1. & 2 Phil. & Mar. cap. 4. against Egyptians: and so of such others.

And this caused M. Stanford (fo. 44.) to write, that there could bee none accessaries (after the offence) to the felonie of embezelling Records, declared by Hen. 6. cap. 12. nor to the felonie of coniuration, set forth by the Statute 33. Hen. 8 cap. 8. because those two Statutes haue no expresse mention, but onely of the Accessaries before the offence cõmitted: And that there could be none Accessary at all, to the felonie of taking of maydens, widowes or wiues against their wils (enacted 3. H. 7. ca. 2.) because thereby, the procurers, abbettors and receiuers are adiudged to be principall felons.

But, for a more certaine rule in all these points, I will vse this one case, that happened in the Kings Bench (3. & 4. Phil. & Mar.) as Iudge Dalyson reporteth it.

Two

Two men (ſaith he) were indited vppon that Statute (3.H.7. ca.2.) for the taking of a woman againſt her will feloniouſly: and two other men were then alſo indited, for that (knowing the felonie) they did receiue, and comfort the firſt ſaid offendors. In this caſe, albeit the Statute doth make alwell the procurors, and abettors of the felonie, as alſo the receiuers of the woman (knowing the matter) to be principall Felons: and thereby theſe two perſons, which receiued the felons onely, (and not the woman) can be deemed no principals: yet, al the Iudges of that court were then of the opinion, that theſe receiuers bee acceſſaries to this felonie, by the Statute, no leſſe than if it were to a felonie at the common Lawe. For, when a ſtatute (ſay they) maketh a felonie, it is a felonie, and hath acceſſaries to it, euen in the ſame manner as if it had beene felonie at the comon lawe. As in a Rape, which is declared by the ſtatute (W.2. cap. 34.) ſaying, If a man rauiſh any woman, where ſhee aſſented not before, nor after, let him haue iudgement of life and member: yet, if another (knowing of the fact) ſhall receiue the rauiſher, hee ſhall bee an acceſſary, no leſſe than if it were to a felonie that had been by the common law.

Acceſſaries before the offence was done.

The ground of acceſſaries being thus leuelled by the line of this iudgement, I will walke euenly through it, and handle (vnder one) both the

the accessaries before, and after, as well by the common law, as by the Statutes.

Such therefore as shall either will, command, hire, procure, conspire, consent, or abette, any Murder, Rape, Robberie, Burghlarie, or Larcenie to be done, and bee not present at the doeing thereof, are accessaries before the felonie done, & thereby felons when the felonie is done.

And albeit, that the chiefe offender doe not accomplish the fault altogether in the selfe same sort, as it was beforehande agreed, and plotted betweene him and the accessaries: yet, if any felony fall out by that attempt, either against the same person, or against any other, then those that were so priuy therunto shalbe taken for accessaries vnto it. As if A. willeth B. to beate or to rob C. and he attempteth it, & therby so beateth him that hee dieth thereof, now is A. an accessary to this murder. *Corone* Fitz. 314. & *Comment.* 475

So, if a man commaund one to set fire on the house of A. and hee so doth, and by kindling the same fire, the house of B. is wasted also: this cōmander is accessary to the burning of the house of B. though he neuer meant that the fire should go any further than to the house of A. only, *ibid.* For, in either case, the latter euill was but a sequele of the former, which was commanded by him, and attempted by the other.

Againe, if a man hire one to poison another, & hee killeth him with a sworde, or contrariwise killeth

killeth him with poyſon when he was willed to ſlay him by ſword: this procurer is an acceſſary to the murder: Dalyſon.

So alſo, if one procure a man to kill another in the field, & he killeth him in a houſe, or church: or to kill him ſuch a day, or at ſuch an houre, and he killeth him at another day or houre. For, their wicked purpoſe is effected as they agreed, though by another meane (or circumſtance) then was ſet downe betweene them. *Comment.* 475.

But if I commaund one to take A. and he taketh and robbeth him. I am no acceſſary to his offence: Stanf. 41. So, if one doe conſpire with another, that the one of thē ſhall burne the houſe of A. and hee burneth the houſe of B. or that hee ſhal ſteale the horſe of A. and he ſtealeth his oxe or that he ſhall robbe A. in the high way, and he robbeth him Burglarly in the night ſealō within his houſe: Now is that other none acceſſarie to any of theſe felonies, for that they be either in other things, or of other kinds, than were intended. *Comment.* 475. And (which is more ſtrange) if the husband conſpire with another to poyſon the wife, and he for that end procureth & bringeth poiſon to the husbād, who tempereth it with an apple, and giueth it to his wife to eate, & ſhee (thinking none euill) deliuereth a morſell thereof to her daughter there preſent, who alſo eateth it, and dyeth of the poyſon: yet is that other perſon none Acceſſarie to this murder that the husband

band hath committed: because it is a distinct thing from that which he purposed: and (against him that is not the immediate murderer) the sequele of the fact shall not bee drawne to charge him beyond that which was intended by him. *Comment.* 476.

But nowe, in all these, and like cases of Accessaries before the fault, it is of necessitie that the commaunder, hyrer, procurer, or conspirer, doe continue that his minde and purpose, euen till the felonie bee fully done and executed. And in this respect, though it be no felony (as I said) to strike a woman with child, whereof the child dieth after it is borne: Yet if a man shall maliciously procure a woman that goeth with child to destroy that child so soone as she shall be thereof deliuered, and she thereupon doth it: Now is he an accessarie to this Murder: because that procurement before the birth, continueth vntill it be executed by the Murder which followeth the birth. Collection Diar 186.

But otherwise if he shall repent him of his malicious minde, and thereof giue notice to the other, and withall charge him that hee make no such attempt, and hee doth neuertheless bring the same to effect, then is such commaunder or procurer no more Accessarie to the fault, than if hee had neuer imagined, or thought vpon it. *Comment.* 476. Neither doe I thinke, if a man foreknow of a felonie (intended to be done) and doe

doe conceale it, and thereby ſuffer it to paſſe to be effected, that hee can bee made an Acceſſarie thereby: vnleſſe hee haue alſo vttered ſome expreſſe conſent, or giuen allured ſigne of his owne allowance and liking of the ſame: but rather, that ſuch his concealement will weigh to a miſpriſion (or contempt) for which he ſhall bee fined: euen as if it happened him to bee preſent at the doing of a felonie (whereof he neither had knowledge, nor came therefore, nor gaue aide thereunto) and would neither diſturbe the felon, nor leuie Huy and Cry after him. Stanford. 40. & *Corone* Fitz. 395.

Acceſſaries after the felonie, be thoſe, which (knowing of the felonie) do felonioully, or with an euill mind, receiue, harbour, fauour, or otherwiſe comfort the felon, whether it be in the ſame countie in which the felonie was done, or in any other. Acceſſaries after the offence.

For, if a man ſhall onely make ſute by his word, (or writing) in the behalf, and for the deliuerance, of one whom hee knoweth to be a felon, this is done of fauour, but yet not with ſuch an euill intent, as that it ſhall make him an Acceſſarie thereby: *lib.* Aſſ. 26. plac. 47. But if a man do (vpon Huy and Cry) arreſt a theefe that hath ſtollen the goodes of another, and doe then (with an euill minde) take the goods, and ſo let the felon goe, hee is to be arraigned for it, as an acceſſarie to the felonie, if not as a principall

cipall felon: for ſo is the doubt moued, *Lib.* Aſſ. 27. plac. 62.

Againe, if a man purſue, and take a felon that hath ſtollen his goods, & then taketh his goods, and ſuffereth the thief to go at large, he is no acceſſary thereby: for he may *agere ciuiliter* or *criminaliter*, at his owne pleaſure, as M. Bracton writeth: but if he take money of the thief, to the end that he ſhall not giue euidence againſt him, whereby the theefe ſcapeth, then is he become an Acceſſarie to the felony of his owne goodes, by the opinion of Iudge Hales (6. E. 6.) becauſe it is done with a minde to comfort the felon in his euill doing, Report Daliſon.

To receiue, harbour, or relieue with money, a man that is bayled for felonie, and bounde to appeare for his triall, ſpeedeth no daunger of beeing an Acceſſarie, becauſe the Lawe doth him that fauour, and the felonie cannot be concealed by it: Neither will it make a man acceſſarie, to receiue (or buy) the goodes, that hee knoweth to be ſtollen, vnleſſe he doe receiue the theefe that ſtale them: 9. H. 4. 1. & *Corone* Fitzh. 126. & 208.

And although the preamble of the ſtatute (2. & 3. E. 6. cap. 24.) ſeemeth to call him an acceſſary, that receiueth the goods only: yet that muſt be vnderſtood of him that receiueth the goods, & the felon together. For it was not the purpoſe of ỹ ſtatute (as I think) to make any new acceſſary that

that was not before, but onely to prouide triall (where it wanted) for those Accessaries that were before.

Furthermore, as one man may bee Accessarie to a principall felon: so may an other man be Accessarie to that Accessarie also. For, if one do feloniously receiue, or comfort him that is an Accessarie, he is fallen into equall danger with him, and is called an Accessarie to an Accessary lib. Ass. 26. pl. 51. *Coron.* Fitzh. 196. Accessarie to an accessarie.

Againe, in the iudgement of an Accessarie, nature is not allowed her excuse: for, (*Corone* Fitz. 427.) a felon fled to the house of his naturall brother, who shut the fore-doore against them that pursued the felon, and conueied him out of the house by a backe doore, whereby hee got to the Church: and this brother was adiudged an Accessarie for it.

But yet such consideration hath the lawe of the duetie of the wife towards her husband, that she shall not bee deemed an Accessarie, though (knowing him to haue committed a felony) she doe both receiue, and comfort him, and also couer the fault that he hath done *Coron.* Fitz. 383.

And in all cases of an after Accessarie, this one thing is generall and requisite, that the fact (to which he is an Accessarie) be a felony at the verie time in which hee becommeth an Accessarie to it. For, if a man doe giue a mortall wound to another vpon the first day of August, and a third

perſon (knowing thereof) receiueth him, two or three daies together, and letteth him go, and then afterward he that was ſtriken dieth of the wound within the yeare and day: yet this receit maketh the other none acceſſarie, becauſe the principall fact was then no felonie, Report Dalyſon.

One perſon charged as principall and Acceſſarie.

And if a man haue beene charged as a principall felon, and vpon triall be acquited thereof, yet may he (if the ſpecial matter will ſo ſerue) be an acceſſarie thereto after the offence, though not an acceſſarie before. *Coron.* Fitz. 200. & 463. For (as M. Bracton ſaith) thoſe offences which make an acceſſarie before, be ſo faſt tied & knit to the principall fact (whereof they be very cauſes) that they can not be ſeuered from it: whereas thoſe others (which make an Acceſſarie after) doe follow the fact aloofe, which alſo is in it ſelfe complete without them.

And to this opinion M. Stanford enclineth fol. 105. But as he confeſſeth that the law was otherwiſe taken in auncient time, and that the partie might be charged as an Acceſſary before the offence alſo, as it may appeare *Coron.* Fitzh. 424. So I find, that the late opinion of all the Iuſtices (1. & 2. Phil. & Mar.) was agreeable to the ſame: becauſe the principall fact is one offence, & the acceſſary fact (whether before, or after) is another offence, and diſtinct from it: inſomuch, that although a pardon of all felonies, will

will not diſcharge a murder, yet it is auaileable for all the Acceſſaries thereto, be they Acceſſaries before, or after, Report Dalyſon.

Now, as all that which is hitherto ſpoken, is meant of Acceſſaries to felons, that bee not attainted: ſo is the ſame much more to bee holden, concerning acceſſaries to felons that be attainted, and of record. For, to receiue an approuer (knowing him ſo to be) will make a man acceſſary to the felonie that he hath confeſſed: and of lik danger it is, wittingly to receiue him that is attainted of felonie, by way of vtlawrie: Coron. Fitzh. 285. And in this latter caſe, there is ſome opinion, that a man ſhall bee an acceſſarie for receiuing a felon attainted (eſpecially in the ſame Countie) though hee knowe not of the attainder at all. Coron. Fitzh. 377. & Collect. Diar. 355. for euerie man (ſay they) is bounde to take knowledge of a matter of record, at the leaſt in the ſame (though not in a forren) countie: but M. Bracton very reaſonably requireth a right and direct knowledge in the partie, to make them acceſſarie, as well in the one caſe as in the other: for albeit a record (and eſpecially the pronunciation of an vtlawrie) bee ſo notorious, that euerie man may eaſily come to knowe the ſame: yet, were it an ouer great extremitie, that ech man ſhould (vpon the peril of his owne life) enforme himſelfe, and take vnderſtanding of it.

I haue now (as you see) gone ouer this large field of principals, and Accessaries, in all these sundry sorts of felonies: so much the more slowly in pace, as I haue laboured to carry the reader in companie with me, and that also the rather, because it is a point of great weight, frequent in vse, and fit for euerie Iustice of the Peace to heare, and vnderstand.

What things some one Iustice may doe.

Now, as I haue passed thorow the power of any one Iustice: So am I to prosecute, by way of short note, the power of some one Iustice of the Peace, and so conclude this second booke.

Stocke of the shire.

The Assesse, made at the Easter Sessions of the Peace (40. El. Reg.) vpon euery Parish in the countie, shall yearely (in default of the Parishioners, and in default of the Church-wardens and Constables there) bee rated by order of such Iustice of Peace as shall dwell in that Parish, or (if none so be dwelling) in the parts next adioyning: And he also (in default of the said Church-wardeins and Constables) may leuie the same by distresse and sale of the goods of any person refusing or neglecting to pay his Portion thereof, and shall tender to the partie the Ouerplus of such Sale, and in default of such distresse, any Iustice of that limit may cõmit to Prison such person without Baile til he pay the same 39. El. c. 3

Such as will not worke.

Any one of these two Iustices of peace, which (by this statute) may appoint Ouerseers for the poore, may also send to the house of Correction, such

such as will not employ themselues in worke, according to this statute 39. El. cap. 3.

The *Custos Rotulorum*, or the eldest of the *Quorum* in his absence, ought (at the generall Sessions after S. Michael) to appoint two Iustices of the peace (the one being of ỹ *Quorum*) to haue the ouersight, and controlment of the Sherifes entring of plaints and amerciaments. And one of those Iustices may examine (& without further enquirie) conuict the gatherers of the same amerciaments, if they gather any more mony than is contained in their lawful Estreits, 11. H. 7. cap. 15. Sherifes.

Euery person finding or seeing any to offend the statuts made against the shooting in Crossebowes and Handgunnes may arrest and bring, or conuey him to the next Iustice of the Peace of the countie, where hee was found offending, who (vpon due examination and proofe thereof before him made) may by his discretion commit him to the Gaole, there to remaine till hee shall truly pay the one moitie of the forfeiture of this statute to the Queene, and the other moitie to such first bringer or conueyer. 33. H. 8. cap. 6. Crossebowes & handguns.

In this, and such other cases the Iustice of Peace, hauing (as it seemeth) the whole matter committed to himselfe alone, ought to be warie and circumspect, lest either he rashly condemne the guiltlesse, or negligently suffer the guilty to escape: And vpon the offence sufficiently proo-

ued, it is neceſſarie that in his *Mittimus* (or precept to the Gaoler) there be cõteined, the names of the parties, with the maner of the offence, and how long time he is to be kept in priſon for it.

Furthermore, hee is to make a Record of the matter, and to ſend the Eſtreit of it into the Exchequer, whereby the Barons may (vpon intelligence thereof) cauſe the Queenes duety to be leuied to her vſe. And although the forme of the *Mittimus*, might be eaſily faſhioned by ſome other Precedents in this booke, yet for the more ready helpe of the Iuſtice in this, and towards other like, I will not ſticke to leaue him a patern both of that, and of the record it ſelfe alſo.

To the Keeper of her Maieſties Gaole at *Maidſtone*, in the ſaid Countie, and to his Deputy or Deputies there, and to euery of them.

Kent. FOraſmuch as this preſent day, A.B. and C.D. of Halling in the ſaid County Yeomen, did arreſt and bring before me at Halling aforeſaid one I. at S. of Friendsbury in the ſaide Countie Mariner, whom they had ſeene and found the ſame day (as they ſaide) ſhooting in a hand-gunne, charged with powder, and a pellet, at a Conie in a certaine place in Cucſtone, within the ſaide County called the Churchfield, contrary to the Law of this realme, and thereupon prayed mee that Iuſtice might be done in that behalfe.

I Iohn Leueſon Knight being the next Iuſtice of the Peace in the ſaide Countie to the place aforeſaide, did then at Halling aforeſaid vpon the ſaid requeſt take the examination of the ſaide I. at S. and did alſo then, and there heare the proofes of them the ſaid A. B. & C. D. touching the ſaide offence: and for that it did then manyfeſtly appeare vnto me, as well by the teſtimonies of them the ſaide A. B. & C. D. as alſo by the plaine confeſsion of him the ſaid I. at S. that he had not then landes, tenements, fees, annuities, or offices to the cleare yearely value of 100. li. and that hee had ſhot in the ſaid handgunne in maner and forme as is aforeſaid, I doe ſend vnto you herewith the body of him the ſaide I. at S. as lawfully conuicted of the ſaid offence before me: requiring you in her Maieſties name, to receiue him into your ſaid gaole, and him there ſafely to keepe as her M. priſoner, vntill that he ſhall haue truly payed the peine and forfeiture of ten pound of lawfull money of England laide vpon him for his ſaid offence, by the ſtatute thereof made in the 33. yeare of the Raigne of the late Kinge Henrie the eight, that is to ſay, the one moitie thereof to our ſaid ſoueraigne Lady, and the other moitie to them the ſaid A. B. and C. D. the firſt bringers of him before me. And this ſhalbe your ſufficient warrant in this behalfe. Hereof fail you not, as you wil anſwer for your cõtempt

at your own peril. Yeouen at Halling afore ſaid, the 20. day of March in the 41. yeare of the raigne of our ſaid ſoueraign Lady *Elizabeth* by the grace of God, Queene of *England, France* and *Ireland*, defendor of the faith &c.

By me the ſaid *Iohn Leueſon.*

Kanc. *Memorandum quòd 20. die Martij, anno regni domin. noſtræ Elizabethæ, Dei gratia, Angl. Franciæ, & Hyb. Reg. fidei defenſoris, &c.* 41. A.B. *&* C.D. *de Halling, in comitatu prædicto* Yeoman, *quendam* I. at S. *de Friensburie in dicto comitatu Mariner inuenerunt, & viderunt apud Cucſtone in com. prædicto, die & anno ſupradict. cũ quodam tormento (Anglicè vocat.* a handgunne) *onerato puluere tormẽtario & globo plumbeo (anglicè* charged with gunpowder & a leaden bullet) *in quendam cuniculum adtunc exiſtentem in quodam loco ibidem vocato* Churchfield, *ſagittantem & exonerantem dictum tormentum, contra formam ſtatuti (in Parliament. dom. H. nuper regis Angliæ octaui, apud Weſtminſter', anno regni ſui 33. tent.) prouiſi ac editi: Ac proinde die & anno ſupradict. præfat.* I. at S. *arreſtauerunt, & apud Halling prad. coram me* I. Leueſon *milite, (vno, & dicto loco proximo Iuſticiariorum, dict. dom. reg. ad pacem in dicto comit. conſeruandam, necnon ad diuerſas tranſgreſſ. & alia malefact. a in eodem comitat. perpetrata audiendum & terminandum aſſignatorum, ad tunc*

vnà

vnà ſecum adduxerunt, petentes inde iuſticiam fieri. Qua quidem petione audita, Ego præfatus Ioh. Leueſon, apud Halling prædict. die, & anno ſupradictis, debitè ſuperinde examinaui præfatum I. at S. *ac probationes prædict.* A.B. *&* C.D. *in hac parte cepi: Ac propterea quòd tam per probationes prædictas, quàm per confeſſionem ipſius* I. at S. *ad tunc & ibidem apparuit mihi manifestè quòd præfat.* I. at S. (*cum non haberet in iure ſuo proprio, nec in iure vxoris ſuæ ad vſum ſuum proprium, nec aliqui alij ad vſum eiuſdem* I. at S. *haberent, terras, tenementa, feoda, annuitates, aut officia, ad clarum annuum valorem centum librarum*) *in tormento prædicto modo & forma prædictis ſagitaſſet, contra formam ſtatuti prædicti, Ego præfat. Iohannes Leueſon, prænominatum* I. at S. *die & anno ſupradict', proximæ Gaolæ dict. dom. Reg. apud* Maidſton *in comitatu prædicto de tranſgreſſione prædict. coram me conuictum commiſi, ibidem moraturum quouſque pœnam & forisfacturam decem librarum legalis monetæ Angliæ verè ſoluerit, viz. vnam medietatem inde dictæ Dominæ Reg. & alteram medietatem inde dictis* A.B *&* C.D, *primis eiuſdem* I. at S. *coram me ductoribus. In quorum omnium fidem & teſtimonium, Ego præfatus Ioh. Leueſon, hijs præſentibus, ſigillum meum appoſui, Datum apud Halling prædict. die & anno primum ſupradictis.*

Per me præfatum
I. Leueſon.

And

Handgunne & Crossebow. And euery person (other than such as are so authorized by the yeerely value of one hundred li. as is aforesaid) ought if hee be licenced to shoote in crossebow or handgunne, and do inhabit in the countrye, to present his name to the next Iustice of Peace adioyning. And thereupon the Iustice ought to present and recorde the same before the Iustices of the peace at the next quarter sessions, 2. E. 6. ca. 14. But learne of others, whether this part is to haue continuance still, or else did onely extend to such persons as had licence at that time.

Highwaies. The superuisors for amendment of the highwaies, ought within one moneth next after any offence done by any against the Acts (2. & 3. Ph. & Mar. ca. 8: & 5. El. ca. 13.) to present that offence to the next Iustice of the peace: and thereupon he ought to certifie the same at the next generall Sessions within the same County. 5. Eliz. cap. 13: & 27. Eli. ca. 11.

Highwaies. The occupiour of any Iron worke, for euery Loade of Cole, or Myne, and also for euery Tun of Iron, that he shall cause to be carried in any peare, (betweene the 12. of October, and the first of May) by the space of one Myle in the high waies within the Wealdes of Sussex, Kent, or Surrey, shall for euery three such Loades, and also for euery such Tunne, pay to the Iustice of peace dwelling neere to the places in that Coũtie where the High-wayes shalbe most annoyed

or

or to his Aſſignes, three ſhillings in money: the ſame (in default of ſuch paiment) to be leuied by diſtreſſe by ſuch Iuſtice or his Aſſignee, of any the goods of the partie.

And ſuch Occupiour, for euery 30. Loades of Cole & Mine, or of eyther of them, and for euery ten Tuns of Iron, caryed in the ſaid Highwaies, betweene the 1. of May, & 12. of October, in any yeare, ſhall laye one loade of Synder, Grauell, Stone or Chalke, in places to be appointed by ſuch Iuſtice, or els ſhall pay within 8. dayes after demaund, at euery ſuch Iron worke, iii.s. for euery ſuch loade, to the hands of ſuch Iuſtice, who vppon default of paiment, ſhall leuie the ſame by diſtreſſe: the ſame moneys to be likewiſe beſtowed by ſuch Iuſtice vpon the ſame High-wayes, at his diſcretion. And ſuch Iuſtice may yearely (within 40. dayes next after May day,) aſſigne the places for beſtowing the ſaide Sinder, Grauell, Stone, Chalke, or moneys therfore. 39. Eliz. cap. 19.

In default of the Pariſhioners and Church-wardens, that ſhall not tare the Pariſhioners towards the reliefe of Diſabled Souldiours, any Iuſtice of the Peace dwelling in that Pariſh, or (if none dwel there) in the parts next adioyning, may aſſeſſe the ſame: and may alſo (in default of the Churchwardens, and Conſtable,) leuie the ſame by diſtreſſe to be ſolde. 35. Eli. cap. 4. Diſabled ſouldiers.

The Iuſtice of peace, of, or neare ỳ place where any

Seafaring men.

any Sea-faring man(ſuffering Shipwrack,& not hauing to relieue himſelfe homewardes) doth land, may giue him a Teſtimoniall vnder his hand,containing the time and place of his landing, with the place of his birth or dwelling, to which he is to paſſe, and with a conuenient time for his paſſage thither. By which he may accordingly paſſe in the vſuall and direct wayes thither,and aſke and take reliefe. 39.El.ca.4.

Soldiers and Mariners to begge.

The Iuſtice of Peace, in, or neare the place where any idle and wandring Souldiour,or Mariner(cõming from his Captain,from,or frõ beyond the Seas) doth land,ought(vpon requeſt)to giue him a Teſtimoniall vnder his hand,expreſſing therein the time and place of ſuch his landing, with the place of his dwelling, or birth, to which he is to paſſe,and with a conuenient time therein limited for his paſſage thither. And the Iuſtice of Peace,next adioyning to the place, or direct way, where any Souldiour, or Mariner, (comming from,or from beyond the Seas)landeth,or trauaileth, & maketh knowne his pouertie,may licence him to paſſe the next and direct way to the place whither he is to repaire,& may limite him time neſſarie onely for his trauaile thither: which licence if he purſue,he may aſke and take(without danger)for his neceſſarie reliefe in ſuch his trauaile,that which any perſons ſhall willingly giue him. 39.Eli. cap.17.

One Iuſtice of the Peace, of the Shire or Riding

ding, next adioyning to any Cittie, Borowe, or Towne corporate, beyond the Riuer of Trent, where Northerne cloathes be made, may also ioyne with them of such Citie, Borow, or towne corporate, in appointing the yearely Ouerseers for such clothes, &c. 29. Eli. cap. 20. Northren Clothes.

Now, for asmuch as this Booke (containing the power of one Iustice to be exercised out of the Sessions) hath great varietie, & is thereby growen somewhat long, I will hereto (for his ease) annexe a summarie and short Table, by which he may suddenly, and at once (as it were) behold, whatsoeuer he alone (out of the Sessions) may take vpon him to accomplish.

A Recapitulation of all that which one Iustice of Peace may doe out of *the Sessions*.

Suertie of the Peace. Cap. 2.	Pag. 76.
By Supplicauit.	77
By his owne discretion.	79
By prayer of the partie.	80
Precept thereof.	87
Supersedeas.	98
Recognusance for the Peace.	102
Returne of Supplicauit.	110
Returne of Certiorari.	111
Release of the Peace.	113
Certifie the Recognusance.	115
Suertie of the good abearing.	118
Precept for it.	124

Make

Recognuſance. 125
Releaſe. 126

Breach of the Peace.
Cap. 3. 127
Puniſh affray, aſſault, &c. 128

Forcible entrie.
Cap. 4. 138
Record the force. 152
Remoue the force. 154
Enquire of the force. 155
Reſtore the poſſeſſion. 156
Execute the Writ vpon the Statute of Northampton. 171

Riot, Rout, vnlawfull and rebellious aſſembly.
Cap. 5. 177
Arreſt, and commit Riotters, &c. 185
Rebellious aſſemblies. 187
Make proclamation. 188
Aſſemble power to repreſſe them. ibid.

Statutes implied and meant in the Commiſſion.
Cap. 6. 189
Command: Huy and Cry. Night watches. Search. High wates, to be enlarged. Conſtables to be choſen. 190
Forbid Faires in Churchyards. Compell to ſweare to the Peace. Charge Conſtables to arreſt Felons. 191

Statutes, not mentioned nor meant in the Commiſſion.
Cap. 7. 193
Conſeruation of Riuers. 194
Controuerſies of maſters and ſeruants. 195

Exa-

Examine Hunters. 196
Arrest and bind plaiers at vnlawfull games. 196
Punish offences of making Tile. 197
Commit Souldiers that sell harnesse. 197
Receiue the discouerie of Agnus Dei. 198
Commit to Warde the speaker of slaunderous newes. 199
Commit to Warde the disturbers of any Preacher. 199
Seise the goods of Egyptian, &c. 200
Ioyne in taking the Inrolment of a bargaine and sale. 200
Examine and search workes of Ware. 200
Punish the breakers of the Assise of Fewell. 201
Certifie of such as repaire not to their parish Church. 201
Take the submission and oath of Iesuites, &c. 202
Examine the takers of Pheasants and Partriches. 202
Examine the entring of plaintes in Shiriffes Courts. 203
Certifie the vnlading of corne and graine. 203
Take the examination of him that is robbed, before he shall bring his action. 204
Giue aduice for the sale of deceitfull Malt. 204
Take Bonde of him that is restrained to make Malt. 205
Take the claime of stollen Horses. 205
Heare the offences of Watermen. 205
Require submission of Sectaries. 206
Warne, not to relieue Recusants. 206
Punish Rogues. 206, & 295
Take information against Felons. 207
Examine suspects, touching Logwood. 207
Trie the stretching of Northen Clothes and Kerseies, and ioyne in appointing of Ouerseers of such. 207, 298
Examine and commit felons that are brought before him. 208

Binde the informers against Felons, to giue Euidence. 208
Rate the asselle vpon the Parish. 290
Send to the house of Correction, such as will not doe their appointed worke. 290
Controll the Shirifes entring of plaints and amerciaments. 291.
Conuict shooters in Crosselbowes, and Gunnes, 291.296
Take presentments concerning highwaies. 296
Appoint the bestowing of stuffe, or take mony, for the high wayes in Kent, Sussex & Surrey. 296
Rate the asselle for Souldiers: Make testimoniall & giue Licences, to them & to Mariners. 298

Howbeit, our Iustice of Peace is not (in the execution of any of these Statutes) to sit downe and rest himselfe, vppon my short collection or note of them, wherein (howsoeuer I haue obserued some substance of the matter) the whole maner of the dooing in circumstance coulde not bee comprehended: But he must alwaies (for his more assurance) flie vnto ỹ Abridgement of the Statutes, or rather to the boke of Statutes at large, and therby line out, and leuell his whole proceeding. For, as in the penning of Lawes, each word is (or ought to be) of weight and value: So, neither will this Volume containe them wholly, nor the Skill of any is able, so sufficiently to abridge them, but that hee shall doe wrong to the substance, and bodie of the Law, which cannot speake plainely, except it speake fully and all together.

The

THE THIRD BOOKE

containing the Practicque of two, (or moe) *Iustices of the Peace, out of* the *Sessions.*

What things any two Iustices of the Peace may doe out of the Sessions: and therein first of *Riots* &c.

Cap. 1.

THE authoritie and power of one Iustice of the Peace, (without the Sessions) thus perused and passed ouer, let vs now examin the like power of two, both in generality, and particular.

It is vniuersally true, that whatsoeuer thing one Iustice of the Peace alone is permitted to doe, either for the conseruation of the Peace, or in the execution of the Commission (or Statutes) the same also may bee no lesse lawfully performed by two (or moe) Iustices: except it bee in a very fewe cases, where some Statutes doe seeme specially to appropriate the execution

thereof to ſome one certaine Iuſtice, either in reſpect that hee is Next to the place, eldeſt of the Quorum, or ſuch like.

The power of two Iuſtices of the Peace, in puniſhing of Riots &c.

But we will proceede by particularities: and becauſe the firſt place (of right) belongeth to the Peace, (wherein the office of this Iuſticer chiefly conſiſteth) and for that alſo we haue (in the 5. chapter of the ſecond booke) diſcloſed, what an vnlawfull Aſſembly, Rout, and Riot bee; to the end that one Iuſtice (which hath ſome portion of power in them) might thereby vnderſtand, what it is that he ought to preuent, or ſtay (in that behalfe) for the cuſtodie of the Peace: let vs heere ſupply in two Iuſtices, that power in puniſhing thoſe Riots, Routs, and Vnlawfull aſſemblies, which we ſaid before to be wanting in one: And that ſhall we the better doe, if we firſt of all lay open the Statute of King Henrie the fourth, containing a moſt ample authoritie, as well for the repreſſing, as for the recording of the ſame and then may we adioyne ſomwhat out of ſome other Statutes alſo.

IF any *Riot*, *Aſſembly*, or *Rout* of people againſt the Lawe bee made, the Iuſtices of Peace, or three or two (at the leaſt) of them, and the Sherife (or Vnderſherife) of the countie, ſhall come with the power of the Countie (if neede bee) to arreſt them, and ſhall arreſt them, and ſhall haue power to recorde that which

which they ſhall finde ſo doone in their preſence againſt the lawe. And by that recorde ſuch offenders ſhall bee conuicted, in manner and forme as is contained in the Statute of *Forcible entries*, (*viz.* 15. R. 2. cap. 2.) And if ſuch treſpaſſers be departed before their comming, then theſe Iuſtices of Peace, or three, or two of them, ſhall diligently inquire within a moneth after ſuch *Riot*, *Aſſemblie*, or *Rout* made: and thereof ſhall heare and determine according to the lawe of the land: and if the trueth may not bee found in the manner as aforeſaide, then within a moneth then next following, the ſaide Iuſtices and ſherife (or Vnderſherife) ſhall certifie before the King and his Councell, all the deedes and circumſtances thereof: which Certificate ſhall bee of like force as the verdite of twelue men, &c. And if ſuch offenders doe trauerſe the matter ſo certified, then the Certificate and Trauerſe ſhall be ſent into the Kings Bench, to bee tried and determined, as lawe requireth. And that the Iuſtices of the Peace dwelling moſt nigheſt in euery Countie, or Vnderſherife, ſhall doe execution of this Statute, euery one vppon paine of one hundred pounds, to bee paide to the king, as oft as they ſhal be found in default 13. H. 4. cap. 7.

Whereupon the Statute (19. H. 7.) addeth, that if the ſayde Riot, Route, or vnlawfull assembly, Maintenance & embracerie.

assembly, bee not found by the saide Iurie, by reason of any maintenaunce, or embraceric of the sayd Iurours: then the same Iustices and Sherife (or Vndersherife) shall also certifie the names of the maintaynours and embracers in that behalfe (if any bee) with their misdemeanours that they knowe, vppon payne of euery of the sayde Iustices and Sherifes or (Vndersherife) to forfeite twentie poundes (if they haue no reasonable excuse) for not certifying the same: which Certificate so made, shall bee of like force as before, &c. And euerie person duely prooued to bee a maintainer, or embracer in the same, shall forfeit twentie pounds to the King, and shall bee committed to Warde, there to remaine by the discretion of the Iustices 19.H.7.cap.13.

Assistance. Heereunto also the Statute (2. Hen. 5.) adiogneth further, That the Kings liege people (being sufficient to trauell) shall bee assistant to these Iustices, Sherifes (or Vndersherife) when they shall bee reasonably warned, to ryde with them, in ayde to resist such Riottes, Routes and Assemblies, vpon payne of Imprisonment, and to make fine and ran-

At the Kings charges. some to the King. Prouided alwayes, that the said Iustices, Sherife (or Vndersherife shall doe their sayde offices at the Kings costes, in going, tarying, and returning, by payment thereof to bee made by the Sherife, by Indenture

ture betweene him and them, of the ſaid payment. And that ſuch Riotters (attainted of great and haynous Riots) ſhall haue one whole yeares impriſonment at the leaſt, whithout being let out of priſon by bayle, mainepriſe, or in any other manner, during the yeare aforeſaid: and that the Riotters (attainted of petite Riots) ſhall haue Impriſonment as beſt ſhall ſeeme to the King and to his Counſell: and that the fines of ſuch Riotters attainted, ſhall bee by the ſame Iuſtices encreaſed, and put in greater ſummes, then they were wont to bee put in ſuch caſes before that time, in ayde and ſupportation of the coſtes of the Iuſtices and other officers aforeſaide, in this behalfe, 2. H. 5. cap. 8.

Capias and Proclamation

Now, if it be witneſſed by two Iuſtices of the Peace, and the Sherife, by Letters vnder their Seales, to the Lord Chauncellour of *England*, that any Murders, Manſlaughters, batteries, robberies, aſſemblies of people in great number in manner of inſurrection, or other rebellious Riots, haue beene done, and that ſuch offendors haue withdrawen themſelues, to the intent to auoide the execution of the common Lawe, then the Lorde Chauncellor may make a Writ of *Capias*, and thereupon (if neede bee) a Proclamation, &c. 2. H. 5. cap. 9. which Statute was made to endure til the next Parliment, and ſo diſcontinued: but it was reuiued

by 8.H.6. & made perpetuall: which moreouer, ordaineth, that (before this Writ of *Capias* shall be awarded) two Iustices of the Peace, and the Sherife of the Shire wher such riot is supposed, ought to witnesse, that the common voice and fame runneth in the saide Countie of the same Riots, 8.H.6. cap. 14.

The letter (or Text) of these lawes beeing thus laide open, let vs also see what exposition and helpe M. Marrow, and others doe bring to some partes thereof, and especially to that of king Henry the fourth: as well for arresting the Riotters, as for recording, enquiring, and certifying of the Riot it selfe.

Some part of the occasion of the statute. 13. H.4.

For asmuch as the power giuen by the statute (17.R.2, 8.c.8.) for repressing of great assemblies and riots, was deliuered with such coniunctiue, and generall words, viz. To the Sherif, and other the Kings Ministers, that it was often doubted, not onely who were meant by the word Ministers, but also whether the Sherife, and any of those Ministers (apart) might performe the seruice, or that they ought all to ioyne together therein: Therefore this statute (13.H.4.) cleareth those questions, & putteth expresse power into the hands of any three (or two) Iustices of the Peace, & of the Sherife (or Vndersherife) not only to arrest such riotters, but also to conuict them of their offences, by recording of that which they shuld see to be don against the peace.

And

And this authoritie of aſſembling the power of the countie, and of arreſting, and impriſoning the riotters, was once before this time (namely, 2. R. 2. cap. 6.) committed to ſome: but it was by and by after (euen in the ſelfe ſame yeare of the ſame King) reſumed, as a thing ouer-hard to bee borne (that a Freeman ſhould be impriſoned, without an Enditement, or other Triall by his peeres, as *Magna Charta* ſpeaketh) vntill that the experience of greater euils had prepared, and made the ſtomacke of the Common-wealth able and fit to digeſt it.

Now, whereas here is mention of the power of the Countie: by vertue of thoſe words, M. Marr. thinketh, that the Iuſtices of the Peace, Sherife or Vnderſherife, ought to haue the aid and attendance of all Knights, gentlemen, yeomen, labourers, ſeruants, apprentices, and villaines: and likewiſe of Wardes, and of other yong men that be aboue the age of xv. yeares: becauſe all of that age are bound to haue harnes by the Statute of *Wincheſter*. But women, eccleſiaſticall perſons, and ſuch as be decrepite, or doe labour of any continuall infirmitie, ſhall not be compelled to attend: for the Statute (2. Henry 5. cap. 8. which alſo worketh vppon the ſame ground) ſayth, that perſon ſufficient to trauell, ſhall bee aſſiſtant in this ſeruice. And it is referred to the diſcretion of theſe Iuſtices, Sherife or Vnderſherife, howe many or how few

Power of the Countie.

fewe, they will haue to attend vpon them in this businesse: and howe or in what sort, also they shall be armed, weaponed, or otherwise furnished for it.

Information. But be it, that information be made to these Iustices, and Sherife (or Vndersherife) that certaine persons be riotously assembled at Dale, and they doe thereupon gather people to suppresse them, and when they come to the place, they find no Riot there: yet are they excusable for this assemblie of power so made by them: because they did it by information.

And though they doe so much without any information, yet if they find a Riot when they come to the place, they shall not onely bee excused for calling together such companie vppon their owne motion, but may also lawfully proceed to punish the offendors, Fitzh. *titul.* Iustic. *del.* P. 9.

Arrest. And this they ought to doe by Arrest, if they be present: In the execution of which Arrest, they may also iustifie the beating, wounding, or killing, of any of the Rioters that shall resist it. So, if they meete with the offendors in their way riotously arrayed, and comming from the place, they may neuertheless arrest them for their vnlawfull assemblie: and after this arrest so made, the power of the countrey ought to aid the Sherife for conueighing the Riotters vnto the Gaole: without which the Arrest were but

nugation

nugation. And in this point it differeth (by the opinion of M. Marrow) from the arrest of a Felon by Huy and Cry: for there (sayth he) when they haue once deliuered the Felon vnto the Shirife, they are no longer compellable to wait vpon him.

The Arrest thus made, these Iustices, Shirife, or Vndersherife, ought to make a record in writing of that which they see and finde: the which (since it is a conuiction in it selfe against the offendors) aught to bee formall and certaine, as well for the time, and place, as for the number, weapon, maner, and other circumstance. For the parties shall be concluded thereby, and shall not be receiued to trauerse, or deny it: because the view of a Riot (as M. Fitzher. sayth) is not to bee trauersed. In so much as if either they doe Record, that they sawe a Riot, where in truth there was none at all, or that it doe afterwards appeare by the Record it selfe, that the Acte which they Recorded doth not amount to a Riot, yet be the parties without any remedie. And if a man bee bound to the Peace, and afterwardes such a record of a Riot, is made against him and others, he shall neither iustifie (as M. Marr. holdeth) nor plead not guiltie, in a *Scire facias* vpon his Recognisance. The Record of the Riot: and the credit thereof.

If therefore a man be slaine, or maymed, or a rescous bee done to the officer, by such a Riot, then the record ought to bee, *Riotosè occiderunt*,

or

or *riotosè mahimauerunt*, or *riotosè reſcuſſerunt*: and not *Felonicè*, nor ſimply *reſcuſſerunt*: becauſe their authoritie in this caſe is reſtrained to the riot only: and extendeth not to the felonie, but ſo, ỹ the parties may (notwithſtanding that record) plead not guiltie to the felonie, or to the reſcuſſe, howſoeuer (for the riot) they are ſtopped.

And this record ought to remaine with the one of them: and they, (and none other Iuſtices of the Peace) ſhall impriſon the riotters, and aſſeſſe their fine, Marrow: which fine they are willed by the Statute (2. H. 5. cap. 8.) to put in greater ſummes then they were woont to be put in ſuch caſes, for ſupportation of the coſtes of the ſaid Iuſtices, and other officers in this behalfe, as well in going and tarrying, as returning: whereof paiment ought to bee made by the Shirife, by indenture thereof betweene him and them.

But if the riotters ſhall eſcape, after that theſe Iuſtices, Shirife, or Vnderſhrife do come and ſee the riot, then can they neither arreſt them at any other time (ſaith M. Mar.) nor award Proceſſe againſt them vpon that record which they doe make: And then, that record muſt bee ſent into the Kings bench, from which place Proceſſe may be made vpon it: where alſo the parties ſhall not be admitted to any trauerſe, but muſt of neceſſitie make fine for their offences.

And

And now, if theſe Iuſtices, Shirife, or Vnderſhrife, ſhall goe to ſee one riot, and then an other riot falleth out in their preſence, yet may they make a record of that: Marr. So, if they be aſſembled for ſome other cauſe of ſeruice, or for ſome priuate buſineſſe (as for an arbitrement, or ſuch like matter) and a riot happeneth to be committed in their ſight, they may record it: Marrow.

Likewiſe, if the riotters ſhall make a riot vpon the Iuſtices, and Shirife that doe come of purpoſe to arreſt them for their former riot, they may record that alſo, Mar. and ſo may they (as I thinke) record any riot that ſhall be done vpon themſelues, whileſt they be aſſembled for any other cauſe than for to ſuppreſſe a riot, though M. Marr. ſeemeth to denie it.

Theſe bee the things that I haue obſerued, concerning the execution of theſe parts of theſe Laws, declared againſt vnlawfull Aſſemblies, routs, and riots: whereunto I will adioyne a caſe or twaine, reported by M. Fitzh. and will then proceede as I promiſed.

If two Iuſtices of the Peace (without the Shirife or Vnderſherife) ſhall ſee certaine perſons in doing any riot, they may cauſe them to be arreſted, and may make a record of that offence, whereof the parties ſhall be for euer concluded. Fitzh. *tit.* Iuſtice *del* P. 9. whereto he addeth (in his booke of Iuſtices of the Peace, folio. 17.) that

that if two ſuch Iuſtices ſhall make ſuch a Record, where (in trueth) they ſawe no ſuch Riot, that yet the parties ſhall bee eſtopped, and are without remedie.

How this Record may be made without the Shirife, or Vnderſhirife, ſince none other Statute giueth this power of recording but this onely, I cannot hitherto perceiue: vnleſſe it bee vnderſtoode of a Riot, committed in their preſence whileſt they bee ſitting in Iudiciall place (as in their Seſſions) or at the leaſt, done to their diſturbance, when they be comming vnto the Seſſions: and ſo farre in this way with him goeth the booke, 7. E. 4. 18. as well as that (14. H. 7.) which is reported by Fitz. *tit.* Iuſtice *del* P. 9.

The *Recording* of a *Riot* by the *Iuſtices*, and *Shirife*, or *Vnderſhirife*, may be after this (or the like) maner.

MEmorandum quod 20. *die Ianuarij Anno regni domin. noſtræ Eliz. Dei gratia &c. Nos* Henricus Brook *miles, Dominus* Cobham, *Dominus* Guardianus *quinque portuum, &* Ed. Hoby *miles, duo Iuſticiariorum dictæ domin. Reginæ ad pacem in com. prædicto, &c. aſſignatorum, &* Martinus Barnham *ad tunc vicecomes eiuſdem comitatus, ad grauem querimoniam & humilem petitionem* A. B. *de* C. *in dicto comitatu* Yeoman,

in

in proprijs, personis nostris accessimus ad domum mansionalem ipsius A.B. *in* C. *prædicta, ac tunc & ibidem inuenimus* D. E. F. G. H. I. *de* C. *prædicta* Labourers, *ac alios malefactores & pacis dictæ dom. Reg. perturbatores ignotos, ad numerum decem personarum modo guerrino arraiatos, viz. gladijs, pugionibus, galeis, loricis, arcubus & sagittis, illicitè & riotosè aggregatos, & eandem domum obsidentes, & multa mala in ipsum* A.B. *comminantes, in magnam pacis dictæ Dom. Reg. perturbationem, ac populi sui terrorem, & contra formam Statuti in Parliamento Domini Henrici nuper Regis Angliæ quarto, anno regni sui decimo tertio tento editi & prouisi. Ac propterea nos præfati Dominus* Cobham, *&* Edw. Hoby, *&* Martinus Barnham, *prædict.* D. E. F. G. H. I. *&c. tunc & ibidem arrestari, ac proximæ gaolæ dict. dom. Reg. in comitatu prad. duci fecimus, per visum & recordũ nostrum de illicita congregatione & Riota prædict. conuictos, ibidem moraturos quousque finem dict. dom. Reg. proinde fecerint. In cuius rei testimonium huic præsenti recordo nostro sigilla nostra apposuimus. Datũ apud* C. *prad. die & an. primũ prædictis.*

And the *Mittimus*, for conueying the Riotters to the Gaole, may bee easily (with a few words of change) framed out of that which is before in the chapter of Forcible entries.

But nowe, as these lawes haue laied downe this order of proceeding against the Riotters that

Enquire of the Riot.

that ſhall be deprehended in their offence: So haue they alſo prouided, that if the offendors be gone, yet their fault ſhall not eſcape with them. And therefore, theſe Iuſtices are commaunded, firſt, to enquire of that by others, which they and the Sherife or Vnderſherife, did not ſee and finde: and if the trueth may not thereby be found, then to certifie what be the impediments.

To this Enquirie, the Sherife or Vnderſherife be not aſſociated, as they were before in arreſting the riotters and recording their diſorder: becauſe they are now miniſters for returning of the Enquirie, and therfore to be ſpared from being Iudges therein.

And albeit theſe Iuſtices doe not go to ſee the riot as this Statute biddeth, yet may they Enquire thereof within the moneth after.

Euery Iuror of this Enquirie, ought to haue lands in that county to the value of twenty ſhillings by yeare of Freehold, or fiue and twenty ſhillings eight pence of Copyhold, or of both, aboue all charges: vpon euery of which alſo, the Sherife ought to returne xx. s. in iſſues at the firſt day, & xl. s. at the ſecond day, 19. H. 7. ca. 13.

Moreouer, where the Statute ſaith, that the ſame Iuſtices ſhal enquire, yet if any other Iuſtices of Peace there (and not they) ſhall do it, that will ſuffice, Marr.

Neither is it of ſuch neceſſity to haue the Enquiry within the moneth, that for default therof

the

the presentmẽt shal be void, for ỹ Iustices of the Peace may Enquire therof at any time by force of their Commission: but if it be not within the month, euery of them that be the next, is in danger to loose 100. li. for it. And therefore, if these Iustices doe charge the Iurie within the moneth, and doe giue day vnto them for yeelding their presentment after their month, the Statute is not offended by it: Marrow.

But if it happen the parties to fall to an accord amongst themselues, so as none of them will sollicite the Iustices to make the Enquirie: yet ought the Iustices to proceede *Ex officio*, as knowing that either some of the Iurie may haue knowledge of the fact, or that (vpon Proclamation made to giue euidence for the Queen) some other persons may come forth ready to enforme them.

The trueth of the matter being found by this Enquirie, these Iustices haue authoritie by this statute not onely to make out Processe against the offendors vnder their own *Teste*, but also to commit them to prison til they make their Fine, and to deliuer them, after payment of the same, or vpon suerties taken for it: or otherwise to receiue their trauerse, and therupon (if the matter will so serue) to discharge, and dismisse them.

For, to all these effects (as I think) the words of the Statute (heare & determine according to the law of the land) do lead & inable them.

On

Certifie the Riot.

On the other ſide, if by this Enquirie the fault be not brought to light, being hindered either by the malicious peruerſitie of the Iurors, or by the vnlawfull maintenance, countenance, or embracerie of other men that put themſelues into the cauſe: yet ought there (within one moneth after ſuch Enquirie) a Certificate to bee made, as well of the names of the principall offendors, and of ſo much of the fact, and circumſtances thereof, as may by any waies or meanes appeare; as alſo of the names of ſuch maintainers, and imbracers, and of their miſdemeanors in this behalfe.

And here the Sherife (or his Vnderſherife) is once more called to this ſeruice, and ioyned with theſe Iuſtices: who by reaſon of his preſence at the Enquirie, may both helpe to eſpie the euill, and adde force, & credite to the Certificate. The ende of which Certificate, is but onely to put the offendors to anſwere.

For, although the wordes of the Statute doe make the certificate equall in force with the verdite of xii. men: yet, foraſmuch as it followeth in the ſame Statute, that the Certificate may bee trauerſed, that is a plain proofe, that it is no conuiction at all, but is onely of the nature of a declaration, preſentment, or enditement, at the common Law, & therefore alſo, it ought to comprehend the certainty of the time, place, perſons, & other circumſtances, though perhaps (as M. Marrow

Marrow holdeth) it needeth not to expreſſe the additions of the parties, as not beeing within the words of the ſtatute (1. H. 5. cap. 5.) becauſe no proceſſe of vtlarie doth lie vpon it.

And, whereas the Enquirie is good, though it be had after a moneth from the offence committed, this Certificat (ſaith Marrow) is not good, vnleſſe it be made within the moneth after the Enquirie: becauſe the power of certifying is giuen by the ſtatute onely, which is the Warrant that they muſt purſue.

Moreouer, where the ſtatut willeth that they ſhall certifie before the King and his Counſell: it ſeemeth to me, that the ſame ought to be done either to the body (I beeing) of the priuie Counſel, or into the Starre Chamber at the leaſt: becauſe the Statut it ſelfe doth by expreſſe words diſtinguiſh the King and his Counſel here, both from the Chancerie, and from the Kings bench, which in many other caſes bee taken from the king, and his counſel alſo. And this I do the rather note, becauſe I haue read of Certificates of this kinde, ſent by Iuſtices of the peace into the Starre Chamber, and for that it is penal to thoſe Iuſtices, Sherifes, or Vnderſherife, if they ſhall not addreſſe their Certificate, as the ſtatut doth appoint them.

But now, if two Iuſtices, and the Sherife goe to ſee a Riot, and other two Iuſtices make the Enquirie: then the one ſort or the other of them,

(with the Sheriſe or Vnderſherife) may make the Certificate, Marr. And if foure Iuſtices, the Sheriſe, and Vnderſherife goe to ſee a Riot, and two of thoſe Iuſtices and the Sheriſe ioine in one Certificate, and the other two and the Vnderſherife ioyne in an other Certificate, then that Certificate whereunto the Sheriſe is partie, ſhall be preferred: becauſe the authoritie of the Vnderſherife, is ouerſhadowed by the Sheriſes owne preſence: Marrow. But otherwiſe, if two Certificates be equall, then that ſhall be preferred which is beſt for the Queene.

And the ſame rule muſt hold, where the Enquirie, and Certificate ſhall diſagree: for, if the Enquirie ſhall finde that the Riot was made by 12. perſons, where in truth it was made by 100 or if the Enquirie be of 12. perſons, & the trueth is that thoſe 12. were harneſſed: or if the Enditment be of a riotous aſſault onely, and the Riotters did both make an aſſault, and did beate and wound: in theſe, and the like caſes, the Certificat may wel be made ſo, as the omiſſion in the Enquirie ſhall be ſupplied by it. Marr. Howbeit, (he ſaith) that if they ſhal varie onely in the day, then the Enditement ſhall be preferred.

And if after the Enquirie, and before the Certificate, the Sheriſe die, or one of the Iuſtices be put out of the commiſsion, no Certificat can then be made. Marr. But if the Riot were recorded by the Iuſtices, and Sheriſe, and the Riotters

Riotters doe escape, yet may that Iustice of the peace (so put out of the commission) ioyne with the other Iustice and the Sherife, in their Certificate of the same. Marrow.

These speculations of M. Marrowes reading, are like inough to fal in practise, and therefore I thought it not amisse to acquaint the reader before hand with some of them.

There remaineth yet, the last branche of the Statute (13. H. 4.) that willeth the Iustices of Peace (most nigh in euerie Countie, to the place where such Riot, or Route shall bee) to doe execution of this Statute, vnder the paine of 100. li. vpon euerie of them for euerie default. Upon which words, these notes may bee gathered: First, that no Iustice of the Peace (dwelling out of the countie where the Riot is) can be charged, although hee be the next vnto the place. Secondly, that if any other Iustices (that be not next vnto the place) shal execute the statute, then that will excuse those Iustices that be the next, because they all haue power by the first part of the Statute. The peine of 100. li. vpon the Iustices.

And this is the cause for which I haue taken leaue to place these things before, vnder the authoritie of any two Iustices generally, although the statute doth specially (and that by a greater paine) bind them that be the next. Yea, al the Iustices of peace (within the cõmission & county) ought to supplie the default of the next Iustices,

if they haue notice of such vnlawfull Assembly, Rout, or Riot: for, so was it lately adiudged in the Starre Chamber: howbeit that penaltie of 100. li. was there laide vppon the next Iustices onely, and the residue were fined by the discretion of that Court, according to the exigencie and temper of their fault.

Thirdly, it is to bee gathered, that if one or two of the Iustices of the Peace (that be next to the place) shal come to execute the Statute, and the Sherife or Vndersherife, doe not come at al, yet those Iustices shall be excused for their 100. li. And M. Marr. thinketh that in this lack case, the Iustices be bound to send for the Sherife or Vndersherife, and not they for the Iustices: and in the same case also it seemeth that the Iustices shalbe fined, if they arrest not the Riotters, or do not moreouer al that which without the Sherife or Vndersherife, they are herein by any way authorized to performe.

Lastly, that they shall doe execution of this Statute, that is to say, of all, and euery part thereof, respectiuely as to such Iustices, Sherife, or Vndersherife, is thereby appointed. But whether they ar to take notice of such Riots at their peril, or may safely expect the information therof, I finde it both doubted & vndecided. *Collect.* Dyar. 110. 25.

Thus much of these things after this consideration: now to some precedents for the furtherance

therance of theſe Iuſtices in the execution, and then to our other matters.

The Precept to the *Sherife*, for Enquirie *vpon a* Riot, *may beare this* Forme.

MIchael Sondes miles, & Mathæus Hadde Armig. *duo Iuſticiariorum, &c. aſſignatorum, vicecomiti eiuſdem comitatus, Salutem: Ex parte dictæ dom. Reg. tibi præcipimus, quòd venire facias coram nobis apud I. in comitatu prædicto, 29. die Ianuarij proximè futuro 24. probos, ſufficientes, & legales homines de comitatu prædicto, quorum quilibet habeat terras & tenementa, infra dictum com. liberi tenementi per chartam ad annuum valorem 20. ſolid. aut per copiam rotulorum Curiæ ad annuum valorem 26. ſolid. & 8. denariorum, aut per vtrunque, altra omnes repriſas: ad inquirendum pro dicta Domina Regina ac pro indemnitate noſtra in hac parte, ſuper ſacramentum ſuum de quibuſdam illicitis aggregationibus & riottis apud C. in comitat. prædicto nuper commiſsis vt dicitur. Et hoc nullatenus omittas ſub pœna 20. lib. quam incurſurus es ſi in executione præmiſſorum defeceris. Et habeas ibi tunc nomina Iuratorum prædictorum, & hoc præceptum: Datum ſub ſigillis noſtris, 20. die Ianuarij, Anno regni dictæ dominæ noſtræ Eliz. &c. 41.*

The entrie of the preſentment (or Enquiry) *may haue this forme.*

Kent. *INquiſitio pro domina Regina, &c.* (as before in forcible entries) *coram* Mich. Sondes milite *&* Mat. Had. *Qui ad hoc iurati & onerati, dicunt ſuper ſacramentum ſuum prædictum, quod D.E. F.G. & H.I. ſimul cum aliis malefactoribus, & pacis dictæ Dom. Reginæ perturbatoribus ignotis, (ad numerum ſeptem perſonarum) modo guerrino arraiati, vi & armis, viz. Hawberdis, gladijs, arcubus, & ſagittis 20. die menſis Ianuarij, vlt. præterito, apud C. in comit. prædicto inter horas octauam & nonam, poſt meridiem eiuſdem diei, domum manſionalem A.B. de C. prædict.* Yeoman, *ſituatam in C. prædicta, riotoſè fregerunt, & intrauerunt, & in ipſum A.B. tunc & ibidem inſultum fecerunt, ac ipſum tunc & ibidem verberauerunt, vulnerauerunt, & indignis modis tractauerunt, ita quòd de vita eius deſperabatur, in magnam pacis dictæ domine Reg. perturbationē & populi terrorem, ac contra formam Statuti de Riotis, Routis, & congregationib⁹ gentium illicitis in parliamento dom. H. nuper Regis, Angl. 4. Ann. regni ſui 13. tento prouiſi & editi.*

And as for the Certificat (which ought to be made to the Queene, and the Counſel) that may be done in Engliſh, by way of a Letter, comprehending the trueth of the matter preſent, as the caſe ſhall require.

And here, let vs leaue theſe vnlawful Aſſemblies

blies, Routs, and Riots, and addreſſe our ſtile to other Statutes.

Any two Iuſtices of the Peace, vppon complaint, that any ſeruant retained by the ſtatute, departeth before the ende of his terme, or at the end therof without a quarters warning: or that any perſon (compellable by the ſtatute to ſerue) doeth refuſe to ſerue for the wages appointed, may examine the matter, (and finding ſuch ſeruant, or perſon faultie) may commit him to ward, there to remaine, till hee ſhalbe bound to the partie offended, to ſerue and continue according to the Statute. Seruants and Labourers.

They alſo, may impriſon for ten daies, the maſter that giueth, & for xxi. daies the ſeruant that taketh, more wages then after the rates thereof made: and may impriſon for a whole yeare, ſuch ſeruant as ſhal be conuicted before them (by his owne confeſſion, or by the oathes of two honeſt men) to haue made any aſſault vpon his maſter, miſtreſſe, or other perſon hauing the charge of him, or of the worke: and they may appoint any woman (being vnmarried, of the age of twelue yeares, & vnder fourtie) that is out of ſeruice, and whome they ſhal thinke meete to ſerue, to be retained by their diſcretion, and may vpon her refuſal commit her to Ward, til ſhe will be ſo bound to ſerue 5. Eli. cap. 4.

Any two Iuſtices of the peace, may make teſtimonial to a Seruing man, that is turned away

Seruingmen. from his maſter, or whoſe maſter is dead: 14. El. cap. 5. & 18. Eli. ca. 3. & 27. Eli. cap. 11.

Apprentices. Any two Iuſtices of the Peace maye giue aſſent to the Churchwardens and Ouerſeers, or to the greater part of them, to bynd (as Apprentices) the children of poore parents, till the age of the man-child of 24. and of the woman child till 21. 39. Eli. ca. 3.

Northren Cloth. Any two Iuſtices of Peace may diſpoſe of the moneys ryſing by the deceiptfull Stretching of the Northern Cloth &c. 39. Eli. cap. 20.

Warrant to leuie forfaitures for Rogues. Any two Iuſtices of Peace may by Warrant vnder their hands and ſeales, cauſe to be leuied (by diſtreſſe, and Sale of the goods of the offendor) all Fines and Forfaites, that ſhall growe by the Confeſſion of the offendor, or by proofe of two lawful and ſufficient witneſſes, before them vpon this ſtatute of Rogues 39. Eli. cap. 4.

Malting. Any two Iuſtices of Peace may duely conuict by two witneſſes, or by the parties Confeſſion, any perſon that ſhal diſobey the reſtraint of Malting, made [againſt] in the open Quarter Seſſions, and ſhall commit him to priſon without Baile, or Mainprife for three daies & vntill that he become bonden in 40. li. to ſome one Iuſtice to performe ſuch reſtraint 39. Eli. cap. 16.

Quære of this [againſt] I thinke it ſhold be out.

Licence to goe to Bath or Buckſtone. Such two Iuſtices may Licence diſeaſed perſons (liuing of almes) to trauel without begging to Bathe, or to Buckeſtone, for remedie of their griefe. 39. El. ca. 4.

By

By the ouerſight of any two Iuſtices, & twelue diſcrete men of the Hundred, and Hundreds adioyning, any perſon (within the Weald of *Kent*) may make in his owne land a newe high way, more commodious then the olde, 14. H. 8. cap. 6. Change a high way.

Two ſuch Iuſtices may once euery yeare appoint Ouerſeers (for that whole yeare following) of cloth to bee made or ſolde, in any Towne (not being corporate) and may charge them vpon their oathes, to ſee execution of ſome parts of the Statute. 3. E. 6. cap. 2. yet in force. Appoint Ouerſeers of Cloth.

Within fiue dayes (after accuſation had, that any perſon hath diſturbed a Preacher, and after his committing to ſafe cuſtodie by one Iuſtice of the Peace) one other Iuſtice of that Shire muſt ioyne with him in the examination of the Offender, and may proceede to find him guiltie by his owne confeſſion, or by two witneſſes, and thereupon commit him to the next Gaole, for three moneths. 1. Mar. Par. 1. cap. 2. Aske of the continuance of this Statute, as before. Diſturbe a Preacher.

Any two Iuſtices of the Peace of the Countie (where any of her Maieſties ſubiects (not being a Ieſuite, Seminarie Prieſt, or other Prieſt, religious, or eccleſiaſticall perſon, &c.) now being, or which hereafter ſhall be of, or brought vp in, any colledge of Ieſuites, or Seminaries, ſhall arriue within fiue months nert after proclamation to be made in that behalf in the City of London vnder the great Seale of England) may within two Ieſuites and Seminaries Colledge.

two dayes next after such returne, receiue his submissiō, vnder the oath set forth by Act in the first yeare of her Maiesties raigne, 27. Eliz. ca. 2.

Subsidie. If any person, that ought to be set to the subsidie, doe by his craft or couine escape the Taxation, and that hee prooued before two Iustices of Peace of that County: then shall hee be charged at the double value of so much as hee ought to haue bin tared at, and shall further be punished at the discretions of the said Iustices, 39. *Eliz. Reg.* and diuers former acts of Subsidies.

Popish Recusant. Any two Iustices of the peace may require any popish Recusant (not making submission according to this Statute) to abiure the Realme, vpon his corporall oath before them. And two such Iustices, may (with the assent in writing of the Bishop of the diocesse, or of the Lieutenant of the Shire, or deputie Lieutenant) giue licēce for such time as shalbe comprised in such licence, to such person as is appointed by this statute to abide within the fiue miles, to goe (for his necessary occasiōs) out of that compasse. 35. El. c. 2.

What things some two Iustices of the *Peace may doe out of the Sessions: and therein* of Bailement.

Cap. 11.

IT falleth out many times, that the statute lawes regarding some Iustices aboue others, either for the opinion

nion of the ability or learning that they ſhoulde haue (being of the *Quorum*) or for the aduantage & facility that they haue to diſpatch the affaire, by means of their nearnes & dwelling, or for the indifferency ẏ they are likely to vſe in the handling of ẏ cauſe, (as being neither of kindred, nor alliance to any of the parties) doe many times make choiſe of ſome two Iuſtices: & do either altogether cloſe ẏ hands of ẏ reſt, or els doe chiefly repoſe the truſt in theſe ẏ be ſo choſen & elected.

Amongſt thoſe of this kinde, the Statute for Bailement. Bailment of priſoners worthily craueth the firſt place, whether you reſpect ẏ weight of the matter that it concerneth, or the length of the diſcourſe ẏ it requireth: the one tending to deſired liberty, & the other cõprehending much variety.

This ſauing then (or deliuerie) of a perſon out of priſon, before he hath ſatiſfied the Law, is vttered by three termes in our Statutes, that is to ſay, Bailment, Mainprise (or manucaption) and Repleuine. And they be indifferently vſed, to expreſſe that ſuertie which the priſoner is to finde in ſuch a caſe. For, that which Bracton and the ſtatute of W. 1. cap. 15. (made 3. Edw. 1.) do ſpeake, of ſetting at libertie of acceſſaries by the words *Replegiari*, and of letting out by ſufficient Pleuin, Britton and the Regiſter doe expreſſe by finding of Mainprise: the Statute 5. Edw. 3. ca. 8. by letting to Baile: that of Marlebridge, cap. 27. (made 52. Henr. 3.) by *tradi in ballium*

Difference betweene Bailement, Mainprise, and Repleuin.

ballium vel replegiari: And the ſtatute of 2. E.3. cap.9. making mention of the writ *De homine Replegiando* to bee directed to the gardein of a Foreſt, declareth the effect thereof to be, that he ſhould repleuy the priſoner by good Mainpriſe: The Statute 23.H.6.ca.10. that commandeth the Sherife to let out of priſon (ſuch as he hath arreſted vpon Enditements of Treſpaſſe) vpon reaſonable ſuertie of ſufficient perſons, calleth the ſame a letting to Baile or Mainpriſe: And laſtly, 1.& 2.Ph.& Ma.cap.13. ſeemeth to make all the three words συνώνυμα, & of the ſame ſignification.

Repleuine. Neuertheleſſe, it ſeemeth, that Repleuin had his originall of the word Pledges, which denoteth them that vndertake for the party, that hee ſhal abide to be iuſtified by law: And it is vſed in diuers other caſes, as in repleuine of cattell vpon a diſtreſſe, repleuine of Franchiſes in a *quo Warranto*, repleuine of Land vpon a *Grand cape*, in olde time, and repleuying of the perſon of a man in the caſe of Villenage.

Bailement. Bailement, is deriued from the French terme Bailler: And that alſo commeth of the Greeke (Βαλλεῖν) they both ſignifiing, to Deliuer into hand. For, he that is Bailed, is taken (or kept) out of priſon, and deliuered (as it were) into the hands of his friends, as Suerties for him, whereof alſo ỳ word *Manucaptio* (or Mainpriſe, which is all one) giueth good euidence: the one mentioning

tioning the deliuerie, the other the receiuing of such a prisoner. And in this respect, the booke of the *Norman Customes* calleth Bailement, a liue prison: for that the party thereby becõmeth prisoner to his friends, that doe vndertake for him.

But Bailemen and Mainprise haue bin taken to differ in the practise of our common lawe: for he which is properly Bailed by the Iustices of any Court, hath bin neuertheleſſe reputed to be a a prisoner there ſtill, and his ſuerties to be (as it were) his ſpeciall gardeins: otherwiſe it hath bin thought of him that is let to Mainprise, as may be ſeene by the Booke cases, 33. E. 3. & 36 E. 3. *Corone* Fitz. 12. & 13. 7. H. 6. 42. 31. H. 6. 10. 38. H. 6. 23. 9. E. 4. 2. & 21. H. 7. 33. But at this day, how long hee ſhall be adiudged to be a prisoner, *Et in Cuſtodia Mariſcalli Mariſcalciæ, &c.* that is Bailed in the Kings Beach, the cuſtome of the Court it ſelfe muſt rule the matter: for it differeth ſomewhat (if I bee not deceiued) from thoſe opinions. Mainprise.

Howbeit, forasmuch as in our courſe (concerning Iuſtices of the Peace) it is not ſo needfull to ſtay vpon the difference between the words, as to proceede to diſcloſe the vſe and manner of the thing: Let vs examine the power of the Iuſtices of Peace in this behalfe.

It ſeemeth, that Iuſtices of the Peace might (after the Statute 34. E. 3. cap. 1. that made thẽ complete Iudges) haue letten to bayle ſuch perſons

sons as were indited of Felonie before them in their Sessions, euen as the Iustices of the Kings Bench vse to doe: but not such as were arrested for suspition of Felonie, and not indited thereof before them, because before the enditement they were no Iudges ouer them. And for helpe herein, it was ordained (1. R. 3. cap. 3.) that euery Iustice of Peace might let to Baile any suspects of Felonie. But that Law begate some inconueniences, and therefore it was soone after repealed (by 3. Henr. 7.) which left power to two Iustices of the Peace (the one beeing of the *Quorum*) to let any prisoners (mainpernable by the lawe) to baile, to the next generall Sessions, or the next Gaole deliuerie: and willeth that they shall then certifie such baile taken, vpon paine to forfet for euery default (thereupon recorded) ten pounds to the king. 3. H. 7. ca. 3.

And here againe there sprang vp another inconuenience: for then Iustices of Peace would not sticke to borrowe one anothers name, (as many yet still doe) and by that meane defraude the good meaning of the Statute: Whereupon it was lastly prouided (by 1. & 2. Phil. & M.) as followeth.

Bailement of prisoners, and examination before they bee bayled.

That no Iustice, nor Iustices of Peace, should let to baile any person contrary to the said statute of *West.* 1. cap. 15. And that no person, being arrested for Manslaughter, or Felonie, or for suspition of eyther of them (beeing bayleable

ble by the Lawe) ſhoulde bee bayled by any Iuſtice of Peace, if it bee not in open Seſſions, or by two Iuſtices of the Peace at the leaſt (the one of them beeing of the *Quorum*) and the ſame Iuſtices to bee preſent together at the time of the ſayde Baylement: and that they ſhall certifie (in writing, ſubſcribed, or ſigned with their owne handes) the ſayde Baylement or Mainpriſe, at the next generall Gaole deliuerie, to bee holden within that Shyre, where that perſon ſhall bee arreſted, or ſuſpected: And that the ſayde Iuſtices, or one of them, (being of the *Quorum*,) when ſuch priſoner is brought before them for Manſlaughter or Felonie, ſhall before any baylement, take the examination of that priſoner, and the information of them that bring him, of the fact and circumſtances thereof: and the ſame, or ſo much thereof, as ſhall bee materiall to prooue the Felonie, ſhall put in writing, before they make that baylement: which examination and baylement the ſayde Iuſtices ſhall certifie at the next Gaole deliuerie, within the limits of their Commiſſion: And the ſayde Iuſtices ſhall haue authoritie by this Acte, to bind all ſuch by Recognuſance (or Obligation) as doe declare any thing materiall to prooue the ſayde Murder, or Manſlaughter, offences, or Felonies, or to bee acceſſarie or acceſſaries to the ſame, as is aforeſayde, to appeare

appeare at the ſaid next Gaole deliuerie, where the triall thereof ſhall bee, then and there to giue euidence againſt the partie, at the time of his tryall: and ſhall certifie all and euery ſuch bond, in like maner, as is abouesaid of the Bailement and examination, 1. & 2. Phil. & Mar. cap. 13.

This ſtatute of Bailement I haue purpoſely recited at large, becauſe it both comprehendeth ſome ſuch other thinges as muſt concurre with the Bailement of the priſoner, & alſo prouoketh me to ſet downe the Statute of W. 1. & to ſhew what perſons are baileable by the Law: for, to either of theſe it referreth it ſelfe (as you haue ſeene) and is alſo reſtrained by them.

Perſons baileable, and not.

Now, by the Statute of W. 1. cap. 15. Priſoners that be before outlawed, or haue abiured: prouours: felons taken with the manner: thoſe that haue broken the Kings priſon: notorious and proclaymed theeues: thoſe that are appealed of prouours, ſo long as the prouours be liuing (if they bee not of good fame:) thoſe which are taken for felonious burninges, or for falſifying the Kinges money, or his ſeale: or which are taken vppon excommunication, or for open euill, or for treaſon touching the King himſelfe, or for the death of a man, or by the commaundement of the King himſelfe, or of his priuie Counſell, or by the (abſolute, and not ordinarie) commaundement of the kings

kings Iuſtices, or for the Forreſt: bee not repleuiſable by the comon Writ, nor without Writ, by Sherifes, nor other gardeins of priſon. But he that is taken for light ſuſpicion: or is indited of *petite Larcenie*, (not being guiltie before of other *Larcencie*) thoſe that bee charged with the receite of theeues, or Felons, or of commaunding, or force, or ayde: or charged with Treſpaſſe, that toucheth not loſſe of life, nor member: and hee that is appealed by a Prouour (being no common theefe, nor defamed) after the death of the Prouour, is baileable by the Statute.

Againe, the Statute 23. H. 6. cap. 10. prohibiteth thoſe that bee in priſon by condemnation, execution, *Capias vtlagatum*, excommunication: for Suertie of the Peace: or by ſpeciall commandement of any Iuſtice, to be bailed, by Sherife, Keeper of priſon, or other Officer or Miniſter: But willeth and commandeth, that all thoſe that be *Arreſted* by force of any Writ, Bil, or Warrant, in any action Perſonall, or becauſe of any enditement of *Treſpaſſe*, be let out of priſon vpon reaſonable ſuerties of ſufficient perſons, hauing ſufficient within the Counties where they be, to be let to Baile or Mainpriſe, to keepe their daies in ſuch places as the ſayde Writs, Bils, or Warrants ſhall require.

Both theſe laſt Statuts (as appeareth) were at the firſt made to giue a rule vnto Sherifes and

other officers, as well for the letting to baile, as for the retaining of their prisoners. But as the Statute of W. 1. is by the expresse letter of 1. & 2. of Phil. & Mar. set foorth as a line whereby the Iustices of Peace are to guide themselues: so it seemeth to me, that they ought to haue an eye vnto the other Statute also: forasmuch as certaine other persons bee therein also mentioned not to bee Baileable by lawe, and so within the reach of the very words that lie in the Statute of Philip and Mary.

Baile for Manslaughter.

And first, this Statute (1. & 2. Phil. & Mary.) seemeth to distinguish these words (Death of a man) that are read in the Statute of *Westminst.* the first, and in this place to restraine them to Murder onely: seeing that it admitteth, that (for some death, or Manslaughter) the slayer may be lawfully bailed: which also is the common practise in that behalfe.

We learne also, that hee which (within the yeare) is acquited of Murder, or Manslaughter, at the Queenes suite, must be remitted to prison or let to mainprise, till the ende of the yeare, and the party grieued may in the meane time commence his appeale, 3. H. 7. cap. 1.

It seemeth moreouer, that he which is endited of Felonie, is not baileable. Lib. Ass. 41. pl. 30. nor hee which confesseth the Felonie, whereof he is accused: for that Statute (West. 1.) meaneth to exclude the one, when it saith, that

hee

hee which is endited of Petite Larceny, may be bailed: and the other, when it denieth Baile to a Prouour, who muſt begin with confeſſion of his owne fault, before he may bee admitted to burthen another man.

And if a man bee taken vpon Proceſſe of rebellion, iſſuing out of the Chancerie, or Starre Chamber, thoſe Iuſtices of Peace may well bee thought voide of diſcretion, that ſhal take vpon them to baile him.

Further, me thinketh that I may ſet downe this as a rule, (euen at the common law) concerning Bailements. That the Iuſtices of the peace cannot meddle with the Bailement of any priſoner, except he be priſoner for ſuch a cauſe, whereof the Iuſtices of peace be competent Iudges: which alſo was the cauſe, that one Iuſtice of the Peace could not by force of the commiſſion onely, haue bailed ſuſpectes of Felony, before that they were endited thereof as I haue tolde you. For, out of their Seſſions, & before inditement, they were no iudges of ſuch a matter.

And on the other ſide, it ſeemeth that two Iuſtices of the Peace (the one of them being of the *Quorum*) may out of the Seſſions, baile ſuch as come into priſon by the proceſſe of the Seſſions made vpon penall lawes, not forbidding Baile: becauſe two ſuch Iuſtices be competent Iudges of all thoſe matters, inſomuch as they may heare and determine them.

Aduise, concerning bailement.

Sundrie doubts (I confesse) may bee made concerning the businesse of Baile, which I am not able to dissolue, and therefore not much willing to moue. Only this I will say for all, that it becommeth Iustices of the Peace to bee verie circumspect in granting Baile, both for feare of wrong by denying it to him that is repleuisable: and for feare of danger to the seruice it selfe, by giuing it where it is not grantable.

And therefore I aduise them, to consider, first, whether the power of Baile (whē it is required) be not taken from them by some of those former recited statuts: and then, whether that particular Statute it selfe (against which the prisoner is charged to offend) doe not specially prohibite the baile: for you shal meete with many statuts, which doe not onely take baile from the offenders thereof, vpon their solemne conuiction after Iudgement, but also vppon the Record of some one or two Iustices of the Peace, or by examination, or proofe by witnesses, or such other priuate triall, had before them.

For example, take a few of each kind, seeing it would prooue troublesome to report them all.

Liueries.

1 He that is conuicted before the Iustices of the Peace, vpon the statute of Liueries, shall be committed to prison for one whole yeare, without Baile or Mainprise sayeth the Statute, 8. H. 6. cap. 4.

2 He that is conuicted before them, for abusing

sing a licence of transporting victuall, shall likewise be committed by them, and shall remaine there a whole yere without Baile, or Mainprise, 1. & 2. Phil. & Mar. cap. 5. Licence to transport.

3 He that is conuicted before them for offending the statute made against forestalling, &c. shall bee committed to the Gaole for two moneths without Baile or Mainprise. 5. E. 6. ca. 4. Forestalling.

4 And hee that is conuicted before them for offence against the statute of Musters, shall bee awarded to remaine in prison without Baile, or Mainprise, till he haue paid the forfaiture. 4. & 5. Phil. & Mar. cap. 2. Musters.

1 Againe, if any one Iustice of the peace shall find, or know any to haue exercised any vnlawfull games, hee may commit him without Baile or Mainprise, til he will become bound no more to vse vnlawfull games. 33. H. 8. cap. 9. Games.

2 So, he that is conuicted before two Iustices of the Peace to haue refused to serue for such wages as is by order appointed, shal remaine in prison without Baile or Mainprise, till he wil be bound to serue accordingly. 5. Eli. cap. 4. and the like is, of some other points in that statute. Seruant.

3 He that is committed by two Iustices of the Peace, for keeping a common Alehouse, of his owne authoritie, shall remaine in Prison three dayes, &c. without Baile or Mainprise 6. E. 6. cap. 25. Alehouse.

4 And the reputed Father or Mother of a Bastard. Bastard

Baſtard childe, that will not perfourme the order ſet downe by two Iuſtices of the Peace thereto authorized, ſhall be committed, and ſhal remaine in priſon without Baile or mainprize, till he or ſhe will be bound, &c. 18. Eli. cap. 3. & 27. Eli. cap. 11.

The moſt of the reſt ſhall onely be appointed out, that the Iuſtices may in a ſort be warned of them, thus ſhortly.

Prophecies. Witchcraft. — 5. *Eliz.* cap. 15. touching *Prophecies.* 5. *Eliz.* cap. 16. concerning *Witchcraft.*

Periurie. — 5. *Eliz.* cap. 14. of *Periurie.*

Seruice. — 1. *Eliz.* cap. 2. touching *Common prayer.*

Scholmaſt. — 23. *Eliz.* cap. 1. touching *Schoolemaſters.*

Preachers. — 1. *Mar.* cap. 3. of *diſturbing Preachers.*

Tithes. — 27. *Hen.* 8. cap. 20. & 32. *Hen.* 8. cap. 7. of *Tithes.*

Souldiours. — 2. *Edw.* 6. cap. 2. of *Souldiours* ſelling harneſſe.

Bridges. — 22. *Hen.* 8. cap. 5. of *Collectors* for *Bridges.*

Bowes. — 33. *Hen.* 8. cap. 9. of *Aliens,* conueying *longe Bowes.*

Apparell. — 1. & 2. *Phil.* & *Mar.* cap. 2. of *wearing Silke.*

Sheepe. — 8. *Eliz.* cap. 7. of *tranſporting Sheepe.*

Hawkes &c. — 5. *Eliz.* cap. 21. of taking *Fiſh, Deere, Hawkes.*

Fleſh. — 5. *Eliz.* cap. 5. of *eating Fleſh.*

Weights. — 9. *Hen.* 5. cap. 8. Parl. 2. of *falſe Weights.*

Aſſemblies. — 1. *Mar.* cap. 12. & 1. *Eliz.* cap. 16. of *rebellious Aſſemblies.*

Riots. — 2. *Hen.* 5. cap. 8. of great *Riots.*

23. *Hen.*

23. *Hen.* 8. cap. 2. of *collectors* of *Gaole* money. Gaole money.
35. *Eliz.* cap. 1. touching *Recusants*. Recusants.
5. *Rich.* 2. cap. 2. of *Forcible* holding Force.
13. *Eliz.* cap. 21. of *Purueiance* neere to the *Vniuersities*: and 23. *Hen.* 6. ca. 14. of *Purueiors* of noble men. Purueiors.
1. & 2. *Phil.* & *Mar.* cap. 5. of *carying Corne*. Corne.
39. *Eliz.* ca. 3. for refusing to contribute to the Poore, or to accompt, or to pay forfaitures Poore.
39. *Eliz.* cap. 11. touching *Logwoode*. Logwoode.
39. *Eliz.* cap. 16. vpon restraint of *Malting*. Malt.

And so, if there bee any other fewe, wherein Iustices of the Peace may not graunt Baile, though otherwise they haue to deale: for all others (that be not of that sort) I doe willingly pretermit.

Now, for an end of Bailement, I will shewe you one forme of a Baile, and another of the Liberate.

Kanc.

MEmorandum quod 20. die mensis Iulij, Anno regni domine nostræ Eliza. &c. Venerunt coram nobis Thoma Robertes, & Henric. Lyndley, *duobus Iusticiariorum, &c. assignatorum, apud* H. *in Comitatu predict.* A. B. & C. D. *de* E. *in dicto comitat.* Yeomen, *& ceperunt in ballium, vsque ad proximam gaolæ deliberationem in dicto comitatu tenendam, quendam* F. G. *&c.* Labourer, *captum, & detentum*

in priſona pro ſuſpicione cuiuſdam Felonię &c. Et aſſumpſerunt ſuper ſe, ſcilicet quilibet prędict. A. B & C. D. ſub pœna 20. lib. bonæ & legalis monetæ Angliæ. & prędict. F. G. aſſumpſit pro ſeipſo ſub pœna 40. lib. ſimilis monetæ de bonis & catallis, terris & tenementis eorum quorumlibet, & cuiuſlibet eorum ad opus dictæ dom. Reg. Heredum, & ſucceſſorum ſuorum leuandarum ſi præfatus F. G. ad eandem proximam Gaolæ deliberationem perſonaliter non comparebit coram Iuſticiarijs dictæ dominæ Reginæ ad dict. am Gaolam deliberandam aſſignatis ad ſtandum recto de Felonia prædicta & ad reſpondendum dict. dom. Reginæ tunc & ibidem de & ſuper omnibus quæ illi obycientur. Datum ſub ſigillis noſtris, die & anno primum ſupradictis.

The Libe-rate.

IHon Biſhop of Rocheſter & Timothy Low, two of the Iuſtices of &c. To the keeper of her Maieſties Gaole in *Maidſtone*, &c. greting: Foraſmuch as F. G. &c. labourer, hath before vs found ſufficient mainpriſe to appeare before the Iuſtices of the gaole deliuery at the next generall gaole deliuery to be holden in the ſaid County, there to anſwere to ſuch things as ſhal be then on the behalfe of our ſaide Soueraigne Lady obiected againſt him, and namely to the felonious taking of two ſheepe (for the ſuſpition wherefhe was taken, & committed to your ſaid Gaole) we commaund you on the behalfe of our ſaid Soueraigne Lady, that (if the ſaide F. G.

F.G. do remaine in your ſaid Gaole for the ſaid cauſe, and for none other) then you forbeare to grieue or detaine him any longer, but that you deliuer him thence, and ſuffer him to goe at large, and that vppon the paine that will fall thereon. Yeouen vnder our Seales, this 20. day of Iuly, &c.

Alehouſe. The authoritie of ſome two Iuſtices of the peace goeth yet further: For two Iuſtices of the Peace (the one being of the *Quorum*) may prohibite and remooue common Ale-ſelling, & may alſo allow the ſame, taking bond with ſuretie by Recognuſance for good rule to bee kept in ſuch Ale-houſe, &c. by their diſcretion. And they may alſo commit and impriſon (for three dayes) thoſe that keepe common ale-ſelling of their owne heads, againſt prohibitiõ, or without allowance thereof, and may after take Recognuſance of them with two ſuerties that they ſhall keepe none. 5. Ed. 6. cap. 25.

And here, ſeeing that the order of the conditions of theſe bonds is partly referred to diſcretion, I will (for the better bridling of theſe nurſeries of naughtines) leaue with you that forme of them, which I haue known practiſed by that honourable Iuſticer, the late Lord William Cobham, Lord Warden of the Fiue Ports, Lord Chamberlaine of her Maieſties houſholde, and one of her Highneſſe priuie Counſell.

The

Alehouſes.

THE Condition of this Recognuſance is ſuch: whereas the within bounden A. B. is admitted and allowed by the within named Lord *Cobham*, and *I. Leueſon* Knight, (two of the Queenes Maieſties Iuſtices of the Peace within the Countie of *Kent* within written) to keepe a common Alehouſe, or Tipling houſe, and to vſe common ſelling of Ale, or Beere, onely within the now houſe of him the ſaid A. B. (and not elſe where) ſcituate in the *High ſtreete* of the Towne of *M.* within written, and cal'led the ſigne of the Hart: If therefore, hee the ſayde A. B. during ſuch time as hee ſhall keepe ſuch common Alehouſe there, ſhall not ſuffer any vnlawful play, at the Tables, Dice, cardes, Tenniſe, Bowles, Cloſh, Coytes, Loggets, or other vnlawfull games to bee vſed in his ſayde Houſe or in his Garden, Orcharde, or other his Grounde, or place: Nor dreſſe, or cauſe, or ſuffer to bee dreſſed, any fleſh to bee eaten vpon any day forbidden by the Lawes or Statutes of this Realme of England: Nor wittingly and willingly admitte, or receiue into his ſayde houſe, or any part thereof, any perſon notoriouſly defamed, of, or for theft, incontinencie, or drunkenneſſe, or that ſhall be before hand notified to him the ſayde A. B. by the Conſtable or Borſholder of *M.* aforeſayd, for the the time beeing, or by the Deputie of either of them, to bee an vnmeete perſon to

For, euery place is not meete.

be

bee receiued into a common Alehouſe: Nor keepe, or lodge there, any ſtrange perſon (aboue the ſpace of one day and one night together) without notice thereof firſt giuen to the Conſtable or Borſholder, or the Deputie of the one of them, there: And finally, if hee the ſayde A. B. during all the time that hee ſhall keepe common ſelling of Ale or Beere in the ſayde houſe, ſhall and will there vſe and maintaine good order and rule: then this preſent Recognuſance, &c. or elſe, &c.

In ſome Shires, the Iuſtices of Peace doe condeſcend vpon certaine Articles, framed by their diſcrettons, and generally to bee propounded to all common Ale-ſellers, taking the bond for performance of the ſame Articles, a coppe wherof they do vſually deliuer to euery of them: which manner is auowable alſo, though not ſo aſſured as the former.

Two Iuſtices of the Peace (ſo that the one bee of the *Quorum*) may (by examination, or Enquirie) heare and determine the faultes of head officers in Cities, Boroughs, and market Townes, that doe not twiſe yearely viewe and examine Weights and meaſures, and breake and burne the defective: as alſo the defaults of buyers and ſellers by other weightes and meaſures then they ought to doe: and may breake and burne the defectiue weights and meaſures, and amerce and fine the offendours by their diſcretion, Weights and meaſures.

cretion, and make proceſſe againſt them, as if they were endited of Treſpaſſe againſt the Peace, 11.H.7.ca.4.& 12.H.7.cap.5.

Oath of Vnderſherife. Two Iuſtices of the Peace (the one being of the *Quorum*) may take the oath of the Vnderſherife of their Countie (before that he meddle with the exerciſe of that office) as wel touching the Supremacy declared in the Act, 1.El. as touching his office, ſet forth 27.El. cap.12. And the like may they doe, for the like oathes of Bailifes of Franchiſes, Deputies and Clarks of Sherifes, and vnderſherifes, and of euery other perſon that ſhall take vppon him to intermeddle with the returning of Iurors, or with the execution of Proceſſe in any Court of Record. 27. El.cap.12.

The Biſhop and his Chancellor, ſhall call the two Iuſtices of the Peace next inhabiting to any Hoſpitall. Hoſpitall, to aſſiſt them in taking the account of ſuch as haue had the collection of the reuenues and profits of ſuch Hoſpitall: & they three may charge the accountant (vnder penaltie, to loſe ſuch ſumme of money as they ſhall thinke meet) to account, and not to delay it, and forthwith to employ the Surpluſage to the vſe of the Hoſpitall, 14 El.ca.5.& 39.El.cap.18.

Baſtard child Two Iuſtices of Peace (the one being of the *Quorum*) in, or nere to the limits where the pariſh Church is, in which a Baſtard child (left to the charge of the Pariſh) ſhal be borne, ought to take

take order by their diſcretion, as well for the reliefe of the pariſh, and keeping of the child, as alſo for the puniſhment of the mother, and reputed father thereof, 18. Eliz. cap. 11.

Two Iuſtices of Peace (the one beeing of the *Quorum*) vppon complaint by any competent Iudge of Tithes, for any miſdemeanor of the defendant in a ſute of tithes, may cauſe him to bee attached, or committed to ward, till he find ſurety vnto thē by Recognuſance to the Kings vſe, to obay the Proceſſe & Sentence of that Iudge, 27. H. 8. cap. 20. & 27. Eliz. cap. 11. Tithes.

And alſo vppon complaint in writing by an Eccleſiaſticall Iudge that hath giuen definitiue ſentence in caſe of Tithes againſt one (which wilfully refuſeth to pay the Tithes, or ſummes of money ſo adiudged) two ſuch Iuſtices may cauſe the partie to bee attached, and committed to the next Gaole, till he finde ſuch ſuertie (as is afore ſaide) to performe that ſentence, 32. H. 8. cap. 7. Tithes.

After execution had for the partie robbed againſt the men of the Hundred, and vpon complaint made by them ſo charged, two Iuſtices of the Peace (one being of the *Quorum*) of the ſame Countie, inhabiting within the ſaide Hundred, or neere vnto it where any ſuch execution ſhall be had, may aſſeſſe and tare, ratably and proportionably by their diſcretions, all and euery the Townes, Pariſhes, Villages, and Hamlets, as well Aſſeſſe the Townes.

well of the ſaide Hundred, as of the Liberties within the ſame, towards an equall contributi-on to be had for the relief of them againſt whom ſuch execution was had. 27. El. 3. cap. 13.

Highwayes. Two Iuſtices of Peace (whereof one to be of the *Quorum*) which were preſent at the Seſſion, wherein any perſon was conuicted for any of-fence againſt this Statute of Highwaies with-in the Wealde of Kent, Surrey, or Suſſex, may make Warrant for leuying the forfaits thereof, to any officer: and they alſo may appoint by their diſcretion ſuch wayes and meanes to leuy the doubles for not paying thoſe forfaits with-in 20. dayes next after lawfull demaunde of the ſame by ſuch Officer, 39. El. ca. 19.

Rogues. Any two ſuch Iuſtices of Peace, haue power to heare and determine all cauſes, that ſhall growe in Queſtion, by the Statute of Rogues, 39. El. ca. 4.

Souldier, or Mariner. Two Iuſtices of Peace, of, or neare the place to which a Souldier or Mariner commeth with the Teſtimoniall of one Iuſtice of Peace, ſhall take order by their diſcretion for ſetting to worke, or relieuing of him, if hee cannot of him-ſelfe get worke there, or employ himſelf in law-full courſe of life, 39. El. ca. 17.

Cloth. Two Iuſtices of Peace, dwelling next any Citie, or Towne, where any Retailer of wool-len cloth ſhall preſent vnto them any defectiue cloth againſt this ſtatute (being conferred with

the

theſtatute 4.& 5.Phil.& Mar.ca.5.) ſhall cauſe the ſame to be cut into three equall parts, whereof the one to be the Queen, the other to the Preſentours, and the third to the Iuſtices themſelues 5.Ed.6,cap.6.

No Fiſherman ſhall bee taken to ſerue as a *Mariner* by the Queenes Commiſſion, but by the choiſe of two Iuſtices of the peace adioining to the place where he is to be taken, 5.El.ca.5. Fiſherman.

Two Iuſtices of the Peace (not being of kinred, alliance, counſell, or fee, to the Lord or owner of a woode) appointed by the more part of the Iuſtices of Peace at their Seſſions vpon cõplaint of the Lord made vnto them, may deuide and ſet out the fourth part of it, if the Lord and commoners thereof beeing firſt called before them) cannot agree vpon it, 35.H.8.cap.17.& 13.Eli.cap.25. Deuide the fourth part of a woode.

Two Iuſtices of the Peace, whereof the one to bee of the *Quorum*, (appointed by the *Cuſtos Rotulorum*, or by the Eldeſt of the *Quorum*, in his abſence) are to ouerſee, and controll the Sherifes bookes and amercements, and the eſtreits of the ſaide amercements, are to bee made by Indenture betweene them and the Sherife or vndersherife: and to be ſealed with their ſeales: And they may vppon ſuggeſtion make proceſſe as in an action of Treſpaſſe againſt the offendours of that Statute to anſwere before them, 11.H.7,cap.15. Amercements in the Counte Court.

Any

And here also, is place for those priuate Acts, wherein any power is giuen to two Iustices of the Peace, as:

Norwich. 5. E. 6. ca. 24. For the making of Couerlets & Dornikes, in *Norwich*.

Wales. 35. H. 8. cap. 11. For wages of the Knights of Parliament.

Northumberland. 11. H. 7. cap. 9. For recognusances to bee taken of Lessees in *Northumberland*.

Vniuersities. 2. & 3. Phil. & Mar. cap. 15. & 13. El. cap. 21. & 27. Eliz. cap. 11. For prohibition of purueiances within fiue miles of either of the Vniuersities.

Kent, and Sussex. 14. Hen. 8. cap. 6. & 26. Hen. 8. cap. 7. For laying out newe high wayes in Kent and Sussex.

Cardiffe. 23. Eliz. cap. 11. For the repairing of Cardiffe Bridge.

London. Westminster. 35. El. ca. 6. Touching newe buildings and Inmates, in, and neare *London* and *Westminster*.

Wylton Bridge. 39. El. cap. 24. For the making of the Bridge at *Wylton* ouer *Wye* in the Countie of *Hereford*.

What

What things, three, or moe, Iuſtices of the Peace may doe out of *the Seſsions.*

CAP. III.

THe authoritie as well of any two Iuſtices of the Peace generally, as of ſome certaine two Iuſtices ſpecially, being thus at ſome length diſcloſed, it remaineth that (for an ende) we ſpeake ſomewhat of three, and the greater number.

Vnlawfull aſſembly.

Three Iuſtices of the peace (one of them being of the *Quorum*) may diſcharge out of priſon any perſon committed eyther for his offence in not declaring to a Iuſtice (within 24. houres) that hee was moued to ioyne in any vnlawfull aſſembly contrary to the ſtatute, 1. Ma. 1. Parl. cap. 12. & 1. El. cap. 17.

Certifie for an apprentice.

It is requiſite, that the Certificat (that is to be made to the head Officer of a Citie or Towne Corporate, where a childe is to be put Apprentice to a Marchant, Mercer, Draper, Goldſmith Ironmonger, Imbroderer, or Clothier, that the father or mother of ſuch childe may diſpend fortie ſhillings freehold by yere) be vnder the hands and ſeales of three Iuſtices of the Peace where the lands lie, 5. Eli. cap. 4.

Clarkes.

Three Iuſtices of Peace (one of them being

of the *Quorum*) may vnder their hands & ſeales, giue licence to Glaſſemen (being of good behauiour) to trauaile (without begging) in that countie 39. El. cap. 4.

Money giuen to the poore, highwayes, or bridges.

The Biſhop and his Chauncellor, and three ſuch Iuſtices of the Peace haue power to examine, how money or other reliefe (appointed by King Henry 8. or any other, to the vſe of the Poore or of amending of Highwayes, or Bridges) is beſtowed, and to cal to account the detainers thereof, &c. 14. El. ca. 5. & 29. El. ca. 18.

Depraue the Sacrament of the Lords Supper.

It ſeemeth, that three ſuch Iuſtices of the peace may out of the Seſsions take information and accuſation by the oathes of two honeſt perſons, againſt ſuch as ſhall depraue the Sacrament of the body and blood of our Lord and Sauiour Ieſus Chriſt, againſt the ſtatute, and examine them, what other witneſſes were then by: and to binde them all by Recognuſance, to giue in euidence at the day of triall, 1. E. 6. ca. 1. but enquire of this matter.

Foure Iuſtices. Bridges.

Foure Iuſtices of the Peace (whereof one to be of the *Quorum*) may (where a decaied bridge is, and where it cannot be prooued who, or what lands bee chargeable to the repairing thereof) tare the inhabitants, make collectours, and appoint ouerſeers, for the amendment of the ſame &c. 22. H. 8. cap. 5.

Six Iuſtices. Gaole.

Sixe Iuſtices of the Peace, may in ſundrie ſhires take order for common Gaoles, whereof the

the Sherife ſhal haue the cuſtody, & to the which murderers and felons &c. ſhal be ſent: and may do and perfoꝛme diuers incidents thereto by the ſtatutes, 23. H. 8. cap. 2. & 13. El. cap. 25.

Sewers. Sire Iuſtices of the Peace (two of them being of the *Quorum*) may foꝛ a whole yeare after the expiration of any commiſsion of Sewers execute the lawes of the Commiſsioners of Sewers, vnleſſe that a new commiſsion of Sewers be publiſhed within the yeare, 13. El. ca. 9.

To this title alſo doe theſe particular Statutes belong.

Algate. 13. Eliz. ca. 23. & 23. Eli. cap. 12. For pauing the ſtreete by *Algate*.

Wales. 34. Hen. 8. For eſtabliſhing *Iuſtices* of the Peace in *Wales* &c.

Cheſhire. 27. H. 8. cap. 5. For *Iuſtices* of the Peace in *Cheſhire*, &c.

Gaoles. 23. H. 8. cap. 2. & 5. El. cap. 24. & 13. El. cap. 25. For the appointing and building of Gaoles, in ſundrie ſhires,

Oxford. 18. Eli. cap. 20. For amending of Bridges within fiue miles of *Oxford*.

Shepey. 18. El. cap. 10. & 27. El. ca. 26. For the reparation of the Ferry called the Kings Ferry in the Iſle of *Shepey* in *Kent*.

Chicheſter. 27. Eli. ca. 22. For *Chicheſter* hauen.

Of the reward, and punishment of *Iustices* of the Peace, for things done, *not done, or misdone out of the* Sessions of the Peace.

Cap. iiii.

OF reward and punishment (as saide Solon) all common weales doe consist: For as the care of equitie and Iustice wareth colde, vnlesse there be reward ready for vertue: So the negligence of euill men must needes be corrected by seueritie and chastisement of paines.

And therefore, albeit the meaning of our parliaments hath alwaies beene, that choise should bee made of such person for this office of the Peace, as needed no reward for their trauell in that behalf: yet, to the end that they should with the more alacritie and cheerefulnesse proceed in their affaires, the lawes do now & then cast them a trifle, rather to let them know that they do behold their well doing, than that themselues doe stand in neede of any recompence.

Reward.

Seruants.

Hereupon euery Iustice of Peace, (sitting in execution of the statute of labourers and seruants) shall haue v.s. the day (for three daies together) out of the forfeitures that grow by the same statute, 5. El. cap. 4.

And

And if any Perſon commanded by two Iuſtices of Peace, (to appeare to be made vn ouerſeer to ſee the ſtatut of Cloth making kept) do without reaſonable excuſe refuſe to come, & to take vpon him ỹ office, he is to forfeit for euery ſuch refuſall fortie ſhillings: and thereof thoſe Iuſtices are appointed to haue the one halfe by the ſtatute, 3. E. 6. cap. 2. Ouerſeers. Cloth.

Thoſe two Iuſtices of the peace alſo next adioyning, to whom any Cloth (faultie againſt the ſtatutes) ſhall be preſented, may cut the ſame into three equal peeces, & ſhall haue to themſelues the one of the ſame, by the Act 5. E. 6. cap. 6. & 4. & 5. Phil. & Mar. cap. 5. Faulty cloth.

And euery Iuſtice of the Peace is allowed to retaine to his own vſe, the one moity of al ſtrangers goods, calling themſelues Egyptians, that he ſhall lawfully ſeiſe, by vertue of the ſtatute, 22. H. 8. cap. 10. Egyptians.

The Iuſtice or Iuſtices of the Peace, that doe ioyne with the Clarke of the Peace, in taking the Conuſance of an Indenture of bargain and ſale of land to be inrolled, ſhall haue xii. d. therefore, if the land exceede not in value xl. s. by the yeare, and ii. s. vi. d. if it doe exceed that value by the ſtatute, 27. H. 8. ca. 16. Inrolmet of bargain & ſale.

The Queenes Highneſſe ſhall beare the coſts that the Iuſtices of Peace ſhall ſuſtaine in the execution of the ſtatutes, 13. H. 4. cap. 7. of Riots, &c. 2. H. 5. cap. 8. Riot.

Forcible Entrie. And the Iustices of the Peace shall make execution of the statute of Forcible Entries at the costs and charges of the partie grieued, 8,H.6. cap.9.

Alehouse. Twelue pence is giuen to the two Iustices of peace for taking euery Recognusance of him that is alowed to keepe a common Alehouse, by the statute, 5.E.6.cap.25.

Punishment. On the other side also, the Statutes doe now and then correct the dulnesse of these Iustices, with some strokes of the rodde, or spurre.

And therefore generally, if a Iustice of peace will not giue remedy to a partie grieued in any thing that he may heare, determine, or execute: then vpon complaint to the Iustices of assise, or to the Lord Chancellor, he shall not only be put out of the commission by the Lord Chancellor, but shall also bee punished according to his demerites, 4.H.7.ca.12.

And particularly, euen at the first it was ordained, that if the Wardens of the Peace did not looke vnto the execution of the statute against such as shuld ride or go armed in any place putting the countrey in feare, then the Iustices assigned by ỳ king should enquire of their default, and punish them, Stat.North.2.E.3.cap.3.

Ride armed.

Riots. The statute of Riots, &c. 13.H.4.cap.7. layeth 100.li. forfeiture vppon those Iustices of Peace that shall dwell nigheſt to the Riot, &c. if they do not put that statute in execution.

And

And thoſe Iuſtices of the Peace, and Sherife, or Vnderſherife, which in ſending their Certificate to the Queene and her Counſell, (concerning ſuch Riot) do not withal certifie the names of the maintainers and imbracers in that behalfe, with their miſdemeanors that they know ſhall euery of them forfait twentie pounds, vnleſſe they haue reaſonable excuſe for not certifying the ſame. 19. H. 7. cap. 13. Certificat.

That Iuſtice of the Peace which ſeiſeth the goods of any Egyptians, and doeth not incontinently reſtore ſuch part therof as ſhalbe proued before him, to haue beene craftily or feloniouſly taken, ſhall forfaite the double thereof to ſuch prouer, 23. H. 8. cap. 10. Egyptians.

If any Iuſtice of the Peace ſhall take any bond (made for cauſe touching the king) in the name of the Iuſtice himſelfe, and not by the words, *Domino regi*, he ſhal be impriſoned for ſo doing. 33. H. 8. cap. 39. Bond.

That Iuſtice of peace that doth not (after requeſt therof made) giue attendance vpon the Q. Lieutenant of the ſhire, for the ſuppreſſion of any Rebellion, or vnlawfull aſſembly, ſhall ſuffer a yeares impriſonment, vnleſſe there be cauſe of reaſonable excuſe, 1. Mar. Parl. 1. cap. 12. & 1. Eliz. cap. 17. Rebellious aſſembly.

If any Iuſtice of peace ſhal be prooued to be in default about the execution of the Act of the pooze, by two ſufficient witneſſes before the Iu- Pooze.

stices of Assise, at their next generall Gaole deliuerie, he shall loose v.li. 14. El. cap. 5.

Gunnes and Crossebowes.

The next Iustice of Peace which faileth in presenting ỳ name of him ỳ presenteth it to him, according to the statute, of shooting in Crossebowes, or Guns, shal forfeit xx. shillings, 2. E. 6. cap. 14. But enquire of the continuance of this, as before in the 7. chapter of the 2. booke.

Agnus Dei.

That Iustice of peace, which doth not (within fourteene daies, after matter vttered to him concerning any *Agnus Dei &c.*) signifie ỳ same to some one of the Queenes priuy Counsel, shal incurre the paines of the Act, 16. R. 2. of *Premunire*: 13. El. cap. 2. And that Iustice of the peace, which after discouery made vnto him by any

Iesuites.

person, that any Iesuite, Seminarie, or whatsoeuer other ecclesiastical or religious person (professed by any authority from the See of Rome) is abiding within any the Queenes dominions, shall not within 28. daies then next following, giue information therof to some of the Queens priuie Counsell, or to one of the Presedents, in Wales, or in the North, shall forfeite for euery such offence, 200. marks, 27. El. cap. 2.

Certifie into the Eschequer

That Iustice of the Peace which (hauing taken any examination concerning Plaintes in the Sherifes Court) doth not certifie the same into the Eschequer within a quarter of a yeare after, shal loose fourtie shillings for his default, 11. H. 7. cap. 15.

Those

Those Iustices of the Peace, which do grant any baile contrary to the lawe, or do not certifie the Baile and examination of the Felonie according to these statutes, shall pay such fine, as the Iustice of Gaole deliuerie shall thinke meete, 1. & 2. Phil. & Mar. cap. 13. & 2. & 3. Phil & Mar. cap. 10. Baile and certifie.

Euery Iustice of Peace, that (dwelling within seuen miles of *London*) doth not (vpon request) assist the Colledge of Phisitions of *London* in the execution of the statute, 32. H. 8. ca. 8. shalbe punished, as one that runneth in contempt of the Queene, 1. Mar. cap. 9. Phisition.

Euery Iustice of Peace, that shall make default in the due execution of this Statute made against the deceitfull stretching of Northren Clothes and Kersies, made beyond the Riuer of Trent, shall loose v. *l.* 39. El. ca. 20. Northren Clothes.

There is also a Fine of xx. *l.* laid vpon euery Iustice of the Peace in Monmouthshire, for his negligence in not repayring the Bridges of Newporte, and Carlion, there, 39. El. ca. 23. Bridges in Monmouthshire.

And how that Iustice of the Peace shall bee punished, that shall take vppon him the Office, not hauing yearely twenty pounds in landes, it hath appeared already, cap. 6. in the first Booke. Not twenty pounds in lands.

The Epilogue.

THus much (so shortly as I could) I thought fit to say, concerning the authoritie of *Iustices* The Epilogue.

ces of the Peace, without the *Seſſions*: wherein I haue rather ſought to admoniſh them (by a ſleight viewe and rehearſall of the moſt part) what things they haue to handle, then laboured to accompliſh them (with full skill) how to adminiſter, and execute them all.

Neither doth that skill and knowledge lie in my power, but in their owne diligence: & muſt therefore be wonne by a continuall ſtudie and painefull meditation of the ſtatutes at large: towardes their helpe and furtherance wherein, I long ſince intreated a Godly & learned Gentleman (Maſter *Iohn Tindall* an apprentice of *Lincolnes Inne*) to take the paines to cull out all thoſe Statutes by themſelues, which were in force, and wherewithall *Iuſtices* of the Peace had to meddle: not altogether behedding thē of their preambles: Nor any whit curtailing them of their wordes: Nor otherwiſe diſmembring or ſcattering their partes in ſunder: But laying forth the bodies of them, whole and at large, vnder their proper *Titles*: together with the materiall parts of their preambles: and not without any of their prouiſoes: Therewithall amending the corruptions of the Engliſh tranſlation out of the Latine and French: and finally adding vnto them (where neede is) ſome notes of helpefull direction. Which things no other man (that I know) hath hitherto aſſayed, All which is ſo marked out in Maſter *Raſtals* Abridgement,

bridgement, as euery man (that will) may eaſily enioy the benefite. And I doubt not, but that (for the abſolute accompliſhment of ſo ſeruiceable a worke) God will hereafter giue him both minde and meanes, to conferre and rectifie the whole volume of thoſe imprinted Lawes, according to the Originall and Autentique Records: then the which I know not any labour, either more auaileable to the Students of the Law, or more neceſſarie for ſuch as haue any charge thereof in the adminiſtration of the Common wealth.

The fourth Booke intreating of the Seſſions of the Peace, and of things incident or belonging thereunto.

THE PROHEME.

IT may peraduenture ſeeme, that hauing already ſtood long in matters that were of the leſſe importance, and ſuch as might bee diſpatched at home *ſine ſtrepitu*, I will bee nowe both long and tedious, when I beginne with thoſe of greater weight, and which doe require the ſolemne *Bench*, and figure of iudgement.

But, as at the firſt I thought it meet to helpe moſt, where moſt neede was: I meane, where one

one or moe *Iuſtices* (preſſed with the neceſſitie of time, and deſtitute of the aſſiſtance of their learned companions) were to adminiſter their office at home: So nowe, knowing that at the *Seſſions* of the Peace, there be commonly many *Iuſtices* in number, and (amongſt them) ſundry ſo well inſtructed in Lawe, as in beeing to buſie with that which belongeth thereto, I ſhall as the ſaying is, but *ſet a Candle in the Sunſhine*, and rather bewray want in my ſelfe, than bring helpe or light vnto them; I purpoſe to runne ouer this reſidue more ſwiftly, except it be in a few places, where either the profite, or neceſſitie, (or both) of the matters themſelues ſhal begge licence, and procure pardon for me.

THE

THE DESCRIPTION OF THE *SESSIONS* of the Peace.

CAP. I.

AS a man that hath receiued hurt in his bodie by a ſtroke whereof hee bleedeth freſhly, will bee contented for the preſent, to admit the help of any mean leech or Surgeon (comming next to hand) for the ſtanching of his bloud, and binding vp of the wound: and yet would more gladly haue vſed the conference of diuers expert Surgeons for doing the ſame, if the danger of the hurt would haue graunted the time that will bee loſt in calling them together: euen ſo the common counſell of this Realme, finding that the body thereof may bee deepely wounded in ſome one member, and perceiuing that certaine euills muſt bee reſiſted at the very firſt, (leſt otherwiſe they grow paſt helpe, and ware incurable) hath many times thought it good to commit to one, or to a few Juſtices of the peace (for that they be ready, & at hand) the ſtopping of the blood (as it were) and firſt dreſſing of the wound,

wound, by repelling of force, and other outrages, that doe sodainely arise: and hath yet neuertheleſſe (when as the time and matter will permit) politikely eſtabliſhed an aſſembly, and conference of all the Iuſtices at certaine times in a full court, and open Seſſion.

For it is true, that if the publike Peace ſhould not be preſerued by taking of Suertie, before it be broken: If ſuch as doe violate the common tranquillitie, ſhould not be committed to priſon when they haue broken it: If ſeditious talebearers (the ſowers of rebellion) ſhould not bee ſnapt vp and reſtrained: If finally, riotous aſſemblies ſhould not be diſperſed, and Forcible inuaſions withſtoode and remooued: the hurt body would bleed to death, and too late (and all in vaine) woulde it bee to ſummon a Seſſion for remedie. But when the bridle is once caſt vpon the head of the Offender, then, and not before, is the matter ready for the Sitter.

The deſcription of a Seſſion of the Peace.

I will (for this time) call *a Seſſion of the Peace:* An aſſembly of any two (or mo) Iuſtices of the Peace (one of them beeing of the *Quorum*) at a certaine day (and place within the limits of their Commiſſion) appointed to enquire by a Iurie (or otherwiſe to take knowledge) and thereupon to proceed to heare and determine according to their power, of cauſes within their Commiſſion, and the Statutes referred to their charge.

And

And this deſcription excludeth all meetings, that are onely for Enquirie: in ſo much as to enquire, and not to heare and determine, is but a halfe doing, and not worthy the name of a ſeſſion of the Peace.

It ſhutteth out alſo ſuch aſſemblies as doe conſiſt of two Iuſtices of the Peace, meeting only to enquire, heare, and determine of a Riot, by vertue of the Statute, 13. H. 4. For, that they may doe (as alſo the former) though neither of them be of the *Quorum*. So that it is but a particular ſeruice, laid vppon two Iuſtices and the Shirife by this Statute: the Record whereof ſhall not (as I thinke I haue ſaide already) remaine amongſt the Recordes of the Seſſions of the Peace.

And therefore, the aſſembly that I meane, is a meeting of ſuch Iuſtices for the execution of their generall authoritie.

And albeit that happily ſome one matter bee the motiue and chiefe cauſe of their comming together: yet if they deale with that and others (within their Commiſſion and charge) let it (on Gods name) paſſe for a Seſſion of the Peace, according to my meaning.

The Seſſions of the Peace then, bee grounded chiefly vppon the wordes of the ſeconde *Aſſignauimus* in the Commiſſion: the which (beeing, *vos, & quoſlibet duos vel plures veſtrum, quorum aliquem, &c.*) doe very neceſſarilie require

require the preſence of one of the *Quorum*.

A partition of all that which followeth in this booke.

And theſe three thinges, namely to Enquire, Heare, and Determine, doe (in effect) comprehend whatſoeuer belongeth to the Seſſions: So that euery thing whereof I ſhall hereafter intreat, will concerne, either the Information of the Iuſtices by enquirie, and other meet meane: Or the Hearing and the triall of the cauſe it ſelfe: Or the Iudgement and execution (which is the Determining) giuen and done vppon it. And therefore, in this path (God willing) will I tread, and by it you ſhall trace me to the end.

Who ſhall appoint the Seſſions of the Peace: and how, and where.

CAP. II.

Knowledge of cauſes at the Seſſions.

THe Iuſtices of the Peace, doe (at their ſeſſions) take knowledge of cauſes within their Iuriſdiction, either by the Oath of Inquirours, or by the preſentment or declaration of other men: And this Inquirie is firſt prepared, by the apparance of the Officers and Countrey, and by the Articles giuen in charge: and then perfor-

Preparation for Inquiry.

med, by the preſentment (or enditement) of them that had the charge to make it.

Now, albeit that theſe ſeſſions bee commonly,

ly, and moſt orderly, ſummoned by a precept in writing: yet is it not altogether of neceſſity (for the making of a lawfull Seſsions) to haue it ſo. For, if competent Iuſtices of the Peace doe get men to ſerue, and thereupon doe holde a Seſsion (without any Precept before directed) all preſentments made before them by twelue lawfull men, ſhall be of force in lawe: but no man ſhall looſe any thing for his default of appearance there, becauſe no man had notice of their Sitting Marr.

Neuertheleſſe, becauſe the common & more allowable maner is, to call the officers & countie together for this ſeruice, by a Precept to the Sherife, wherein, both the diſpoſition of the Iuſtices is notified for the holding of a Seſsion, and the ſeruice and attendance of thoſe others is commaunded to be thereat with them (which alſo they be well warranted to direct vnto him, by the 2. *Aſſignauimus* of their Commiſsion, and by the *Mandamus* that foloweth therupon) I will lay downe the forme thereof, which hath bene like to this:

EDwardus Hoby *miles*, & Radulphus Hayman *armiger*, *duo Iuſticiar. dom. reg. ad pacem in comitatu Kanciæ conſeruandam, nec non ad diuerſa felonias, tranſgreſsiones, & alia malefacta in dicto comitatu perpetrata, audiendum & terminandum aſsignatorum, vicecomiti eiuſdem comitatus,* Precept, to ſummon the Seſsions of the Peace.

mitatus, Salutem: ex parte dictæ dom. reg. tibi præcipimus, quod non omittas propter aliquam libertatem in ballina tua, quin eam ingrediaris, & venire facias coram nobis, vel ſocijs noſtris Iuſticiarijs pacis, &c. (tali die &c.) proximè futuro apud Maidſtone *in com. prædicto, tam 24. probos & legales homines de quolibet hundredo in ballina tua, quàm 24. milites & alios probos, & legales homines de corpore comitatus tui (tàm infra libertates quàm extra) quorum quilibet habeat 40. ſol. reditus terrarum & tenementorum liberè per annum ad minus: ad inquirendum tunc & ibidem ſuper hijs quæ ex parte dictæ dom. Reg. eis iniungentur. Scire facias etiam omnibus Coronatoribus comitatus tui, Seneſchallis. Conſtabularijs, Subconſtabularijs, & Balliuis libertatum, infra Hundreda & libertates prædicta, quod ſint tunc ibi ad faciendum & perimplendum ea quæ ratione officiorum ſuorum ſunt facienda. Proclamari præterea facias per totam ballinam tuam, in locis idoneis prædictam Seſsionem pacis ad diem & locum prædict. fore tenendam. Et tu ipſe tunc ſis ibidem, ad faciendum, & exercendum ea quæ ad officium tuum pertinent: & habeas ibi tunc, tam nomina Iuratorum, Coronatorum, Seneſchallorum, Conſtabulariorum, ſubconſtabulariorum, & balliuorum prædict. quàm hoc præceptum. Datum ſub ſigillis noſtris apud* Shoreland, *in comit. præd. 16. die Martij, anno regni dictæ dom. noſtræ Reg. Eliz. Dei gratia, &c. 41.*

This

This precept may be made (as here it is) by any two Iuſtices of the peace, ſo that the one of them be of the *Quorum*, for two ſuch may holde a Seſſion of the Peace, as it doeth plainely appeare by the commiſſion: and therefore (as M. Marr. ſaith) it ſufficeth not to haue it run vnder the name of the *Cuſtos Rotulorum* alone, ſeeing that he hath no more authoritie in this behalfe, then any one of his fellows hath: for the words of the ſaid *Mandamus* in the Commiſsion to the ſherife bee, *Coram nobis, &c. venire facias, tot, & tales, &c.* Yea, if two ſuch Iuſtices make a precept for a Seſſion of the peace, all their fellow Iuſtices cannot diſcharge it by their *Superſedeas*: but a *Superſedeas* out of the Chancerie will diſcharge it, ſaith Fitzh. The number of the Iuſtices.

And if one Iuſtice of the peace alone wil take vpon him to hold a Seſſion of the Peace, (that was lawfully ſummoned by him and an other ſuch Iuſtice) and will make the ſtile of the Seſſion in the names of himſelfe and the other, all preſentments ſo taken before him may be auoided: But if the Seſſions be in trueth holden by two ſufficient Iuſtices onely, and the ſtile (or title) thereof be made in the names of three, then all the preſentmentes before them ſhall ſtande good. For it wil not helpe the partie to ſay, that one of the three was not there, when it ſhal appeare that two of them (the one beeing of the *Quorum*) were preſent, which will ſuffice, Mar.

The time. Touching the time of holding the Seſsions of the peace, I will forbeare to ſpeake, till I ſhall come to diuide the Seſſions.

The place. But the place of holding them is arbitrable, and at the pleaſure of the Iuſtices themſelues, ſo that it bee meete for acceſſe. And although the precept do appoint the Seſsions to be holden in ſome one towne by name, yet may the Iuſtices keepe it in any other towne, and all the preſentments ſhal be good that ſhalbe taken where they hold it: but then againe, no amerciament can be ſet vpon any man for his default of apparaunce there, becauſe he had no warning of it Marrow.

So, if two ſuch Iuſtices make a precept for a Seſsion to be holden in one towne, & two other Iuſtices make another precept for another Seſsion to be holden at another towne (or in an other part of the ſame Towne) the ſame day: then the preſentments taken before either of them ſhall be good: Marrow. And then alſo it ſeemeth, that he which ſerueth at the one Seſsion (as a Iuror, or officer) ſhall be excuſed for his default at the other: becauſe as they both bee the Queenes courts, and of equall authoritie: So he cannot preſent himſelfe in them both at once.

What

What perſons ought to appeare at theſe Seſsions, and therein of the *Cuſtos Rotulorum*, the *Records* of the *Seſſions*, and the Clarke of the Peace, and how the Iurors ought to be qualified and ordred, and of the priuiledge of the Seſsions.

CAP. III.

FOr the better preparation towards this Enquirie, let vs peruſe the perſons that are to attend and doe ſeruice at the Seſsions.

The Iuſtices and their Equalitie.

The Iuſtices of the peace be ſo neceſſarie, as without them (though al others ſhould appeare) no Seſsion can be kept: and yet if any of them be abſent, their fellow Iuſtices can not amerce them, as the Iuſtices of Aſsiſe may do for their abſence at the Gaole deliuerie: for, *Inter pares non eſt poteſtas*, and the authority of al the Iuſtices of the peace at the Seſsions is equall, ſo that like power hath he which is not of the *Quorum* with him that is, except it be in ſpecial caſes ſet forth in the Commiſsion and Statuts. And therfore, it was holden (3. H. 7. Fitzh. *tit. Iuſtice del Peace* 3.) that if one which is not of the *Quorum*, will bee ſo bolde as to rebuke one that is of the *Quorum*, he and his companions may not commit him to priſon for it. Neither will any diſcrete Iuſtice take libertie hereby to carpe or ſkorne any of his Collegues, becauſe he is equal

with them: but will rather drawe from hence a lesson, to vse them withall lenitie and modestie, seeing that they be not inferiour to him.

And albeit the power of these Justices bee ioynt at the Sessions, yet (to some purpose) each one hath a distinct power by himselfe also. For, if one of them (sitting in this Iudiciall place) shal see a Riot, he may cause the parties to be arrested, and may also record the Riot, whereby they shal be so concluded, as they shal haue none answere to it: Fitzh. *tit. Iust. del Peace 9.*

The Recognusors. The Recognusors that stand bound to the keeping of the peace, and to appeare at the Sessions, and such like, be commonly tied vnto the Quarter Sessions, whereunto I am not yet come: And those prisoners that are sent by Iustices of the peace for felonie or manslaughter, or suspition thereof, or be let to Baile or Mainprise vpon any such offence, bee (for the most part) reserued till the Gaole deliuerie, wherewith I haue not to doe: The rest of that kind, may bee brought forth at euerie Sessions of the Peace.

The prisoners.

But two sorts of men there are, that owe their ordinary attendance at these sessions, that is to say, the Officers (or Ministers) of the court, and the Iurors of the country.

The Custos Rotulorum. Amongst the Officers, the *Custos Rotulorum* hath worthily the first place, both for that he is alwayes a Iustice of the *Quorum* in the Commission

mission, & amongst them of the *Quorum*, a man (for the most part) especially picked out either for wisedome, countenance, or credite: and yet in this behalfe he beareth the person of an Officer, and ought to attend by himselfe, or his deputie.

For the words in the Commission be to him now by his proper name, *Quod ad dies & loca prædicta breuia, præcepta, processus, & indictamenta prædict. coram te & dictis socys tuis venire facias.* Whereas (vntil the 14. yere of king Richard the second) that charge was general to al the Justices, & not laide specially vpon any one person in the Commission: as it doeth appeare in the Tower, by the Records which I haue already touched.

This man (as his very name bewraieth) hath the custody of the Rolles (or Recordes) of the Sessions of the peace: and whether the custody of the Commission of the peace it selfe doe pertaine to him alone, it hath beene made some question. Who shall keepe the commission of the Peace.

For Marr. saith, that seeing the other Justices may holde a Session without him, it is meete they should then haue the Commission with them. But Chocke in the booke (9. E. 4. 2.) holdeth, that a Justice of the peace (in making any Iustification by vertue of his Office) needeth not to shew the commission of the peace: because (saith he) the keeping thereof belongeth to the *Custos Rotulorum*: & for the same cause also, the

Bailife of a Iuſtice of the peace ſhal not be driuen to ſhew the commiſſion, as it ſeemeth 10. H. 7. 7.

And truely, ſince it is ſuch an entire thing, as can remaine but in the hands of one at once, it ſeemeth moſt reaſonable, that hee that is put in truſt with the reſt of the Records, ſhould be credited with the cuſtody of the Commiſsion alſo.

The records of the Peace.

But vnder the name of the Recordes of the Seſsions of the peace, I doe not comprehend all manner of Recordes concerning the peace, but thoſe onely which ought to be at the Seſsions of the peace: as Bils, Plaints, Informations, Inditements, Preſentments, the Rolles of proceſſes, Trialles, Iudgements, Executions, and all other the Acts of the Seſsions of the peace themſelues: And furthermore, the Ingroſſement of the rates of ſeruants wages, all Recognuſances of the peace and good Abearing: Recognuſances concerning Felonies, and Alehouſe keepers, and ſuch like as ought to bee certified (or brought) to the Seſsions of the Peace, muſt be numbred amongſt the Records of the Seſsions of the Peace: for of all theſe there may bee vſe at the Seſsions, and therefore the *Cuſtos Rotulorum*, or ſome for him, ought to be readie there to ſhew them.

For which end I take it meete, that howſoeuer thoſe Records haue heretofore beene ſuffered to lye in the handes of the Clearke of the Peace, and by the death or remoue of him haue

haue beene to seeke: yet now, the inconuenience being found, and the records themselues being growne to greater bulk, the same should be lodged in some special and proper roome vnder safe custodie, and not without an Inuentorie (or register) inuented, wherof the one part to remaine with the *Custos Rotulorum*, and the other with the keeper of them.

Now although it were before time at the libertie of a Iustice of the peace, to certifie a Recognusance of the peace to the *Custos Rotulorum*, (as you may see 2. H. 7. 1.) Yet nowe, by the statute (3. H. 7. cap. 1.) hee ought to certifie, send, or bring it to ỹ next Sessions of the peace, that the party may be called, and to the end also, that his default (if he make any) may be recorded: & by such record of his default, he is concluded to say, that he appeared there. 13. E. 4.

As for Precepts for Suertie of the Peace, the speciall Records for conuictions of Forcible entries, Riots, and such like, as bee made out of the session of the Peace by particular Iustices, and be to remaine with themselues, and not appointed to bee certified thither, I cannot recken them in the number of the Records of the sessions of the Peace: no more than I may well doe the Inrolments of bargaines and sales, and such other Recordes lying in the charge of the *Custos Rotulorum*, or Clarke of the Peace.

And now, as this man is (by name and office) keeper

keeper of the recordes of the Peace: So would it not a little amende the ſeruice, if hee were (in deede alſo) carefull for the due preſeruation of them, and would not looſely leaue them (as commonly it is founde) to the onely cuſtodie of the Clarke of the Peace, without hauing any regiſter of their number and ſortes, and without appointing any conuenient place certaine, for the more ready ſearch, and ſafe beſtowing of them: whereby it falleth out very often, that after the death of ſuch a Clarke, theſe recordes are hardly recouered, and that peeceemeale from his widow, ſeruaunts, or executors, who at their pleaſure may embeſel, miſuſe, or conceale what they will: The which, how farre it may reach to the loſſe of her Maieſtie in her Fines and forfaites Royall, and to the hurt of her ſubiects as well in their purchaſes of landes (the Inrollementes whereof alſo are not alwaies orderly digeſted) as in their goods, and towards their perſons (by the filching of Bonds, Enditements, or Proceſſes) I leaue to bee debated and decided in the Court of their owne conſciences that take this charge vpon them.

M. Brook (Tit. Commiſſion 11.) addeth, that the Recordes of the Iuſtices of the Gaole deliuerie doe remaine amongſt the Recordes of the Peace alſo. Howbeit I think he meant it not of all the Records of the Gaole deliuerie.

For, as the Iuſtices of Gaole deliuerie haue their

their proper Clarke, which maketh vp, and keepeth the Records of things determined by their Commission: so the same Iustices (being withal Iustices of Peace) doe leaue with the Clarke of the Peace, Inditements, and such causes of the Peace, as be not determined, but doe hang in Proceſſe, to the ende that offendours may bee the more speedily Iusticed.

And it appeareth 13. Henr. 4. 10. that Hanford (Iustice of Gaole deliuerie) at his departure called the Clarke of the Peace, and willed him to take the name of a prisoner that had been sent thither for Felonie without any sufficient proofe, and to cause it to bee enquired of at the next Sessions of the Peace.

This *Custos Rotulorum* hath credit (by 27. H. 8. ca. 16.) touching Inrolments: by 11. H. 7. ca. 15. to appoint two Iustices of the peace that may controll the Shirifes books: by 27. El. ca. 12 for taking the oath of the Vndersherife, and by 39. Eliz. cap. 12. for keeping the Ingrossement sealed of the rates of Wages for seruaunts and labourers.

The gift of the Office of the Custos Rotulorum.

And this office of the *Custos Rotulorum* was of auncient time giuen by the discretion of the Lord Chancellor, vntill that (about the latter end of the raigne of king Henry the eight) sundry persons (no lesse vnworthy to occupie the Office, then greedy to haue the place) did by their own labor, & other mens friendship, obtain at

at that kings hands, graunts of the ſame by his Letters Patents, for terme of their liues: by meanes whereof, ſo many euils did ſhortly enſue, both to the hinderance of Iuſtice, and to the diſheriſon of the kinges ſubiects, that the laſt Parliament of his raigne, (*viz.* 37.H.8.cap.1.) did ſomewhat reſtraine that courſe: For as it did ordaine, that none ſhould thenceforth bee appointed *Custos Rotulorum* in any ſhire (a few places of Priuiledge onely excepted) without a Bill ſigned with the kings hand: So it tooke order alſo, that the ſame Bill ſigned ſhould be but as a warrant to the Lord Chancellor, to aſſigne (in the Commiſſions of the Peace) the ſame perſon to be *Custos Rotulorum*, onely vntill the king ſhoulde (by another Bill ſigned with his hand) make appointment of another perſon for the place.

But neither this ordinance had any long life: for within a few yeares after, it was thought ſo preiudiciall to the power of the Lord Chancellour, and ſo troubleſome a matter to ſue to the king for bils ſo to be ſigned, that by the Parliament. (3.E.6.c.1.) the Lord Chauncellor was wholy reſtored to his auncient authority in naming the *Custos Rotulorum* againe (except in ſuch priuileged places) without expecting any ſuch bill: and that the *Custos* appointed by the diſcretion of the Lord Chancellor, ſhould enioy the ſame Office, to be occupied by himſelf,

or

or his ſufficient Deputie, in as ample maner, as if that ſtatute (37.H.8.ca.1.) had neuer beene made.

The Clarke of the Peace oweth his attendance at theſe Seſſions alſo. For (omitting that hee hath ſpeciall truſt in the taking of Inrolments by 11.H.7.c.15. and that he is (in a ſort) incorporate by that name of his office to ſue vpon the Statute of Huy and Cry, 27.El.ca.13. generally: & 39.El.ca.25. in one ſpeciall place: becauſe thoſe thinges haue no reference at all vnto the Seſſions, he readeth the Inditements, and ſerueth the Court: hee inrolleth the Acts of the Seſſions, & draweth the Proceſſe. He muſt record the proclamations of Rates for ſeruants wages, and inroll the diſcharge of Apprentices, 5.El.cap.4. Hee alſo is appointed to keepe the counterpane of the Indenture of Armour, 4. & 5.Phil.& Mar.cap.2. Hee keepeth the Regiſter booke of licences giuen to Badgers and Laders of corne, 5.El.cap.12. and of thoſe that are licenced to ſhoot in Guns, 2.Ed.6.ca.14. And he is bound (vnder the paine of 5l.) to certifie into the Kings Bench, tranſcripts of Inditements, Vtlawries, attainders, and Conuictions, had before the Iuſtices of the peace within the time limited by the ſtatute, 34.H.8.cap.14. Clarke of the Peace.

All which things he cannot doe, if hee be not preſent: ſo that hee is an Officer to this Court, and is the Clarke of the Iuſtices, as the Statute

12,

12.R.2.cap.10. nameth him, and not, as M. Marrow thought) the Clarke of the *Custos Rotulorum* onely.

You may reade also (2.H.7.1.) that if a Recognusance of the peace bee brought in, to the *Custos Rotulorum*, & the party grieued will not sue forward, than the Clarke of the peace (who is the Clarke & Atturney of the King, saith that booke) shall call vppon it for the Kings aduauntage: and I am sure, that the said Statute (37. H.8.cap.1) calleth his place an Office.

The nomination of the Clarke of the Peace.

Howbeit, the nomination and appointment of him hath long time belonged to the *Custos Rotulorum:* and he is to enioy his Office, so long as the *Custos Rotul.* keepeth his place: and may exercise it by himselfe, or by a Deputie sufficiently instructed in the Lawe, and admitted by the *Custos Rotulorum.*

And this Office was also (for a time) giuen by the Kings Letters patents for terme of life, as that of the *Custos Rotulorum* was, vntill the said Statute (37.H.8.ca.1.) recontinued the ancient order of giuing it by the *Custos Rotulorum* onely.

The Coroners.

Furthermore, the Coroners (as the common forme of the precept sheweth, and the Statute 27.H.8.cap.5. presumeth) ought to bee present at the sessions: But yet, that is not for to certifie their Inquisitions, which ought, by 1. & 2.Phil. & Mar.cap.12. to be done at the generall Gaole deliuerie:

deliuerie: nor yet to receiue any Approuer, for neither that belongeth to the Iuſtices of peace, 9.H.4.1, but it is only (ſaith M. Marr.) becauſe the Coroners be parties to the Exigents, and be Iudges of the Vtlawries: Howbeit, they are (beſides that) Conſeruators of the Peace alſo, and may (in caſes) commit men to priſon, and therefore ought to be at the ſeſſions, to obiect againſt them,

The Sherife in like manner ought to attend at theſe ſeſſions, for the double duetie that hee beareth: the one, as Shirife to returne the Precept, to take the charge of priſoners, and ſo to ſerue the Court otherwiſe, as he hath in charge by the *Mandamus* that is mentioned in the Cōmiſſion: the other, becauſe he alſo hath Care and Charge of the Peace. The Sherife.

The Bailifes of Franchiſes, and the Conſtables of Hundreds are to ſerue heere, the one as Miniſters, and the other as Iurours, and therefore ought to giue their attendance. Bailifes and Conſtables.

And euery of thoſe (except it bee the *Cuſtos Rotulorum*: for thereof I doubt) may without controuerſie be amerced, if they make default.

But the Ordinarie oweth not his attendance at any ſeſſions of the Peace, as he doth at euerie Gaole deliuerie, in the opinion of M. Marr. In deede he is not warned by the common forme of Precept, and therefore cannot ſo conueniently take knowledge of the ſeſſions of the Peace. The Ordinarie.

How-

Howbeit, I thinke that he ought to ſerue, when he ſhall be called, for matter of Clergie.

Iurors for Inquirie and triall.

But eſpecially, heere ought to appeare ſuch Iurors, as be returned by the Shirife, and warned by his bailifes, whether it be for Enquiry, or triall. And in this behalfe, both the commiſſion, the common forme of the preecept, and the Law it ſelfe (11. H. 4. cap. 9.) willeth, that they ſhould be, *Probi & legales homines.*

For, if any of them be diſcredited in Law, as by Attainder in Conſpiracie, Attaint, *decies tantum*, Subornation of Periurie, Concealement, or ſuch like, they be not *Probi*, and their preſentmẽt is voyd by it, vnleſſe there be xii. (beſides them) that are not ſo blemiſhed.

Againe, if they be outlawed, abiured, condemned in a Premunire, or attainted of treaſon, felonie, or ſuch like: then be they not *Legales*, and their preſentment is meerely voide alſo, as it may be gathered vpon the caſe, 11. H. 4 41.

And women, infants vnder fourteene yeares of age, Aliens, and ſuch as bee within orders of the Miniſterie, or Clergie, cannot bee empaneled amongſt others. Mar.

Generally alſo, theſe Iurors ought, either to be inhabiting within the Shire, or els to haue lands there: for the Commiſſion willeth, that they ſhould be ſuch, *Per quos rei veritas melius ſciri poterit:* which muſt needs bee vnderſtood of ſuch, as haue cauſe to know the Countrey: And

the

the Precept is vsually according to the same forme, especially (in the Countie Palatine of *Lancaster*) each Juror of enditement and triall, ought to haue to the yearely value of fiue li. by order of the statutes, 7. H. 5. cap. 1, 18. H. 6. cap. 12. & 33. H. 6. cap. 2.

If any of these Jurours returned, bee threescore and ten yeares of age, or haue any continuall infirmitie, or be otherwise decrepite, yet that shall not excuse him for not appearing, if the Justices will exact his seruice: but he is driuen to his Action vpon the statute (W. 2. cap. 38.) against the sherife for his returning of him, Mar.

And if he haue a Charter of Exemption, hee ought to shew it to the Sherife: against whome (if he will notwithstanding empanel him) hee may haue onely his Action vpon the Case, and none other remedie, 18. H. 8. 5. *Curr.* which may be truely said, as to the sauing of his issues: but (by some other bookes, and namely 42. Ass. Pl. 5 and Mar.) he is to be discharged vpon his apparance, and specially where he hath in his Charter of Exemption these words, *Licèt tangat nos*, vnlesse it fall out that there want others that be sufficient to serue and furnish the number, in which case, none is to be spared.

Now, though some of the Jurors of this Enquirie, be of affinitie (or consanguinity) with any partie grieued, that procureth the inditement: yet that hindereth not their presentment:

howbeit it is no diſcretion, for the Iuſtices to ſuffer any ſuch to be empanelled.

Generall and particular Iuries.

Our common maner in *Kent* (agreeing with the forme of the precept) is to returne particuler Iuries for the Hundreds, and one generall Iurie for the body of the Shire: this laſt is made vp with vs (for the moſt part) of the Conſtables onely: and thoſe others (if they bee not filled at the firſt) are woont to remaine, and to be renued with the *Tales* from Seſsions to Seſsions. But that vſage is no ſmal hinderance to the ſeruice (as many doe thinke) by reaſon that (thoſe particular Iuries being ſeldome ſerued with full apparance) the whole Enquirie ſtandeth onely vpon their labour that are empanelled for the body of the Shire, that is to ſay, vppon one man of each Hundred, or two (at the moſt) who cannot be thoght to ſee ſo much as a whole Iurie of eyes both may and doth ſee.

And therefore, they thinke, that it were good to make vp ſome of the particular Iuries alſo (when they bee not full) *de circumſtantibus* of other Hundreds: by which meane, either the whole Shire, or (at the leaſt) a great many parts thereof, might be peruſed, and ſerued.

And to this opinion M. Marrow ſeemeth to encline, ſaying, that in default of thoſe which are returned, the Iuſtices may take a Iurie *de circumſtantibus*: And hereunto alſo the Statute (3. H. 8. ca. 12.) ſheweth ſome good conſent, in that

that it giueth power to the Iuſtices, by their diſcretion to commaund the Sherife, or his deputie, to adde, alter, or diminiſh the names of the pannel, which, if he refuſe to do, he ſhall forfeit xx, li. for his contempt.

Neither is it to be obiected, that men (being all of one Shire) may not take knowledge of things done in diuers Hundreds: Seeing, they haue diuers occaſions of meeting togither, as at the Countie Courts, the Sherifes turnes, the Aſſiſes, and generall Quarter Seſſions. And if a Iurie of one Hundred would make preſentment of an offence done within any part of the Shire, (out of their owne Hundred) this were good in Law.

Beſides the which (if M. Marr. mixture bee followed) fewe of them that doe appeare, ſhall looſe their labour, wheras now the moſt part of them doe come in vaine.

How they of the Iurie muſt be ſworne, and ordered.

But theſe men be not truely Iurors, til they be ſworne, as their name pretendeth, and otherwiſe their preſentment is vtterly void. And if it ſhould (by any ouerſight) happen, that they or ſome one of them, were not ſworn at all: yet if y Record make mention, that they bee ſworne, their preſentment is of force inough: for the Record may not be gainſaid.

And the Iuſtices may (vpon cauſe) remoue a Iuror, after he is ſworne 20. H. 6. 5. Againe, if (after the ſwearing of the Iurie) their ſeruice

be put off till the next day, (vpon any vrgent occasion) then may they be sworn of new, as if they had not before appeared: 7. H. 4. 38.

The number of Iurors. Each Iurie of Enquirie ought to containe twelue in number at the least, and if there bee 18. (or mo) it shall not be amisse: Yea, it is the common order with vs, to haue them of an odde number, as 17. 19. or 21. to the ende (as it seemeth) that if they should dissent in opinion somwhat equally, yet there should bee alwayes one to weigh downe the side, and cast the ballance. But if twelue of them doe agree, the gain-saying of the residue cannot hinder the presentment. Yea, the lawe was (in the time of King Ethred) that in a Iurie of 12. the agreement of 8. should preuaile and make a good verdite, although for a long time togither it hath been, and yet is otherwise vsed.

The Iustices ought not to commit these Iurors of enquiry to any keeper: nor to keepe them without meat or drink: nor to carry them out of the Towne: and yet they may adiourne them to another place, to giue their verdit.

Concealement If these Iurors doe wilfully conceale offences (presentable and that bee complained of by Bill) then may the Iustices choose an Enquest of persons (whereof euerie one may dispend xl.s by yeare) to enquire of their concealement: And if any such concealement bee found within the yeare, euerie one of the first Enquest shall be amerced

mercedin full Seſsions, by the diſcretion of the ſame Iuſtices. 3. H. 7. cap. 1.

And becauſe the Iurors of thoſe dayes were yet wilfull in their concealements, it was prouided within eight yeares after, that the Iuſtices of Peace ſhould determine cauſes, vpon information, without any ſuch preſentment. But many times *In vitium ducit culpæ fuga:* & therefore, that ordinance endured not long, as you ſhall hereafter perceiue.

Neuertheleſſe, it is to be wiſhed, that theſe & ſuch other Inquirors would more carefully employ themſelues in that ſeruice, which is the chiefe and almoſt the onely ground, whereupon the Iuſtices are to worke: conſidering that rarely any other than common promoters (that hunt for priuate gain, & are not led by zeale of Iuſtice) will be intreated to informe againſt offenders.

And this ſhall they the better doe, if they will bee directed by theſe few councels, following, viz. Firſt, that they come prepared, to further the good of their Country, and not to ſaue their iſſues, or to ſerue for faſhion ſake: then, that they giue credite to credible perſons, ſworne to informe them: thirdly, that they meaſure their doings by the right line of Lawe, and not by the crooked corde of a pretended equitie and counterfeit conſcience. Furthermore, that they hold not a court of common plea, by admitting proofe of witneſſes againſt the Queene, as

knowing that they are not to trie an issue, but to offer an information, the truth or falsitie whereof shal be afterwards tried by another Jury: Finally, that they discouer not their owne doe-

Keepe counsel ings, for it is vsually a part of their Oath, that they shall keepe the Queenes Counsel, & their fellowes. And we reade in Fitz. (Tit. *Coron.* 207. & 272) that to indite a man of Felony, and then to shewe abroad to others what they haue done therein, hath been taken for Felony: Howbeit, that offence is now holden to be fineable onely.

Priuiledge of the Sessions. And now, as all these owe their seruice at the Sessions, either by reason of their Office, or by vertue of the Sommons: So al others also may freely attend there, if not for any thing that specially concerneth thēselues, yet for the aduancement of publike Iustice, and for the seruice of the Queene. And to this ende, they are inuited thither (as I may say) by a certaine freedome of accesse, & by protection from common arrest: a thing, that is incident to each court of Record, and without the which, Iustice should be greatly hindered. So that, if a man come voluntarily to these Sessions, with the minde, either to preferre any bill of Enditment, or to giue information against an other: or to tender a fine vpon an Enditement, touching himselfe: or doe come compelled to make appearance for the sauing of his bond: and bee arrested by the sherife vppon common and originall processe, in his comming thi-

thither, or during his tarrying there: it seemeth that (vpon examination of the matter vnder his oath) he shall be dismissed thereof by the priuiledge of this Court, euen as it is vsed in the higher courts at Westminster 1. H. 7. 12. &c.

Of the Articles that are to bee giuen in charge, at the Sessions of the Peace.

Cap. IIII.

IT was the auncient manner, that twise in the yeare at the Sherifes turne (which was somtime a court of great authoritie, & called Shiremoote) the Bishop of the dioceſſe, and the Alderman (or Earle) of the Shire, should bee present: the one, to informe the people in the lawes of God: and the other to instruct them in the lawes of the land: Archaionom, *in legibus Canuti, cap.* 17.

And it were to be wished, that as ther is commonly at euery Assise, a Sermon (vttered by some learned man) so also the like might bee at each generall (or quarter) Sessions of the peace. For, seeing that the laws of men must be obeyed for God, it doth of necessitie ensue, that hee which will seeke to haue man obeyed rightly,

muſt firſt cauſe God to be preached truely.

The Iuſtices of the Peace (ſaith Maſter Fitzherb.) for their parts bee bound to informe the people: and (no doubt) the charge is giuen, as well to inſtruct thoſe that bee ignorant, leaſt they offend vnwares: as to enquire of thoſe that haue alreadie fallen into danger by offence and thereof it is, that many Statutes doe expreſſly commaunde, that they ſhall bee openly read (or declared) at the Seſſions, as you ſhall ſee in place for it.

The ancient order, of giuing the charge in Eire.

But the maner of giuing the Charge, and receiuing the Verdite at this day, differeth from that which the Iuſtices in Eyre were wont to vſe: for you may ſee M. Bracton fol. 116. that firſt one of the Iuſtices did open before the whole aſſembly, the benefites of the ſeruice in hande: the commodities of keeping the Peace: and the euils of the contrarie: and that then the Articles of the Charge were read by one and one to the Iurors: who (receiuing the ſame at the handes of the Iuſtices) did alſo make aunſwere (in the yeelding vp of their verdite) to ech article ſeuerally, and by it ſelfe.

Which cuſtome, as it had many profits: ſo is it worthie (in mine opinion) to be recontinued and brought in vſe againe.

Neither ought the multitude of the Articles (now inquirable) to diſcourage any man in this behalfe: For, if thoſe lawes which be leaſt ſeruiceable

uiceable (either for the preſent time, or for the place, or other iuſt reſpect) were onely touched or run ouer, by way of ſhort articles: then would there be the more time affoorded for ſpeech, that might be well ſpent, aſwel in diſcourſe of exhortation, or dehortation, as in the larger handling of ſuch other ſtatutes, whereof there is greater vſe and neceſſitie. And this libertie the Iuſtices in *Eire* themſelues did vſe alſo, as the ſame M. Bracton in the ſame place reporteth.

The points of the charge diuided.

The pointes of the charge that wee haue in hand, may be reduced to a fewe heades, and that after ſundry ſorts of diſtribution: of which (for examples ſake) I will ſhewe you ſome. Firſt thus:

1 All the matters inquirable, bee either Eccleſiaſticall, or Lay, and Temporall: and theſe Temporall, be either high treaſons, petite treaſons, felonies, or otherwiſe puniſhable and fineable offences: Or thus,

2 All theſe points, doe either concerne God, the Prince, or Subiect: Or thus,

3 The breach of theſe Articles, is offenſiue, either againſt the firſt, or the ſecond Table of the ten Commandements of God: Or thus,

4 All theſe matters bee inquirable, either by vertue of the Commiſſion of the Peace, and of the ſtatutes therein implied, or els by power of the Statutes not comprehended within the Commiſſion: Or thus,

5 All

5 All theſe Lawes doe either commaund or prohibit, things agreeing, or repugnant to ſome of the foure Cardinall (or principall) vertues, Prudence, Iuſtice, Fortitude, or Temperance: or thus,

6 All offences inquirable heere, be either voluntarie, inuoluntarie, or mixt: or thus,

7 All theſe ordinances doe either draw vs to the good, or withdraw vs from the euill, of the mind, the body, or Fortune: Or thus,

8 Men doe offend theſe lawes, either by doing nothing of that which is commanded: or by doing an other thing then is commanded: or by doing that amiſſe, which is commanded well: or thus,

9 Theſe lawes be offended, either by dooing too much, or to little.

They may alſo be diuided, by the varietie of the puniſhments, and by ſome other accidentall reſpects: all which I leaue to the choice of ſuch as ſhall giue them in charge, and will now (for this time) ſet downe the Articles themſelues, after the order of the firſt and third ſortes of diuiſion, pointing out in the firſt place the Eccleſiaſticall cauſes, and then purſuing the Temporall.

The matter of this charge.

In which doing, firſt, I will omit all ſuch ſtatutes, as doe concerne, but onely ſome one, or a few particular places: knowing that I write to the moſt part, who haue not to do with them.

Secon-

Secondly, I will purpoſely pretermit the diſtinct rehearſall of puniſhments, contained in the ſtatutes that I am to run thorow: as well for breuities ſake, becauſe thoſe doe rather pertaine to the Iuſtices, then to the Iurors; as alſo for that I haue an auncient Precedent or two, to make for mee: the one of the Iuſtices in *Eire*, who (in their charge) did only read the Articles in offence, without vſing any mention of the paines due vnto the ſame, As it appeareth by *Bracton*, *Britton*, & the ſmall volume of the olde Statutes, vnder the Title, *Capitula Itineris*: & another like, of the Articles deliuered to the Enqueſt of office, in the Kings Bench, as is to bee ſeene in the booke of Aſſiſes, *lib.* 27. pla. 44.

And yet, if in ſome ſpeciall point it may bee ſeruiceable, to haue the paine of the Lawe laide wide open (as in a great many, thorough the lenitie thereof, it will doe no good at all) the Reader ſhall find it for the moſt part quoted in the Margine here, and ready to be vſed by him.

Laſtly, I will neither recite all the partes of each generall ſtatute by it ſelfe, nor yet comprehend them wholly and fully with others: becauſe the firſt of theſe wayes woulde bee very long, thorough the often iteration of the ſame things, and the other would bee ſo crooked and comberous (thorough the varietie and difficulty of the exceptions) that the hearer would be many times loſt, before I ſhould come to the end.

I

I know, that M. Fitz. was of the opinion, that the Iuſtices of peace ought at their quarter Seſſions, and might at their priuate Seſſions, giue in charge to the Enqueſt, all ſuch matters as they haue power to determine: and this he vrgeth, as well by the oath of the Iuſtices (who are ſworne to doe right in all cauſes within their Commiſſion, or the ſtatutes) as alſo by the ignorance of the Iurors, who be inſtructed only by the charge: which if it be ſo, I ſee not (for my part) how either theſe Iuſtices (that are bounde to vtter all) can be diſcharged, or the Iurors (that ought to heare all) can bee enformed without this, or ſome ſuch compendious and plaine way, that may both ſhortly for the time, & lightſomly for the order, comprehend the chief ſubſtance of all that which belongeth to their Enquirie.

Howbeit, as I thinke it the beſt for the Iuſtices, to rehearſe all ſuch points, whereof the Iurie may make preſentment before them: ſo yet, I hold them diſcharged (in my ſlender opinion) if they vnfolde only the articles of their Commiſſion, and of ſuch other ſtatutes as do expreſly authoriſe them to make Enquirie.

For, as there be ſundry lawes that do giue to Iuſtices of the peace a certaine ſpeciall (or particular) power in them, and doe not yet yeeld vnto them any authoritie to enquire vppon the ſame (of which ſort be the ſtatutes, 27. H. 8. ca. 20. & 32. H. 8. ca. 7. of Tithes: The ſtatute 35. H. 8. ca. 17.

17. of Woods: The ſtatute 23. El. ca. 9. of Logwood, and ſundry others:) So alſo there be diuers others, that do affoord to the Iuſtices of peace the power of hearing and determining, and yet do not expreſſly giue them the name of Inquirie.

And, forasmuch as they may heare and determine of theſe, by Information (giuen to themſelues, and by them recommended to the Iury) it ſeemeth to me, that they bee not ſo neceſſarily bound to giue them in charge, but that they bee well inough diſcharged, if they be open and readie to receiue the Informations and preſentments that ſhall bee offered vppon them: And of this kind be the ſtatutes of Highwaies. (5. El. ca. 13. & 18. Eliz. cap. 9.) the ſtatute of Fighting in Church or Churchyard (5. Ed. 6. ca. 4.) the ſtatute of Informers (18. El. cap. 5.) and ſundrye others, whereof it would be ſuperfluous to make rehearſall.

Neuertheleſſe, becauſe I wil not that my fantaſie ſhall either ſtand againſt his iudgement, or be preiudicial to other mens profit, I haue contended (what I may) to deliuer the principall & moſt ſeruiceable parts, not onely of the Commiſſion and of ſuch Lawes as doe ſpecially containe their Inquirie within them, but alſo of all ſuch other ſtatutes as may bee heard and determined by Iuſtices of the Peace at any their ſeſſions: and that in ſo narrow a roome, as (if I be not after ſome proofe, deceiued) they may be diſtinctly

ſtinctly read ouer in a couple of houres, at the moſt: So alwayes, that the varieties of the puniſhments, the yeares of the Kings and their Parliaments, and ſuch other Notes as fall in by the way, be left vnread, and be paſſed ouer.

Eccleſiaſticall cauſes.

Extoll any forrain power.

IF any perſon haue (within this halfe yeare) by writing, printing, teaching, preaching, expreſſe deede, or act, aduiſedly, maliciouſly, and directly affirmed, holden, ſet forth, or defended, the authority, preheminence, power or iuriſdiction Spirituall or Eccleſiaſticall, of any Forraine prince or perſon whatſoeuer heretofore claimed, vſed, or vſurped in this realme, or any the Queens dominions, or haue aduiſedly, maliciouſly, and directly, put in vſe or executed any thing for the extolling, ſetting forth, or defence of any ſuch pretended or vſurped iuriſdiction, preheminence, or authoritie, or any part thereof. Or if any perſon (compellable to take the oath of Recognition of the Q. Maieſtie to bee ſupreme Gouernour in all cauſes within her dominions) haue refuſed to take the ſaid oath, after lawfull tender thereof to him made, 1. Eliz. cap. 1. 5. Eliz. cap. 1. enquirable by words of 23 Eliz. cap. 1.

Offence { 1. Premunire. 2. Treaſon.

Offence { 1. Premunire. 2. Treaſon.

If

If any perſon, vnder the Queenes obedience haue at any time (within this yeare) by writing, ciphering, printing, preaching, or Act, aduiſedly holden, or ſtoode with, to extoll, or defend the power of the Biſhop of *Rome*, or of his See heretofore claimed, or vſurped within this realme: or by any ſpeech, open deede, or act, aduiſedly attributed any ſuch maner of authoritie to the ſaid See of *Rome*, or to the Biſhop therof, within any the Queenes dominions, ye ſhall preſent him, his abettors, procurers, counſellors aiders and comforters. 5. El. cap. 1. Pope.

If any perſon haue by any meanes practiſed to abſolue, perſwade, or withdrawe any other within the Queenes dominions from their naturall obedience, or (for that intent) from the religion now eſtabliſhed here, to the Romiſh religion, or to moue them to promiſe obedience to the See of *Rome*, or other eſtate: Or if any perſon haue beene willingly ſo abſolued, or withdrawne, or haue promiſed ſuch obedience. Withdrawing from obedience. Treaſon.

And if any perſon haue willingly ayded or maintained any ſuch offender, or knowing ſuch offence haue concealed it, and not within twentie dayes diſcloſed it to ſome Iuſtice of Peace, or other higher Officer, 23. El. cap. 1. Miſpriſion of Treaſon.

If any perſon haue ſaid Maſſe.

1. or ſung Maſſe: or haue 1. 200. marks, and a yeres priſonment.

willingly 2. heard Maſſe, 2. 100. markes, and a yeres priſonment.

23. Eliz. cap. 1.

If

Bull, Agnus Dei.

If any perſon haue vſed, or put in vre, any Bull, writing, or inſtrument of abſolution or reconciliation, or of other ſort, gotten from the biſhop of *Rome*, or See of *Rome*, or frō any perſon claiming authoritie from the ſame: Or haue by color of any ſuch taken vpon him to abſolue, or reconcile any perſon: or haue publiſhed any ſuch Bull or inſtrument. Or if any perſon haue receiued ſuch abſolution, or haue procured, abbetted, or counſelled any ſuch offendor, to the intent to vphold ſuch offence.

Treaſon.

Premunire.

If any perſon haue (after ſuch offence) aided, comforted, or maintained ſuch offendor, to the intent to vphold the authoritie of the ſaide See of *Rome*.

Miſpriſion of Treaſon.

If any perſon (to whom ſuch Bull or Inſtrument hath beene offered or perſwaded) haue not within ſixe weeks next after ſignified the ſame to ſome of the Queenes priuie Counſell, or to the Lord Preſident of the North, or of Wales.

Premunire.

If any perſon haue brought hither from the biſhop or See of Rome, or from any perſon authorized, or claiming to be authorized by any of them, any *Agnus Dei*, croſſes, pictures, beades, graines, or ſuch like ſuperſtitious things, & haue the ſame deliuered, or cauſed, or offered to be deliuered, to any the Queenes ſubiects to vſe or weare in any wiſe: & if any perſon haue to ſuch intent receiued or taken the ſame, and haue not apprehended the offerer therof, nor within three

dayes

daies after diſcloſed him to the Ordinarie, or to ſome Iuſtice of the Peace, nor within one day deliuered the thing to ſome Iuſtice of the Peace 13. Eli. cap. 2. 23. Eli. cap. 1.

Iſ any perſon (being at liberty or out of hold) haue ſince the 8. day of May, in the 27. yeare of her Maieſties raigne, wittingly and willingly, receiued, aided, or maintained within any part of her highneſſe dominions, any Ieſuit, Seminarie prieſt, or other ſuch prieſt, deacon, or religious, or eccleſiaſtical perſon, being borne within this Realme, or any her highnes dominions, and (at any time ſince Midſommer in the firſt yeare of her Maieſties raigne) made, ordained, or profeſſed by any authoritie deriued, challenged, or pretended from the See of *Rome*, knowing him to be a Ieſuite, Seminarie prieſt, or other ſuch prieſt, deacon, or religious or eccleſiaſtical perſon. 27. Eli. cap. 2. Ieſuites and Seminaries. Felonie.

Iſ any perſon haue vſed Inuocation, or coniuration of euill ſpirites for any cauſe: or haue vſed Witchcraft, Inchantment, Charming, or Sorcerie, whereby any perſon is killed or deſtroyed: 5. Eli. cap. 16. Felonie. Conturation.

Iſ any perſon haue practiſed any Witchcraft enchantment, charme, or Sorcerie, wherby any perſon hath beene waſted, or lamed, in body, or members: or wherby any the goods, or cattailes

Of-fence { 1 One yeares impriſonment, and foure times on Pillorie. 2 Felonie.

of any perſon haue beene waſted, or empayred. And if any haue beene ayders, or counſellors, to any of theſe.

Offence
1 Priſonment and Pillorie as before.
2 Forfeite all goodes, and priſoned for life.

If any perſon hath vndertaken, by Witchcrafte, Inchantment, Charme, or Sorcerie, to tell in what place anie treaſure of Golde or Siluer might bee found: or where goods loſt (or ſtolen) ſhould become: Or if anie perſon haue practiced any Sorcerie, Inchantment, Charme, or Witchcraft to the intent to prouoke any perſon to vnlawfull loue, or to hurt, or deſtroy any perſon, in body, member, or goods, 5. Eliz. cap. 16.

Prophecying.

If any perſon haue within theſe ſixe Moneths aduiſedly aduaunced, publiſhed and ſet forth, by writing, printing, open ſpeech, or deede, to any other perſon, any fantaſticall, or falſe prophecie, vppon armes, fieldes, beaſts, or badges, or vpon any time, name, bloodſhed, or warre, to the intent to make thereby rebellion, diſſention, loſſe of life, or other diſturbance within the Queenes Dominions. 5. Elizab. cap. 15.

Offence
1 Ten pound, and a yeares priſonment.
2 All his goods and priſonment for life

Felonie.

Set foorth how long the Queene ſhal liue.

If any perſon haue, by ſetting of figure, caſting of natiuitie, or by calculation, prophecie, Witchcraft, Coniuration, or other vnlawfull meanes whatſoeuer, ſought to know, and haue ſet forth by expreſſe wordes, deede, or writing, how

how long her Maieſtie ſhall liue, or who ſhall raigne after her deceaſe: or elſe haue aduiſedly, and with a malicious intent againſt her Maieſtie, vttered any direct prophecy to ſuch purpoſe. And if any perſon haue aided, procured, or abetted any ſuch offenders, 23. El. cap. 2.

If any perſon haue vnlawfully procured any other to commit wilfull and corrupt periurie, in any cauſe depending in ſute in any of the Queenes Courtes of Recorde, or in any Leete, Court baron, hundred, or Court of ancient demeſne: or haue corruptly ſuborned any witnes ſworne to teſtifie in *perpetuam rei memoriam*: or if any perſon haue vppon ſuch procurement, or by his owne act wilfully committed ſuch Periurie, 5. El. cap. 9. & 14. El. cap. 11. **Periurie.** Halfe a yeeres priſonment, ſtand vpon the pillory, & diſabled for a witneſſe.

If any perſon hath of purpoſe, maliciouſly or contemptuouſly, moleſted, or by any vnlawfull meanes miſuſed any preacher lawfully authorized, in any his open Sermon or preaching, in any Church, or other place, vſed, or to bee appointed: & who were his aiders, procurers, or abetters, 1. Marr. cap. 3. Learne if this ſtatute doe ſtand for this part. **Diſturbe preacher.** Three months priſonment, & bound to his good port.

If any perſon haue (within theſe 3. months) by contemptuous, or reuiling wordes, or haue aduiſedly in any other wiſe, depraued, deſpiſed, or reuiled the bleſſed Sacrament of the body and bloode of Chriſt, 1. Edward. 6. cap. 1. & 1. **Sacrament.** Impriſonment and fine.

Elizabeth. cap. 1.

Seruice and Sacraments.

If any parſon, vicar, or miniſter haue refuſed to vſe the common prayers, or to miniſter the Sacraments according to the booke of common prayers: or (wilfully ſtanding in the ſame) haue vſed any other fourme in open prayers, or in adminiſtration of the Sacraments, or haue ſpoken anie thing in derogation of the ſaid booke, or any part thereof: Or if any perſon haue in any play, ſong, or rime, or by any opē word ſpoken in derogation of the ſaid booke, or of any thing therin contained: or haue cauſed, or maintained any parſon, vicar, or miniſter, to ſay any common prayer, or to miniſter any Sacrament in other manner than after the ſaid booke: or haue interrupted any parſon, vicar, or miniſter, to ſay open prayer, or to adminiſter anie Sacrament, according to the ſaid booke, 1. Eli. cap. 2. & 23. Eliz. cap. 1.

Fine.

1 Loſſe of his promotion for a yeare: and Impriſonmente by Sixe Moneths.
2 Depriuation, and impriſonment by a yeare.
3 Depriuation, and priſoned for all his life.

1 100. markes, or ſixe moneths priſonment.
2 400. marks, or twelue moneths priſonment.
3 All his goods and priſonment for life.

Repaire to Church.

If any perſon (being aboue the age of fiue teene yeares, and not hauing lawfull and reaſonable excuſe to be abſent) haue not repaired and reſorted to his or her pariſh church or Chappell accuſtomed, or (vpon let therof) to ſome vſual place wher common prayer is to be vſed, vpon euery

Twelue pence for eache offence, and punishment by cenſures of the Church,

euery ſunday and other holy day: and haue not there orderly & ſoberly abiden, during the time of ſuch common prayer, preaching, or other ſeruice of God: and how long ſuch perſon hath forborne ſo to repaire and reſort, 1. Elizab. cap. 2. & 23. Eliz. cap. 1.

If any Popiſh Recuſaunt, or other Seditious Sectaries: which is by anie the Statutes (35. Elizab. cap. 1, & 2.) to bee abiured this Realme and all her Maieſties Dominions, haue either refuſed to make ſuch Abiuration, or making it, haue not gonne to ſuch hauen within ſuch time, as was to him therefore appointed, and haue not from thence departed this Realme: or after ſuch departure haue returned into any her Maieſties Dominions without her ſpeciall licence, 35. Eliz. cap. 1, & 2.

Popiſh Recuſants and ſeditious ſectaries

Felonie.

If any perſon haue kept or maintained any Schoolemaſter which reſorteth not to the Church, or is not allowed by the Biſhop or Ordinary of the dioceſſe, 23. El. ca 1.

Schoolemaſter.

The maintainer 10. li. for eache moneth.

Schoole-maſter priſoned for a yeare, and diſabled.

If any perſon haue maliciouſly ſtriken any other with any weapon, in any Church, or churchyarde, or drawen any weapon there to that intent, 5. Ed. 6. cap. 4.

Fighting in Church or Churchyard.

Looſe one of his eares, or to bee marked with F.

Faire or Market in Churchyard. Fine.

If any perſon haue kept faire or market in the Churchyard, Stat. Winton 13. Eliz. 1.

Robbe Churche or Chappell. Felonie.

If any perſon haue felonioully taken goods out of any Church or Chappell.

Felonies in Lay cauſes.

Petite Treaſon. Seruant and maiſter Huſbande and wife, Clarke and Prelate.

If any ſeruant haue killed his or her maſter, or miſtreſſe: or any wife her huſbande: or any Eccleſiaſticall perſon his Prelate 25. E. 3. cap. 2.

Murder.

If any perſon haue (of prepenſed malice) killed or murdered another, openly or priuily, whether hee that was killed were an Engliſhman or a ſtraunger, lying vnder the protection of the Queene.

Felonie: and ſo be the reſt that follow.

Poiſoning. Murder.

If any haue wilfully killed any other by poiſoning: and who be his aiders, abetters, procurers, and counſellors. 1. E. 6. cap. 12.

Manſlaughter.

If any perſon haue by chaunce-medley felonioully killed another.

Cutte out tong, or put out eyes.

If any perſon haue of malice prepenſed, cut out the tongue, or put out the eyes of any of the Queenes ſubiects, 5. H. 4. cap. 5.

Gaoler handling ſtraitly his priſoner.

If any Gaoler, keeper, or vnderkeeper of a priſon, haue by dureſſe and paine compelled any his priſoner, to become an appeacher of others againſt his will, 14. E. 3. cap. 10.

Buggery.

If any perſon haue committed the deteſtable vice

vice of Buggerie with men or beaſt, 25. H. 8. cap. 6. & 5. Eli. cap. 17.

If any man haue raviſhed a maide, widow or wife, aboue ten yeares of age, againſt her will, though ſhe conſented afterward, W. 2. cap. 34. Rape.

If any man haue carnally knowen and abuſed any woman childe, vnder ten yeares of age, though ſhe conſent before, 18. El. cap. 7. Child.

If any perſon haue taken a maiden, widow, or wife, hauing lands or goods, or being heire apparant to any, againſt her will vnlawfully (other than his warde, or bondwoman) and of his procurers, abetters and receiuers, knowing thereof. 3. H. 7. cap. 2. Take woman

If any perſon haue robbed another, going or riding by the way, or otherwiſe, howe much, or how little ſoeuer it be that he taketh from him: or haue priuily and fraudulently picked or cut the purſe of another, being vpon him. 18. Eliz. cap. 4. Or haue robbed anie houſe by day, or by night, any perſon being in the ſame, or thereby put in feare: Or haue robbed any perſon in any part of his dwelling, the owner, wife, children, or ſeruants, being therein, or within any other place within the precinct thereof and then being waking or ſleeping: Or haue robbed any perſon being in a tent or boothe, in a Faire or Market, the owner, his wife, children, or any ſeruant being then within the ſame, ſleeping or waking, 5. E. 6. cap. 9. or hath robbed by day Robberie. Cut purſe. Rob houſe. Boothe or tent.

time (though no perſon were then therein) any dwelling houſe, or outhouſe there to vſed, and hath taken thence goods to the worth of v.s. or aboue, 39. El. ca. 15.

Larcenie and petite Larcinie

If any perſon, or perſons, haue felonioully taken the goods of any other: & whether the ſame be aboue twelue pence in value, or vnder.

Purueyors.

If any purueyour for the Queens Maieſties houſe, or his vndertaker, deputie, or ſeruaunt, haue made any purueiance without warrant, & haue caried any thing away againſt the conſent of the owner, being aboue xii.d. in value 28. E. 1 cap. 2. 18. E. 2. cap. *vltim.* 5. Ed. 3. cap. 4. 2. &. 3. Phil. & Mar. cap. 6.

If any purueyour of the Queene, or his vndertaker, deputy, or ſeruant, haue taken any carriage in any other manner than is contained in his cõmiſſion. 36. E. 3. ca. 2. Or haue made purueiance without the teſtimonie & appraiſement of the Conſtable, and foure honeſt men of the town, & without deliuering tales or indentures vnder his ſeale, teſtifying his purueiances, the goods being aboue twelue pence in value, 5. E. 3. ca. 2. 25. E. 3. ca. 1. Or hath taken any ſheepe with their wools betweene Eaſter & Midſummer, at ſmall prices, & carried them to his owne houſe, and ſhorne them. 25. E. 3. cap. 15.

Quare, if the felony of Purueiours (made 36 E. 3. ca. 6.) be not altered by 23. H. 6. ca. 14.

If

If any perſon haue found a Falcon, Tercelet, Lanor, Laneret, or other Falcon, that was loſt, and hath not foorthwith brought it to the Sheriffe, that hee might proclaime it, but did ſteale & carry away the ſame, 34. Ed. 3. cap. 22. 37. Ed. 3 cap. 19. Hawke embezeled.

If any ſeruant (being 18. yeares of age, & not being an Apprentice) hath gone away with, or hath conuerted to his owne vſe, any money, iewels, goodes or cattels of his maiſters or miſtreſſes, and of his or her deliuerie to keepe, of the value of fortie ſhillings, to the intent to ſteale the ſame, 21. H. 8. ca. 7. 5. Eliz. cap. 10. Seruant embezelling goods deliuered.

If any perſon haue by night broken any houſe, tower, walles, or gates, and hath entred in with an intent to doe any robberie, murder, or other felonious act there: Or if any perſon haue burned any dwelling houſe: or haue by night burned any barne neare to a dwelling houſe. Burghlarie. Burne houſe or barne.

If any perſon impriſoned for felonie, haue broken priſon, 1. Ed. 2. Or if any other perſon haue broken the priſon for ſuch a priſoner, by which he eſcapeth: Or if any Gaoler haue willingly ſuffered ſuch a priſoner to eſcape: and if any perſon, being arreſted for felonie, haue been reſcued, and by whom. Breake priſon.

If any perſon haue deuiſed vnlawfully & maliciouſly to ſet at liberty any priſoner indited of treaſon (concerning the Queens perſon) & haue expreſſly vttred the ſame deuice, 14. El. ca. 2. Enlarge a priſoner.

If

Take, keepe, or deſtroy Caſtles, &c.

If any perſon haue deuiſed malicioully to take or keepe from the Queene, any of her Caſtles, townes, fortreſſes, or holdes, or to raze, burne, or to deſtroy any of them malicioully and traiterouſly (the ſame hauing munition, or ſoldiours therein of hers) and haue vttered the ſame deuiſe, 14. El. cap. 1.

Conuey munition, or victuals.

If any perſon, hauing the charge or cuſtodie of any Armour, Ordinance, Munition, Shotte, Powder, or habillements of Warre of the Q. Maieſties, or of any victuals (prouided for the victualling of any Souldiers, Gunners, Mariners, or Pyoners) ſhall for any lucre, or gaine, wittingly, aduiſedly, and of purpoſe to hinder, or impeach her Maieſties ſeruice, embeſile, or conueigh away, any of the ſame, to the value of xx. ſhillinges at once, or at ſeuerall times. 31. Eliz. Reg. cap. 4.

Hunting by night.

If any perſon haue vnlawfully hunted in the night, in any Forreſt, Parke, or warren, or with painted faces, viſors, or other diſguiſings, to the intent to be vnknown, and haue vpon examination by one of the Queenes counſel, or by a Iuſtice of Peace of the ſame ſhire, wilfully concealed ſuch hunters or hunting, or haue diſobeied any arreſt for ſuch hunting, or made reſcue to any perſon warranted to arreſt ſuch hunter, ſo that the warrant was not executed, 1. H. 7. ca. 7.

Multiplying.

If any perſon haue practiſed the arte of multiplication of gold or ſiluer, 5. H. 4, cap. 4.

If

If any haue the ſecond time brought, ſent, or receiued, into any ſhippe or bottome, any rams, ſheepe or lambs being aliue, to be conueyed out of the Queenes dominions, or haue procured the ſame. 8. El. ca. 3. Conuey ſheep

If any perſon haue ſold, exchanged, or deliuered within *Scotland*, or the batable ground, to the vſe of any Scot: (without the Queenes lycence, vnder her great Seale) or ſolde, exchanged or deliuered to any Scotte within *England*, *Wales*, *Barwike*, the Marches, or batable ground, to the intent to be conueied into *Scotland* (without ſuch licence) any horſe, gelding or mare: and if any haue ſo bought any of the ſame, 23. H. 8. cap. 16. 1. El. cap. 8. Conuey horſes into Scotland.

If any perſon haue (aduiſedly, and with a malicious intent againſt the Queenes Maieſtie) deuiſed, written, printed, or ſet forth any booke or writing, containing any falſe, ſeditious and ſlanderous matter to the defamation of her Maieſtie, or to the incouraging or mouing any inſurrection or rebellion within her Realme or dominions: or haue (aduiſedly, or with a malicious intent againſt her Maieſtie) procured any ſuch booke or writing to be written, printed, or ſet forth: Or haue maliciouſly, by any wordes, writing, or printing, wiſhed, or deſired her Maieſties death, or depriuation, or any thing directly to that effect: and if any haue aided, procured, or abetted any ſuch offender, 23. El. ca. 2. Slanderous newes.

If

Rebellious aſſemblies.

If any perſon (of, or aboue the number of twelue) haue beene aſſembled, and haue intended, gone about & practiſed with force of armes, vnlawfully to change any lawes of this Realm, or to cut or caſt downe any incloſure of parke, or incloſed ground, or the bankes of any fiſh-pond, or any conduit heade or pipe, to the intent they ſhould lie open, or void, or to haue any Common or way there: Or to deſtroy the Deere or Conies in any Parke or Warren, or Douehouſes, or Fiſh in Poole, or in Pond, or to cut downe any houſes, Barnes, Milles, or Bayes, or to burne any ſtacke of corne or graine, or other vſuall ſuſtenance of men: and (being commanded by the Shirife, or any Iuſtice of Peace of the ſhire, or by the Maior, Shirife, Iuſtice of peace, or Bailifes of the City, Borough, or Corporate towne, where the aſſembly was, by Proclamation in the Queenes name to depart to their houſes) haue notwithſtanding continued together one houre after, or haue after that, forcibly attempted to do any ſuch thing.

And if any perſon haue vnlawfully by ringing of Bell, ſounding of Trumpet, Drum, Horne, or other Inſtrument, or by fiering of Beacon, or by malicious ſpeech, or Outcry, or by ſetting vp, or caſting any writing, or by any other act rayſed, or cauſed to bee raiſed twelue perſons, or aboue, in ſuch maner, and to any ſuch intent as is aforeſaid, and they (being commaunded by Proclamation

clamation, as before) haue neuertheleſſe continued together one houre after, or haue afterward attempted forcibly to doe any of the ſaide things: And if any the wife, or ſeruant of any the ſaide aſſembled perſons, or if any other perſon haue willingly and without compulſion, deliuered, or conueyed money, harneſſe, weapon, or victual to any of the ſaid perſons aſſembled, during their abode together as before. And if any perſon haue hindred or hurt any that did proclaime, or went to proclaime, as before: and if any the parties ſo aſſembled (knowing of that hinderance, or procuring it) haue neuertheleſſe afterward committed or put in vre any the things aforeſaide: And if any perſons (to the number of fortie or moe) haue ſo aſſembled to the intent to do any the ſaid things, or any other felonious or rebellious act, & haue continued together three houres, after ſuch proclamation made, at or nigh the place of aſſembly, or in ſome market towne nert adioyning, and after notice to them thereof giuen, 1. Mar. Parl 1. cap. 12, & 1. El. cap. 17.

Soldiour, Mariner, or Gunner departing.

If any ſoldiour (entred a ſoldiour of Record) and hauing taken part of the Queenes wages, or any Mariner or Gunner (hauing taken preſt wages to ſerue the Queene on the Sea) haue not accordingly gone to his Captain (vnleſſe he were letted by notorious ſickneſs, or other impediment from God) or haue departed from his Captaine, without his licence vnder his ſeale,

18.

18.H.6.cap.19.2.& 3.Ed.6.cap.2,4.& 5. Phil. & Mar. cap. 3. & 5. Eliz. cap. 5. But conſider whether this entring of Recorde, haue any vſe now.

Egyptians. If any ſtrangers, calling themſelues, or being commonly called Egyptians, haue remayned in the Realme one moneth: And if any perſon (being fourteene yeares of age) which hath beene ſeene, or found in the fellowſhippe of ſuch Egyptians, or which hath diſguiſed himſelfe like to them, haue remained here or in *Wales* by the ſpace of one moneth, either at one time or at ſeuerall times, 1.& 2. Phil.& Mar. cap.4.5.El. cap.20.

Dangerous Rogue. If any dangerous Rogue, that was baniſhed the realme, or adiudged perpetually to the Galleyes, haue returned into the Realme without lawfull licence. 39.El.ca.4.

Idle Soldiour and Mariner. If any Soldiour, or Mariner, or other perſon (as Soldiour or Mariner) haue wandred idle, without ſetting himſelfe to ſeruice, labour, or other lawfull courſe of life, and hath not repayred to his place of Byrth, or dwelling: and had not a lawful Teſtimonial from a Iuſtice of peace of, or neere the place where hee landed: or hath counterfaited ſuch Teſtimoniall, or hath caried the ſame (knowing it counterfait) 39.El.ca.17

Felonies omitted. Note that ſome felonies be here omitted, either becauſe there is none vſe of them now, or els for that they be for particular places, as:

The

The felonie of Prouiſours. 13. R. 2. Stat. 2. ca. 2 Prouiſors.

The felonie of Wools and Wool-ſellers, 18. H. 6. cap. 15. and certaine felonies in the Statutes of the Staple. 27. Ed. 3. whereof I doubt. Wools.

The felonie of *Powdike*, 12. H. 8. cap. 11. & 2. & 3. Phil. & Mar. cap. 19. Powdike.

It ſeemeth alſo by 25. E. 3. c. 2. that there was a felonie, for riding armed, &c. which (I thinke) is not ſo conſtrued now. Armed.

The felonie of Embeſelling Recordes, 8. H. cap. 12.

If any perſon haue commaunded, counſailed, waged, or procured to bee committed any petite treaſon, Murder, Manſlaughter, Rape, Robberie, Burghlarie, or other the felonies aforeſaide. Acceſſaries before.

If any perſons knowing the ſaide Felons, haue receiued, comforted, ayded, abetted, or fauoured them, before their attainder, or after. Acceſſaries after.

Hitherto of Felonies and their acceſſaries in Lay cauſes, all which are puniſhed by the pains of death, except petite Larcenie.

If any perſon haue maimed another of any member, whereby he is the leſſe able to fight, as by putting out his eye, ſtriking off his hand, finger, or foote, beating out his foreteeth, or breaking his Scull: And of their Acceſſaries. Maime. Grieuous Fine.

If any haue committed vnlawfull aſſault, beating, wounding, or ſuch like treſpas, againſt the body of any man: Or haue with force and againſt Treſpaſſes. Fine.

gainſt the lawe taken the goodes of another, or haue done any treſpaſſe in the lands of another. Commiſſion of the Peace.

Extortion. Fine. If any Ordinarie, Archdeacon, Officiall, Sherife, Eſcheatour, Cozoner, Underſherife, Bailife, Gaoler, or other Officer, haue by colour of his office, or for doing his office, taken a greater, or more exceſſiue reward or fee, than belongeth to him: or haue taken any fee or reward for expedition in doing his office, or haue vnlawfully eracted any oath, or other vndue thing: Commiſſion of the Peace.

Eſcheator. If any Eſcheator (other then of ſuch a City, Borough or Towne, as hath authority to make Eſcheators within themſelues by Letters Patents of the Queene, or her Progenitors) haue taken vpon him that office in this Shire, or occupied it by himſelf, or another, and had not then in this ſhire, Landes, tenementes, or Rents, for life at the leaſt of twenty pounds by yere: or haue ſold, or ſet to ferme that office, or made any deputies for whom he wil not anſwere, and whoſe names he hath not certified within 20. dayes after into the Eſchequer, 12. E. 4. 9.

Looſe forty pound.

Looſe forty pound. Or if any Eſcheator hath taken for the execution of any *Diem clauſit extremum*, or other Writte in one Countie, aboue fortie ſhillinges in all: or that forty ſhillings where the lands are not found to be holden *in capite*: 23. H. 6. ca. 17. & Fitz. 143. Or hath taken for the finding of any

ny office of landes (not exceeding 5. pounds by yere) aboue 15. ſhillings in all, for all the things thereof, 33. H. 8. cap. 22. Looſe fine pound.

If any Sherife haue letten his county, or any his Bailiwikes, Hundreths, or Wapentakes: or haue returned in any pannels, any bailifs, officers, or their ſeruants, or ſeruants ſeruants, or haue refuſed to let to baile (vpon ſufficient ſuerties) any perſon being in his cuſtodie, becauſe of any action perſonall, or becauſe of Enditement in treſpaſſe, and not being in for any condemnation, execution, vtlawry, excommunication, ſuerty of the Peace, or commandement of any Juſtice, or for being a vagabond: Or haue taken any obligation by colour of his office, but only to himſelfe, and vpon the name of his office, and vpon condition only to appeare according to the writ or warrant: or haue taken for an areſt aboue 12. d. Or if he, or any other miniſter, haue taken any thing, for making of any Returne or Pannel: or aboue 4. d. for the copy of a Pannell: or aboue 4. d. for the ſaid Obligation, or for any warrant or Precept: Or any Bailife aboue 4. d. for making any areſt: or the gaoler aboue 4. d. vpon the committting to his Ward of any perſon arreſted, or attached. 23. H. 6. cap. 10. Sherifes and their Miniſters, &c. Forfeite fourtie pound, and looſe treble dammages to the partie.

If any ſherife, or other his miniſter, haue arreſted, or impriſoned, or cauſed any fine, or raunſome, or amerciament to be leuied of any perſon by Sherifes, arreſting, or leuying fine for Enditements in his turne.

by reaſon of any Enditement, or preſentment made in the Sherifs turne, or lawday, without proceſſe from the Iuſtices of peace for the ſame firſt obtained: Or haue not brought in ſuch enditements and preſentments to the Iuſtices of the Peace, at their next ſeſſions. 1. E. 4. cap. 2.

Looſe fortie pound.

Sherifes entring of plaints, and leuying amerciaments.

If any ſherife, or any his miniſters, haue entred into his booke, any plaints in any mans name, not being preſent in the court, either in his owne perſon, or by ſufficient and honeſt atturney, or deputie: Or haue entred any moe plaints then ỳ plaintife ſuppoſeth that he hath cauſe of action for: Or haue leuied the ſhire amerciaments without booke indented between them and two Iuſtices of the Peace: or if the Bailife of the Hundred haue made default in warning or executing any warrant againſt any defendant in the Sherifs court. 11. H. 7. ca. 15.

Looſe fortie ſhillings.

Bailife ſeruing warrant

Sherifs muſt ſhew the Eſtreats vnder the Eſchequer Seale.

If any Sherife or his Miniſter haue leuied anie the debtes of the Queene, without ſhewing to the parties the Eſtreates of the ſame, vnder the ſele of the Eſchequer, 42 Ed. 3. cap. 9. & 7. H. 4 ca. 3.

Fine to the king, treble damages to the partie.

Sherifes to return additions of Iurors

If the ſherife of this ſhire, or any other perſon (to whom it appertained to make returne of any Writ) hath returned any Iuror without the true addition of the place of his abode at the time of that returne, or within a yeare next before, or without ſome other addition by which

that

that Iuror might well bee knowen, If any Eſtreat of iſſues hath beene gathered of any perſon, other then ſuch as by vertue of the ſaid Eſtreate was of right chargeable or charged therewith, 27. Eli. cap. 7.

Fiue markes to the Queene. Fiue markes to the partie.

If he that taketh vpon him to be the Vnderſherife of this ſhire, hath not (before his exerciſing of that Office) taken the oath of the ſupremacie, and the oath of his office, before the Iuſtices of Aſſiſe or one of them, or before the *Cuſtos Rotulorum*, or two Iuſtices of the Peace, the one being of the *Quorum*.

Vnderſherifs, clarks, & bailifes to bee ſworne.

If any Bailife of franchiſe, deputy (or clark) of the ſhire, or vnderſherife, or other perſon taking vppon him to reture any enqueſt, Iury, or Tales, or to meddle with the execution of proceſſe in any court of record, haue not before that receiued and taken the ſaid oth of ſupremacie, & the oath (appointed for ſuch officer to take) before ſome of the ſaid Iuſtices, after this maner.

Looſe fortie pound.

I, A. B. ſhall not vſe or exerciſe the Office of Vnderſherife (Deputye, Clearke, Bailife, &c.) corruptly during the time that I ſhall remaine therein: Neither ſhall or will accept, receiue or take, by any colour, meanes, or deuiſe whatſoeuer, or conſent to the taking of any manner of fee, or reward, of any perſon, or perſons for the empanelling, or returning of any enqueſt, Iury, or Tales, in any Court of record for the Queene, or betwixt partie and

partie, aboue two ſhillings, or the value thereof, or ſuch fees as are allowed or appointed for the ſame by the lawes and Statutes of this Realme. But will, according to my power, truly and indifferently with conuenient ſpeed impanell all Iurors, and returne all ſuch Writs touching the ſame, as ſhall appertaine to bee done by my duetie or office, during the time that I ſhall remaine in the ſaid office. So helpe me God.

Treble damages to the partie.

If any vnderſherife, or other of the ſaid perſons, hath committed any Act contrarie to the ſaid othes, 27. Eli. cap. 12.

Sherife and Gaoler. Fine.

If any ſherif or gaoler haue denied to receiue felons, by the deliuerie of any Conſtables or townеſhips, or haue taken any thing for receiuing of ſuch, 4. E. 3. ca. 10.

Fees in liberties.

In liberties, the bailifes, ſtewards, and other miniſters there, haue like fees, and puniſhments for extortion, as ſherifes & their miniſters haue out of liberties, 27. H. 8. cap. 24.

Cozoner.

If any Cozoner haue refuſed to doe his office vpon the view of a dead body by miſaduenture, without taking any fee therefore, 1. H. 8. ca. 7.

Looſe fortie ſhillings.

or haue taken vpon the view of the dead body of a man ſlaine or murdered, aboue thirteene ſhillings foure pence, of the goodes of the ſlayer or murderer, if he had goods, or (other wiſe) of the towne, where he was ſlaine in the day time, and

Looſe fiue pound.

was ſuffered to eſcape, 3. H. 7. cap. 1.

If

If any Ordinary, or his ſcribe, or regiſter, haue taken mo, or greater fees, for the probate of a Teſtament, or for letters of adminiſtration, then hee ought to take, that is to ſay, 6. pence for the ſcribe, for writing the probate of a Teſtament, that ſhall bee brought written in parchment, and likewiſe ſixe pence for the adminiſtration, wher the goods of the teſtator or inteſtate, be not aboue 5. pounds: If the goods be aboue fiue pounds, & not aboue fortie pounds, then two ſhilings 6. pence for the Ordinary, and 12. pence for the ſcribe. If they exceede forty pounds, then two ſhillings 6. pence for the Ordinarie, and two ſhillings ſixe pence to the ſcribe, or elſe one peny for euery ten lines at ten inches length, at the ſcribes election: the like ſhall bee giuen for euery copie of a Teſtament or Inuentory, or els after the rate of lines as before, 21. H. 8. cap. 5.

Ordinary.

Looſe tenne pounde, and to the party ſo much as is taken contrary to this Act.

If any parſon, vicar, or curate, haue taken aboue foure pence for entring into the Chuch Booke the licence of a ſicke perſon to eate fleſh vpon the fiſh-dayes. 5. Elizab. cap. 5. Or aboue two pence for regiſtring of a Teſtimoniall of any ſeruant departing from one place to another, 5. Eliz. cap. 4.

Parſon. Vicar. Curate.

If any ſpiritual perſon (or any other for him) haue taken Mortuarie (or corps preſent) or any thing for the ſame in any place, where the ſame

Mortuarie.

was not vſed to bee giuen before the one and twentie yeare of king Henrie the eight: or taken (in places where Mortuaries were then vſed) any thing for a Mortuarie where the goods of the dead perſon were vnder tenne markes: or more than three ſhillings fower pence therefore, where the goodes were of the value of tenne markes, and vnder thirtie pounds: or aboue ſixe ſhillings and eight pence therfore, where the goods were vnder fortie pounds: or aboue ten ſhillings wher the goods were aboue three ſcore pounds. 21. H. 8. cap. 6.

Forfeit ſo much as he ſhall take ouer: and looſe fortie ſhillings to the partie grieued.

Clarke of the Peace.

If the Clarke of the Peace haue taken aboue twelue pence for the inrolling of the bargaine and ſale of any land, not exceeding xl. ſhillings by the yeare: or aboue two ſhillings ſixe pence, if the land exceede that value by the yeare, 27. H. 8. ca. 16. Or haue taken aboue two ſhillings in all, for any licence and Recognuſaunce of a badger, drouer, kidder, or lader, and for the Regiſtring thereof, 5. Eli. cap. 12. Or haue taken aboue twelue pence for a Recognuſance of him that taketh a rogue into his ſeruice for one yere 14. Eliz. cap. 5.

Fine

Fine.

Fine.

Iuſtices Clarke.

If the Clarke of any Iuſtice of Peace haue taken aboue twelue pence for any recognuſance of an Alehouſe keeper, or Tipler, 5. E. 6. cap. 25.

Fine.

Clarke of the market.

If the Clarke of the market haue taken any common fine, to diſpenſe with faults: or hath ridden

ridden with moe than ſixe horſes, or hath tarried longer in the countrey then the neceſſitie of his buſineſſe required. 13. Ric. 2. cap. 4. Offence 1 2.li. 2 10.li. 3 20.li.

If any officer haue in any Towne taken Scauage, or Shewage (that is to ſay) any thing for the ſhewing of ware, marchandize that be truly cuſtomed to the Queene before. 19. H. 7. cap. 8. Scauage. Looſe twentie pounde.

If the Maior of this Towne of *Maidſtone*, (and ſo of other townes in other ſhires) haue taken aboue one peny for ſealing a buſhell meaſure, or aboue a halfe peny for any other meſure: or aboue one peny for ſealing an hundred weight or aboue a half peny for halfe a hundred weight, or aboue a farthing for any leſſe weight. 7. H. 7. cap. 3. & 11. H. 7. cap. 4. Seale weights. Looſe fortie ſhillings

Sundry other fees of officers there be, as of Alnageours, Gaugeors, Serieants at Armes, and others whereof there is not ſo common vſe, & therefore I omit them: Howbeit, ſuch are enquirable, and puniſhable here alſo. Fees omitted.

If any Purueyour of the Queenes Maieſtie haue taken any thing of the value of xl. s. or vnder, without ready paiment therefore made: if any Conſtable or Borſholdr haue not (vpon requeſt made) aſſiſted the owners to reſiſt the Purueiors ſo taking: And if any of the Queenes Purueyors. Looſe { Double of the thing taken. Double damages.

Looſe twentie pounde.

officers haue procured any to be arreſted or vexed for ſuch reſiſtance, 20.H.6.ca.8.& 23.H.6.cap.2.

Looſe fortie ſhillings for each tree.

If the Purueyour haue taken, or felled any timber trees (meete to be barked) but onely in barking time, except it were for the reparation or building of the Queenes houſes or ſhips: or haue taken any more than the very number of ſuch trees, 5.Eliz.cap.8.

Two yeares priſonment: treble dammages: and raunſome.

One yeares priſonment. Fiue poundes to the Q. and fiue pounds to the partie.

If any ſuch Purueior haue taken any thing of any man, to the end to ſpare him: or haue taken corn by any other meſure than by the ſtriked buſhell, or by any more than eight ſuch buſhels to the quarter: or haue taken carriage therefore, without making readie payment 25.Ed.3. cap.1. 36.E.3.cap.3.& 1.H.5.cap.10.

Vniuerſities.

Of Purueyors within fiue miles of *Oxenford* or *Cambridge*, See 2.& 3.Phil.& Mar. cap.15. 14.Eli.cap.11.& 39.Eli.cap.18.

Informer. Looſe tenne pounds, and ſtand on the pillorie.

If any common Informer or Promoter (as he is commonly called) haue compounded or agreed with any perſon for any offence againſt any penall Lawe, without the order or conſent of ſome of the courts at Weſtminſter, or haue willingly delayed or diſcontinued his ſuite once commenced. 18.Eli.cap.5.& 27.Eli.cap.10.

If

If any man haue raiſed huy and cry without cauſe, or (it being raiſed) vpon good cauſe, haue not beene ready at the commaundement of the Sherife or at the huy and cry of the Country, to purſue and arreſt felons, or ſuch as haue dangerouſly hurt any man: And if the ſherife or any Bailifes haue not followed ſuch huy & cry with horſe and armour. W. 1. 3. Ed. 1. cap. 9. 3. Ed. 1. *Officium Coronatoris:* Stat. Wincheſt. 13. Ed. 1. Huy and crie. Fine.

If the watch in euery borough and towne, haue beene kept from ſunne riſing to ſunne ſetting, betweene Aſcenſion day and Michaelmas day, to arreſt ſtrangers that paſſe by in the night ſeaſon. Stat. Winton. 13. Ed. 1. Watch. Fine.

If any Lord of the ſoile haue not enlarged the highway from market to market, ſo that no dike, buſh nor tree (except great trees) be within two hundred foote of each ſide thereof: Stat. Wincheſt. 13. Ed. 1. Highwaies.

If any perſons (except the Queens ſeruants and officers, in doing her ſeruices, & their company, aiding them in that behalfe) haue ridden or gone armed, by day or night: or haue brought force in affray of the people, before the Queenes Iuſtices, or otherwiſe: Stat. *Northampton*, 2. Ed. 3. cap. 3. Ride or goe armed. Impriſonment and loſſe of the Armour.

If any perſon arreſted, or impriſoned for Felonie, haue beene negligently ſuffered to eſcape, 1. R. 3. cap. 3. Eſcape by negligence. Fine.

If any be a Barettour, or a common quarrelour, Barrettors.

Maintetners. Embracers. lour, or otherwiſe of euill name and fame, 34. Ed. 3. cap. 1. Or a maintainer of quarrels, or an Embracer of Iuries, 33. H. 8. ca. 10. & 37. H. 8. ca. 7. & 38. Ed. 3. cap. 13.

Priſonment and good Abearing. Tenne times ſo much as hee taketh for a yeares priſonment.

Barrettour. The word (Barretor) may be deriued either of the French *Barat* (and ſo it ſeemeth to be taken in the Statute of Champarty, W. 2. cap. 49.) ſignifiyng deceit; ſo that Barettor ſhould notifie a deceiuer: or els of the Latine *Baratro*, or *Balatro*, (as ſome write it) which betokeneth a vile knaue or vnthrift, and (by a *Metaphore*) a ſpot in the common-wealth: But whatſoeuer the worde doth properly denote, common vſe (*Quem penes arbitrium eſt, & ius, & norma loquendi*) taketh it for a common quarreller, or maintainer of *Quarrels*: and in that ſence I thinke it to ſtand in the old Statute called *Ragman*, and it meaneth him that medleth in the quarrels of other men, whether it bee by fight, or by ſuite in lawe.

Champartours. If any be a Champartour, that is to ſay, one that moueth pleas or ſuites, or cauſeth or procureth them to bee moued at his owne coſtes, to the end to haue part of the land, or other thing in variance, 33. E. 1.

Fine.

Iurour. Priſonment, and ranſome. If any Iuror in any Inqueſt heere, haue taken any thing of any man to make his preſentment fauourable.

If any perſon haue by himſelfe, or other for him,

him, giuen any Liuerie of ſigne or company, or badge, or retained any man, other then his houſ- hold ſeruaunt, Officer, or learned man in the Lawe, 1. Hen. 4. cap. 7. 2. Hen. 4. cap. 22. & 8. Edw. 4. cap. 2.

Liueries of companies and badges.

Priſonment, fine & ranſome. V. li. loſſe to the retainor, & the like to the retained. } for each month.

If any company of men (other then men of fraternities, and men of artes in cities and boroughes) haue made any one generall ſute of cloth, hoodes or hattes amongſt them, to bee knowne by. 7. H. 4. cap. 14.

Looſe fortie ſhillings.

If any perſon haue (within this three moneths) aduiſedly, and with a malicious intent againſt the Queenes Maieſtie, of his owne imagination ſpoken any falſe ſeditious and ſlanderous newes, or ſayings of the Queenes Maieſtie: or haue (within the ſaide time) aduiſedly, and with a malicious intent, ſpoken any ſuch newes or tales, to the ſlaunder and defamation of our ſaid Queen, of the reporting or ſpeaking of any other, 23. El. cap. 2.

False newes.

Looſe his eares, or pay 200. li. for the firſt offence.

Looſe one eare, or 200. marks for the firſt offence.

If any perſon haue by writing, or open ſpeeche notified, that the eating of fiſh, or forbearing of fleſh, vpon any dayes, nowe vſually obſerued as fiſh dayes, is of neceſſitie for ſaluation of ſoules, or is the ſeruice of God, otherwiſe then as other politicke Lawes be, 5. Eliz. cap. 5.

Priſonment.

If any perſon haue falſly and deceitfully gotten into his poſſeſſion any money, or any other

False tokens or letters.

things

Suffer any corporall paine, except death.

things of any other mans, by colour of falſe priuie token, or of counterfait letter, made in another mans name. 33. H. 8. cap. 1.

Who be Rogues.

If any perſon (aboue the age of 7. yeres) calling himſelfe a Scholler, hath gone about begging: or if any Seafaring man (not hauing ſuffered Shipwracke, nor hauing a lawfull teſtimoniall from a Iuſtice of Peace, of, or neere the place where he landed) haue gone about begging, or haue tranſgreſſed ſuch Teſtimoniall: or if any Idle perſon haue gone about begging, or haue vſed any ſubtle craft, or vnlawfull game or play, or haue feigned knowledge in Phiſiognomie, Palmeſtrie, or other like craftie ſcience, or haue pretended to tell deſtinies, fortunes, or ſuch like phantaſticall imaginations: Or haue vttered himſelfe to be a Proctour, procurer, Patent gatherer, or Collector, for any Gaole, Priſon, or Hoſpitall: Or if any Fenſer, Bearewarde, Minſtrell, or common Player of Enterludes, (other then ſuch Players of Enterludes, as belong to a Baron, or other perſon of greater degree, and be authorized vnder his hand and Seale of Armes) Iugler, Tinker, Pedler, or Pety-Chapman, (other then Glaſſemen, of good behauiour, and licenſed vnder the hands and Seales of three Iuſtices of Peace, of which one to be of the *Quorum*) haue wandered abroade: Or if any wandring perſon, or common Labourer, (not hauing otherwiſe then by labour to maintaine himſelfe)

To be whipped.

himſelfe) being able of bodie, haue vſed loytering, or refuſed to worke for lawful Wages: or if any perſon deliuered out of Gaole, haue begged for Fees, or trauailed begging: or pretending loſſe by Fier, or otherwiſe, haue wandered begging: Or if any (not being a Felon) haue pretended to be an Aegyptian, or haue wandered in the forme, or habite of counterfait Aegyptians: Or if any impotent or diſeaſed perſon (licenſed by two Iuſtices of the Peace, to goe to Bathe, or Burſton) haue not forborne to begge, or haue not returned according to ſuch licence: or if any poore perſon (appointed to aſke reliefe in the ſame Pariſh, by the Churchwardens and Ouerſeers thereof) ſhall begge in any other ſort then is ſo appointed. For all ſuch be declared, to bee Rogues, Vagabonds, and ſturdie Beggars, 39. El. ca. 3. & 4.

The Word Rogue is but a late Gueſt in our Lawe: For the elder Statutes call ſuch a one, a valiant, ſtrong, or ſturdy Beggar and Vagabond, and it ſeemeth to be fetched from the Latine *Rogator*, an asker, or Beggar: and in which ſenſe Martial the Poet long ſince vſed it ſaying:

Inter raucos vltimus Rogatores,
Oret caninas panis improbi buccas.

And randged laſt among the roaring Rogues,
In vaine a morſell may he begge of bread,
So bad, as hungry Dogs diſdaine to byte.

If

Officers not punishing or conueying Rogues.
Looſe 10.s. for each offence.

If any Conſtable, Boroſholder, or Tythingman, haue not done his beſt endeuour to apprehend ſuch Rogues as haue begged or made abode within their Limits, or haue wilfully ſuffered anye of them to eſcape punishment.

Poore and Rogues.
Forfait v.li. and be bound to good behauior

If any ſuch Officers haue not conueyed ſuch Rogues, towards their places of Byrth, or laſt Dwelling: Or if any perſon haue hindered, by Reſcous, or otherwiſe, the execution of theſe ſtatutes of Rogues, or of the Poore, 39. El. c. 3. & 4

Looſe 20.s.

If any ỳ Churchwardens & Ouerſeers of any pariſh haue not taken order for ſetting to worke, or for reliefe of their poore: or haue not aſſeſſed the Inhabitants and occupiers of landes in their Pariſh therefore: or haue not indeuoured to leuie ſuch aſſeſſes: or haue abſented themſelues from their monthly meeting, or haue not accounted as they ought, 39. El. ca. 3.

Impriſonment

Looſe 20.s. for euery month.

If any Parents or children, beeing of ſufficient abilitie, haue not relieued their poore and impotent Children or Parents, at their owne charge, in ſuch ſort as hath at any Quarterſeſſions of the Peace bin appointed for them to doe.

Looſe 20.s. for euery default.

Or if the Miniſter of any Pariſh haue not kept a Regiſter booke of the teſtimonials for Rogues, 39. El. ca. 3. & 4.

Riots, routs, vnlawfull aſſemblies.
Priſonment and fine.

If any perſons (to the number of three or aboue) haue beene riotouſly aſſembled, to beat any man, to enter vpon a poſſeſſion, or to doe any ſuch vnlawfull act, and haue done it indeede, or attemp-

attempted to doe it: Or haue beene aſſembled togeather in Routs for any common quarrel: Or otherwiſe vnlawfully againſt the Queens Maieſties Peace, 2. H. 5. ca. 5. Commiſſion vnder the name of Conuenticles.

Rebellious aſſemblies.

If any perſons (aboue the number of two, and vnder twelue) beeing aſſembled, haue intended vnlawfully with force to murder or ſlay any of the Queenes Subiects: Or to cut or caſt down any incloſure, or bankes of any Fiſh-pond, or conduit head, or pipe, or to doe any the deedes (mentioned in vnlawfull aſſemblies before) and haue not departed vppon proclamation, but haue attempted to doe any of thoſe things.

One yeres priſonment, and treble damages to the party grieued, and coſtes.

Or if any perſon (beeing moued to make any rebellious aſſembly) haue not within 24 houres after diſcloſed the ſame to a Iuſtice of the peace, or to the Sherife: Or if any perſon haue ſtirred or procured any other to make ſuch aſſembly, 1. Mar. Parl. 1. cap. 12. 1. El. cap. 17.

3. Months priſonment.

If any haue lien in awaite, to maime, or kill any other.

Fine. Lying in await.

If any haue entred into landes or poſſeſſions with force, or entring peaceably, haue holden the ſame with force, 8. H. 6. cap. 9.

Forcible entries. Priſonment and Fine.

If any perſon haue vnlawfully broken, or deſtroyed the head or damme of any Pond, Mote, Stewe, or ſeuerall pitte wherein fiſhes are put by the owner thereof: Or haue wrongfully fiſhed in any of the ſame, to the intent to take away

Cut ponde head, fiſh: hunt Deere: take hawks, or their egges.

way the fiſh againſt the owners will: Or haue wrongfully entered into any Parke or other ground, before this Statute incloſed, or after this Statute, (by the licence of the Prince) to bee incloſed and vſed for keeping of Deere, & haue wrongfully hunted, driuen out, hurt or killed, any Deere there: Or if any perſon haue vnlawfully taken away any Hawke, or the egges of any Hawke out of the woods or grounds of any other perſon. 5. Eliz. cap. 21.

Three moneths priſonment, and bound to his good behauiour for ſeauen yeares.

Take Hawks egges: take Hawkes, or driue them away.

If any perſon haue taken, or cauſed to bee taken, vpon his owne, or other mens grounde, the egges of any Falcon, Goſhawke, Lanner, or Swanne, or haue taken any Eirer, Falcon, or Goſhawke, Tercell, Lanner, or Lanneret, or haue purpoſely driuen them out of their couerts: or haue borne any Hawke of the breed of *England*, called a Nieſſe Goſhawke, Taſſell, Lanner or Lanneret, 11. H. 7. cap. 17.

One yeares and a dayes priſonment and fine.

Looſe ten pound.

Loſſe of the Hawke.

Nieſſe hawke.

Dogs, Nets, Ferrets.

If any Artificer, Labourer, or other Lay man, not hauing lands or tenements of fl. s. by yeare, or any ſpirituall perſon aduanced to ten pounds liuing by the yere, haue kept greyhound, hound, or other dog to hunt: or haue vſed ferrets, nets, or other engins, to take or deſtroy Deere, hares, conies, or other gentlemans game, 13. R. 2. c. 13

One yeares priſonment.

Trace Hare.

If any perſon haue traced, killed, & deſtroyed any Hare in the ſnow, 14. H. 8. ca. 10.

Looſe a Noble for each Hare.

If

If any perſon whatſoeuer, haue taken, or killed any Pheſant or Partriches, with any manner of net, or other deuiſe whatſoeuer, vpon the freehold of any other, without ſpeciall licence, or in the night tim, except it were vnwillingly, by lowbelling or tramelling, who alſo did then and there preſently let them goe againe: Or, if any perſon haue hawked, or with his Spaniels hunted in any ground (not being his owne) where any corne or graine did then growe, or before it was ſhocked, or copped, without the conſent of the owner of ſuch corne or graine. 11. H. 7. cap. 17. & 23. El. cap. 10.

Take Pheſants or Partriches.

Looſe { Twentie ſhillings for each Pheſant. X. s. for eache Partridge.

Hawking in Corne.

Looſe fourtie ſhillings.

If any perſon haue by himſelfe or any other ſold any marchandizes or wares to any other, and haue within three moneths next after that, by himſelfe or by any other bought the ſame, or any part thereof againe, vppon a leſſer price, knowing them to bee the ſame: Or if any perſon haue by any corrupt bargaine, mortgage, or other meanes, taken in gaine aboue the rate of tenne pounds, for the hundred, for one whole yeares forebearance, and ſo after that rate, for more or leſſe, 37. Hen. 8. cap. 9. 13. Eliz. cap. 8. & 27. Eliz. cap. 11.

Uſurie.

Looſe the treble value: and be priſoned and fined.

If any haue within theſe two yeares foreſtalled, regrated, or ingroſſed vnlawfully.

Foreſtallers Regrators. Ingroſſers

Foreſtaller.
Offence.
1 *Looſe the goods, and be priſoned two moneths.*
2 *Looſe double the goods and be ſixe moneths priſoned.*
3 *Looſe the goods, and ſtand on Pillorie.*

A Foreſtaller is he, that buyeth or cauſeth to be bought, or maketh contract or promiſe for the hauing or buying of any victual or wares, comming by land or water towardes any Faire or Market to bee ſolde, or comming from beyond the Sea towards any Citie, Port, Hauen, Creeke, or rode of this Realme, to be ſold, before the ſame ſhalbe in the Faire or Market, Cittie, Port or Hauen ready to be ſold: Or that by any meanes maketh motion to any perſon for enhauncing the price of the ſame: or that doth diſſwad, mooue, or ſtirre any perſon (comming to the Market or Faire) to forbere to bring any of the ſame to any faire, market, city, Port, or Hauen to be ſold.

Regrator.

A Regrator is hee that regrateth or getteth into his poſſeſſion, in any faire, or market, any corne, wine, fiſh, butter, cheeſe, candles, tallow, ſheepe, Lambes, Calues, ſwine, pigges, geeſe, capons, hennes, chickins, pigeons, conies, or other dead victuall whatſoeuer brought to any faire or market to be ſold, and ſelleth the ſame again in any faire or market kept ther, or within fowre miles thereof.

Ingroſſer.

An Ingroſſer is hee, that ingroſſeth or getteth into his handes by buying, contract, or promiſe taking (other then by demiſe, leaſe or graunt, of land or of tithe) any corne growing in the fieldes, or other Corne or graine, butter

butter, cheeſe, fiſhe, or other deade victuall, within England, to the intent to ſell the ſame againe. But ſuch as doe buy Barley or Oates, (without foreſtalling) and turne the ſame into Malt or Oatmeale, and ſell it againe: and ſuch victuallers of all ſortes, as buy victuall (without foreſtalling) and ſell it by retayle againe, and Badgers and Drouers (being lawfully licenced and not abuſing their licences) are excepted. So be all buyers of wines, oyles, ſpices, and other forraine victualles brought from beyond Sea hither, except fiſhe and ſalt onely, 5. Ed. 6. cap. 14. 5. Elizab. cap. 12. 13. Elizb. cap. 25.

Seede corne

If any perſon haue within theſe two yeares bought corne in any faire or market for change of his ſeed (hauing then ſufficient for his houſe, and for ſowing his ground for a yeare) and did not bring thither (if hee might) ſo much as hee did ſo buy, and did not the ſame day ſell it after the price then going, 5. E. 6. ca. 14.

Looſe the double.

Making of malt.

If any perſon haue (at any time within this yeare, the moneths of June, July, and Auguſt only excepted) made any barley malt, that was not the time of three weekes (at the leaſt) in the fat, flooze, ſheeping, and ſufficient dryng: and if in any of the ſaide three moneths, and was not ſeuenteene dayes (at the leaſt) in the fat, flooze, ſteeping and ſufficient dryng.

Looſe twentie pence for euery quarter

If any perſon haue within this yere mingled any malt not ſufficiently made, (or made of mow burnt or ſpired barley) with other good malt, and after put the ſame to ſale.

If any perſon hath within this yeare put to ſale any malt not ſufficiently well troden, rubbed and fanned, whereby halfe a peck of duſt, or more may be fanned out of one quarter thereof. But this Acte extendeth not to malt made for the prouiſion of a mans owne houſe or familie. 2. & 3. E. 6. ca. 16. and reuiued 27. El. cap. 14.

Impriſonment 3. daies and till he bee bounde in forty pound

If any perſon (being lawfully reſtrained touching his making of Malt) haue not accordingly forborne to make the ſame 39. Eli. ca. 16.

Liue cattell.

If any perſon haue within theſe two yeares bought oxen, ronts, ſteeres, kine, haifers, calues, ſheepe, lambs, goates or kids, liuing, and ſold any of the ſame againe aliue, before he hath kept them fiue weekes, 5. E. 6. cap. 14.

Looſe the double.

Tanned leather.

If any perſon (not hauing the Queenes ſpeciall licence) haue bought or ingroſſed tanned Leather, to ſell it againe, vnleſſe hee be an artificer that maketh wares of ſuch tanned Leather, and worketh it in the ſame, 5. Ed. 6. cap. 15. 1. Eli. cap. 9.

Looſe the price thereof.

Woollen yarne.

If any perſon haue bought any Woollen yarne, and haue not made cloth thereof, 8. Hen. 6. cap. 5. Or haue bought any wooll, but of the owner of the ſheepe, and of the tithe, 14. Ric. 2. cap. 4.

Looſe the value thereof.

If

If any butcher or other perſon, haue killed any weinling, bullocke, ſteere, or Haikar (vnder the age of two yeares) to be ſold whole, or by retaile: or haue killed any calfe for to ſell being vnder fiue weekes olde, 5. E. cap. 8. & 24. H. 8. ca. 9.

Weinlings vnder two yeares.

Looſe a noble for each oxe.

Calues vnder fiue weekes olde.

Looſe a noble for each calfe

If any perſon haue willingly (betweene the firſt of March and laſt of June in any yeare) taken away, or deſtroyed the egges of any wilde foule (vſed to be eaten) from the place where they did lay them, 25. H. 8. cap. 11. 3. E. 6. cap. 3.

Egges of wilde foule.

Priſonment for a yeare, and looſe after a rate for each egge.

If any perſon (feeding aboue a hundred and twentie ſheare ſheepe for the moſt part of the yeare, vpon his grounds that be meete for milch kine, and wherein no perſon hath any common) haue not for each 60. ſuch ſheepe reared one Calfe, during the time of keeping ſuch ſheepe, 2. & 3. Phi. & Ma. cap. 3. 13. E. ca. 25. or if any perſon feeding vpon his ſeuerall paſtures aboue twentie Oxen, routs, ſteers, ſcrubs, haikars, or kine, haue not for euery ten ſuch beaſts kept one milch Cow, and for euerie two kine weaned and reared vp yearely one calfe, except it chance to die. *ibid.* He that feedeth ſuch ſheep or beaſts only to be ſpent in his houſe, is excepted. *ibid.*

Milchkine and calues.

Looſe twentie ſhillings for euerie moneth for eache cow, and the like for ech calfe.

The like paine as the laſt before.

If any perſon haue taken any Salmons, be-

Salmons.

Offence
1 Burne the nets.
2 Three monethes prisonment
3 One yeares imprisonment.

tweene the feast of the natiuitie of the blessed vergine Mary, & of S. Martin in any riuers or waters: Or haue taken yong Salmons at any mill poole, or other place, betweene the middest of Aprill and Midsummer: or haue at any time cast into any waters any net, by which the frie of any fish may be taken, W.2.ca.48.13.R.2.cap.19.17.R.2.cap.9.

Frie of fish.

If any person haue with any net, or meane, taken and killed any frie or spawne of any fish, in any wear, floudgate, streame, or ryuer, (salt or fresh) or at the taile of any mill: or haue taken there any Salmons or Trowts, out of season, that is, being kippers, or shedders: Or haue taken and killed any pickerell vnder ten inches fish in length, or Salmon vnder fifteene inches, or Trowt vnder eight inches, or barbell vnder twelue inches: or haue fished in any the saide places with any net, but such whereof euery mesh was two inches and a halfe broad: But angling is excepted, and so is the taking of Smeltes, Loches, Minews, Bullheads, Gudgeons, and Eeles, in places onely where they haue beene vsed to bee taken, 1.Eliz.ab.cap.18.14.Eliz.cap.11.& 27 Eliz.cap.11.

Salmons. Trouts.

Loose the fish, and xx.s. for each offence.

Vnlse of fish.

Nets.

Angling.

Victuallers prices reasonable.

If any Butcher, Fishmonger, Inholder, Tipler, brewer, baker, pulter, or other seller of Victuall, haue not solde

ſold the ſame at reaſonable prices, and for moderate gaines, 23. Ed. 3. cap. 6 13. R. 2. cap. 8. If any beere-brewer, or ale-brewer haue ſold their drinke at higher prices than haue beene appointed by the Iuſtices of Peace, 23. H. 8. cap. 4.

Looſe the double of that he receiued.

Brewers.

Looſe ſixe ſhillinges for euery barrell, and ſo after that rate.

If any butchers, bakers, brewers, poulters, cookes, fruiterers, or any myſterie of any of them, haue conſpired, or taken any oath, or promiſe, not to ſell but at prices certaine agreed betweene them 2. E. 6. cap. 15.

Victuallers conſpiring.

Offence
1 Terme poundes, or twentie dayes priſonment.
2 Twentie pound, or ſtand on Pillorie.
3 Fortie pounde, or looſe one eare and be infamous.

If any butcher haue ſolde, or offered to ſell, ſwines fleſh mezled, or any fleſh that died of the murraine: Or if any other victualler haue ſold, or offered to ſell any corrupt or vnwholeſome victuall: *Stat. Piſtorum cap.* 7. 51. H. 3.

Corrupt victuall.

Fine.

If any perſon haue, againſt proclamatiõ therof made, tranſported or caried out of this realm any corn, grain, or malt, growing, or made here: or any beere, butter, cheeſe, or wood in any veſſel (except to Barwick, or the Marches thereof) without ſufficient authoritie, or any ſeafiſh, or herring not take by a natural borne ſubiect here: or haue by any meanes cõueied, or willingly cõſented to cõuey any of the ſaid things, to any

Tranſport corne, beere, butter, cheeſe, ſeafiſh, herring, wood.

The owner of the veſſell to looſe it.

The owner of the victual to loſe the double value.

The maſter & mariners, to loſe their goods, and to haue a yers priſonment.

veſſell being on the Sea, or in any place or Hauen of this realme to be tranſported ouer Sea, or into Scotland, without ſufficient authority: or if any perſon hauing licence to conuey any of the ſaid things, haue fraughted or laden his veſſell, or any part thereof, at any moe places than one only, 1. & 2. Phil. & Mar. ca. 5. 13. El. cap. 11. & 13.

Butter and cheeſe.

Forfeit the double value

If any perſon haue bought (to ſell againe) any butter or Cheeſe, vnleſſe it be in open faire or market by retailing it after the wey of cheeſe and barrell of butter, or after a leſſe quantitie: or vnleſſe it be victuallers for that which ſhalbe retailed or ſpent in their houſes, 3. E. 6. cap. 21. & 14. El. ca. 11. & 27. El. cap. 11.

Fiſh packed.

Bought of ſtraungers.

Looſe three ſhillings foure pence for ech barrell.

Looſe the Herring or the value.

If any perſon haue packed fiſh in barrels, and haue mixed the countable fiſh with the ſinal fiſh, 22. Ed. 4. cap. 2. 11. H. 7. cap. 23. or haue bought of a ſtraunger borne, or out of a ſtrangers bottome, any herring (other then ſuch as comes hither by reſon of ſhipwracke) not ſufficiently ſalted, packed and caſked, 5. El. ca. 5.

Rammes, ſheepe, Lambs, tranſported.

Offence { Looſe his goods and his lefte hand.

If any haue brought, ſent, or receiued into any ſhip or bottome, any rammes, ſheepe, or lambes, being aliue, to bee conueied out of the Q. dominions: or if any perſon haue procured the ſame, 8. El. cap. 3,

If

If any perſon haue dried in this realme, to be ſold, any fiſh taken or brought hither by any ſtranger borne, 13. El. cap. 11.

Drying of Fiſhe brought by ſtrangers. Looſe the fiſh or the value.

If any ſtranger borne, haue brought into this realme, any cods, or lings, packed in barrels, or other caſkes, 13. El. cap. 11.

Cod̃es or Lings in Caſke. Looſe the fiſh or the value.

If any perſon (within this yere) haue taken vpon him to ſet price, to take toll, or to demaund any tare vppon any Sea-fiſh taken by any Subiect of the Queenes in their owne veſſels: if any Purueyour or other perſon haue within that time, by colour of any Commiſſion taken any ſuch Herring, or Sea-fiſh (other than the accuſtomed compoſition fiſh for *Iſland*) againſt the will of the bringer in thereof: or if any perſon haue within that time, cauſed to bee laden and carried in any veſſell (whereof any ſtranger borne, is wholly or partly owner or maſter) any fiſh, victuall, or other thing, from one Port or Creeke of this Realme, to any other of the ſame: Or if any perſon haue within that time brought into this realme, or any part thereof, other than into the Ile of *Man*, or into *Wales*, any wine comming out of the dominions of France, or any Tholouſe Woad, but onely in ſuch veſſell whereof ſome Subiect of the Queene was then owner, or part owner, 5. Edw. cap. 5. & 27. Fliz. cap. 11.

Set price or tare vpon ſea-fiſh. Looſe the value of the fiſh.

Purueyour.

Forfait the double value.

Seafiſh and herring

Looſe the goods ſo laden, or the value.

Wine or Woade in a ſtrange bottome.

Forfait all the Wine and woade.

Wines retayled.
Looſe 3.s. 4.d. for euerie gallon, and ſo after that rate

If any perſon authorized to ſell wine by retaile, haue within this yeere ſold the ſame aboue the prices thereof limited by the Queenes proclamation, if there haue beene any, 5. El. ca. 5. & 27. El cap. 11.

Not aboue ten gallons of wine.
Looſe tenne pound.

If any perſon, not being the ſonne of a Peere (or Baron) of this Realme, nor hauing lands or profits to the yerely value of a hundred marks, or goodes to one thouſand markes, haue kept in his houſe any veſſell of Galcoigne, Guion, French, or Rochel wine, containing aboue ten gallons, to the intent to ſpende the ſame in his houſe, 7. Ed. 6. cap. 5.

Vttar flesh.
Looſe fiue pounds, and haue ten daies priſonment.

If any Inholder, Tauerner, alehouſe-keeper, common victualler, common cooke, or common table keeper, hath vttred, or put to ſale any kind of flesh victuall, vpon any day in the time of lent, or vppon any friday, ſaterday, or other day appointed by former law to bee fiſh day (not being Chriſtmas day) except it bee to ſuch perſon, as (reſorting to ſuch houſe) had lawfull licence to eate the ſame according to the Statute thereof made the fift yeare of her Maieſties raigne, 27. El. cap. 11.

Eate flesh.
Looſe xx.s. or haue one months impriſonment.

If any perſon (other than by reaſon of age, ſickneſs, childing or licence) haue within this yere, eaten flesh in Lent, or vpon any fiſhday obſerued by the cuſtome of this realme, 2. Ed. 6. ca. 19. & 5. El. ca. 5. 35. El. ca. 7.

If any common brewer, baker or tipler, haue broken

broken the aſſiſe of bread, beere, or ale: And if any ſteward of *Leete*, or officer in market towne, haue taken any fine for breach of the aſſiſe of bread or ale, in ſuch caſes, where corporall puniſhment is appointed, 13.R.2.ca.8. Aſſiſe of bread and ale. Fine.

If any perſon haue bought or ſolde by any vnlawful weights or meaſures: or if any perſon haue bought or ſold in any citie or Market, with any weight or meaſure that is not lawfully marked or ſigned: 11.H.7.c.4. Or haue bought corne by heaped meaſure in any place (except within ſhip boord) or haue vſed double meaſure, the one to buy, the other to ſell with, 15.R.2.c.4. 11.H.7.c.4. 5.E.3. *de Pi.* Weights and meaſures. 1. Loſe a Noble. 2. Loſe a Marke. 3. Loſe 20.s. and ſtand on pillorie.

If they of the towne where the Kings Standerd is appointed to remaine, haue not their common weights and meaſures ſigned, or haue not there by ſigned weights and meaſures ſold to al that haue required ỹ ſame: And if the head officers of Market Townes haue not twiſe yearely made viewe and examination of weights and meaſures there, 11.H.7.cap.4. Common weights and meaſures. Fine and amercement.

If any veſſell for beere or ale haue beene ſolde or put to ſale, being made of vnſeaſonable wood or not hauing thereupon the mark of him ỹ made it: or if any barrell for beere containe not of the Queens ſtandard 36. gallons: the hilderkin 18. gallons: the firkin 9. gallons: euery barrell of ale 32. gallons: the hilderkin 16. gallons: & euerie firkin 8. gallons: 23.H.8.ca.4. Veſſell for ale, or beere. Looſe 3.s.4.d.

If

Veſſels for wine, hony, oile, herring, Eeles, Salmon.

If any haue made or brought into this realm any tun of wine, not containing 252. gallons: or pipe not containing 126. gallons: or tertian not containing 82. Gallons: or hogſhead not containing 63. gallons: or butte of Malmſey not containing 126. gallons: Or barrell of herring not containing 32. gallons of wine meaſure: Or barrell of Eeles not containing 42. gallons: or butte of Salmon not containing 84. gallons: or any kilderkins tertian, firkins or rundlets, but after the ſame rate. 2. H. 6. cap. 11. 1. R. 3. cap. 13. & 28. Hen. 8. cap. 14.

Looſe the wine, hony, oile, and fiſh.

Veſſels of Sope.

If any haue made any veſſell of ſope, that being empty containeth not 32. gallons for the barrell, 16. for the halfe barrel, and 8. for the firkin: or waieth aboue 26. li. the barrell, 13. li. the halfe barrell, or 6. li. and a halfe the firkin, 23. H 8. cap. 4.

Looſe 3. s. 4. d. for each one.

Toll diſh.

If any Millers haue taken toll by heaped meaſure. 31. Ed. 1. *de Piſtor, & Braciat.*

Fine.

Artificers conſpiring

If any Artificers, workemen or labourers, haue conſpired or promiſed togither, or made any oaths, that they will not doe their works but at a certaine price or rate, or but at certaine times, or but a certaine worke in a day, or that one of them ſhall not take vpon him to finiſh that which another hath begun. 2. Ed. 6. ca. 15.

Defence.

1. Ten li. or haue twenty dayes priſonment, with bread and water.
2. Twenty li. or ſtand on Pillorie.
3. Fortie li. or looſe one eare, and bee infamous.

If

If any perſon doe vſe any art or manuell occupation, (vſed in the fift peere of this *Queene*) which hath not beene brought vp therein ſeuen yeeres (at the leaſt) as an apprentice: or hath ſet any to worke in it, which is not a workman, or a iourneyman by yeere, or hath ſerued as an Apprentice. 5. El. ca. 4.

Arrowhead Smiths.

If an Arrowhead Smith haue not well boyled, braſed and hardened at the point with ſteel, and marked with his marke, ſuch heades of Arrowes & quarrels, as he hath made. 7. H. 4. ca. 7. Loſe the heads and be priſoned, & make fine.

Tanners.

If any perſon (during ſuch time as he vſed the miſterie of Tanning of any hide of ſkin of Ore, Steere, Bull, Cow, Calfe, red or fallow Deer, Goate, or Sheep) haue vſed alſo the miſterie of a Shoomaker, Currier, Butcher, or of any Artificer vſing the cutting or working of ſuch Leather. Looſe all the Hides and skins, tanned by him.

If any perſon haue galhed or cut the Hide of any Bull, Ore, Steere or Cowe, whereby it is impaired: or if any Tanner haue put to ſale any ſuch hide.

If any perſon (other then ſuch as at Michaelmas 1559. had freehold of fortie pound by the peere, or had then any Tanhouſe, and did occupie tanning of Leather, or hath been an apprentiſe or taught as a hired ſeruant ſeauen yeres to a Tanner, or hath been wife to a Tanner, or the ſonne of a Tanner, and brought vp foure yeres in that art, or the ſonne or daughter of a tanner, Looſe all the leather tanned by him.

or

or such as hath married the wife or daughter of a tanner, that left to the same his Tanhouse and Fats) hath tanned any Leather, or hath taken any profite by the tanning thereof.

If any Tanner haue suffered any Hide to lie in the Limes longer, than till the haire falleth off, or may be taken off: or haue vsed any other, than Lime, Culuerdung, Hendung, colde Water, Mose of cold water, and Okenbarke, in his Tanning, or haue ouerlimed any Hides in the pits, or put them in vessels before the lime bee perfitly wrought out, or haue suffered his Leather to be frozen with the frost, or to be parched with the fire or the sunne: Or haue tanned any rotten Hides, or wrought them negligently in the Mose, or haue not renued the Mose so oft as neede was: Or haue not suffered the Hides (for outer sole and cloute Leather) to lie in the Mose xii. moneths, and for the vpper Leather nine moneths: Or hath not sufficiently tanned any Hide: Or hath tanned any Hide of Ore, Steere, or cow, otherwise than whole, & without cutting any part thereof away, except three or foure Bends ouerthwart for clout leather: Or haue tanned any bull hide, horse hide, or sheepe skin: or hath put any of thē to sale, being tanned.

Forfait the Hides.

Lose the hides or the value.

If any person haue put to sale any tanned leather (red and vnwrought) vnlesse it bee sufficiently tanned and dried, and vnlesse it bee in the places appointed for it, in open faires and markets,

kets, and vnleſſe it bee firſt ſearched and ſealed: Or haue departed with the hide of oxe, Steere, or Cowe, but onely whole, without any part cut off, except Bends for clouting leather, as before. Loſe the hides or value.

If any perſon haue bought, contracted for, or beſpoken any rough hide, or calues ſkins in the haire (except ſalt hides for the vſe of ſhips) but ſuch perſons only as ſhall tawe the ſame: or ſhall and may by this act, tanne the ſame: Or haue bought or beſpoken any tanned leather, not wrought into made wares (other than necks or ſhreds of ſadlers or girdlers) but ſuch perſons onely, as will conuert and worke the ſame into made wares. 5. El. ca 8. Looſe all the hides and ſkinnes or the value.

If any Currier haue curried any leather, but in his owne houſe, and that being in a corporate or market towne: Or haue curried any leather not well tanned, or not thoroughly dried after his wet ſeaſon: Or haue vſed in his wet ſeaſon any deceitfull meanes to corrupt the ſame: Or haue curried vtter ſole leather with any other ſtuffe than hard tallow, or inner ſole, or ouer leather with any ſalt ſtuffe: Or haue not licored them both thorowghly: Or haue burned, ſcalded, or ſhaued too thinne, or not wrought ſufficiently any leather: Or haue gaſhed or hurt any leather by any meanes: Or haue refuſed to currie within fiue dayes in Summer, and ten dayes in winter, well and ſufficiently any leather, by any cutter of leather, or his ſeruant, bringing with him Curriers. Loſe a Noble for each offence except gaſhing.

him good ſtuffe for the perfite liquoring of the ſame, 5. El. ca. 8.

Looſe a Noble for each hide, or skinne.

If any Currier haue (during the time that he hath occupyed Currying) vſed the feate of a Tanner, Shoomaker or Butcher, or other Artificer, vſing cutting of leather, 5. El. cap. 8.

Shoomaker.

If any Shoomaker haue made any Bootes, bulkins, ſhoes, ſlippers or pantofles, or any part of them of Engliſh leather wette, curried (other than Deeres, Goates or calues ſkinnes, dreſſed like Spaniſh Leather) but of Leather well tanned and curried, or well tanned onely, and well ſewed with threed well twiſted, wared and roſoned, with the ſtitches hard drawne, with hard leathers, and without mixing Neats or Calues leather in the vpper Leathers thereof: Or haue put in any Bootes, Bulkins, Startups, or ſlippers (betweene the laſt of September, and the twentith of Aprill) meete for any perſon aboue foure yeares olde, any dry Engliſh Leather (other than Calues or Goates ſkins, dreſſed like Spaniſh leather:) Or haue ſhewed for ſale, any of his wares vppon the ſunday morning before diuine ſeruice be ended: Or haue put into any of his ſaid wares, lether made of ſheepsſkins, bull, or horſehide, or into the vpper leather of any ſhoes, ſtartups, ſlippers or pantofles, or into the neather part of any bootes, (the inner ſole and half of the ſhoe, onely excepted) any part of the wombe, necke, ſhanke, ſlanke, poll, or cheeke: Or into

Looſe 3. s. 4. d. for euerie paire.

into any vtter ſole other than the beſt of the Dre or Steeres hide: or into the inner ſole other than the wombes, necke, pol, or cheeke: or in the treſwels of the double ſoled ſhooes, other than the flankes of the ſaid hides, 5. El. ca. 8.

If any Lord of Faire or market, haue not appointed two or three honeſt and ſkilful perſons, to be ſearchers and ſealers of leather there: And if any of the ſearchers and ſealers ſo appointed, haue refuſed to ſeale good Leather: or haue made default in ſearch: or haue concealed any faultes, 5. El. cap. 8.

Search and ſeale leather.

Loſe xl. li. for euery yeare.

The appointers to looſe xl. s. for each offence.

If any ſuch ſearcher haue not cut the wombes from the vtter ſole Leather truely tanned, before it bee curred: or haue not regiſtred the bargains for leather, taking due fees, *ibidem.*

Looſe 3. s. 4. pence for each diker of leather: and ſo for each dozen of skins.

If any perſon haue denied any ſuch ſearcher to enter into any place, to ſearch tanned leather, & wrought ware, or to ſeiſe and carry away that which was inſufficient: Or if any haue carried out of any faire or market, any whole ore or ſteere hide (wherof any ſole leather may be cut) before the wombes bee cut off: Or haue put away any tanned lether (red & vnwrought) without regiſtring the ſame, and the price thereof: Or haue bought any tanned lether, before it was ſearched and ſealed, or haue carried it out of any faire or market before it was regiſtred, 5 El. cap. 8.

Looſe fiue pound.

Looſe the value of the leather.

If any Goldſmith, or worker of ſiluer, haue

Goldſmiths and guilding.

Forfeit the double value.

wrought any ſilluer, that is not ſo fine in allay as the ſterling, or haue not ſet his marke vpon his worke before he ſet it to ſale, 2. H. 6. c. 14. And if any haue gilded any Sheaths, or any mettal but ſilluer, ſauing the ſpurres of Knights, and the apparell of a Baron, or ſuch as are aboue that eſtate, 8. H. 5. ca. 3.

Forfeit ten times the value of the thing gilt, and be priſoned one yeare.

Looſe x. li. for each default.

If any Pewterer, or Braſier, haue ſold, or exchanged any braſſe or Pewter, but onely in open Faire or Market, or in his houſe, vnleſſe he were thereto required by the buyer: or hath wrought any holow wares of lay mettal, which is not according to the aſſiſe of the lay mettall wrought in London: or haue not ſet his ſeale or marke vpon the ſaid ware, 19. H. 7. cap. 6. & 4. H. 8. cap. 7.

Looſe the wares.

Tilemakers. Looſe the double value to the buyer.

If any Tilemaker haue not digged and caſt vp his earth for Tile, till after the firſt of November, or haue not ſtirred and turned it till after the firſt of Febʒuary following, or if he haue wrought it before the firſt of March following, or if hee haue not wrought and tried it from ſtones, veines, and chalke: Or if he haue made, or any perſon haue put to ſale, any plaine Tile, vnder tenne inches and a halfe in length, ſixe inches & a quarter in breath, and halfe an inch and a quarter in thicknelſe: or any roofe Tile vnder thirteene inches in length, and halfe an inch

Looſe for euerie
- 1000. of plaine Tile, fiue ſhillings.
- 100. of roofe Tile, a noble.
- 100. of corner Tile, two ſhillings.

inch and halfe a quarter in thicknes, with conuenient deepneſſe: or any gutter Tile vnder ten inches and a halfe in length with conuenient thickeneſſe, breadth, and depth: And if any ſearchers appointed for the ouerſight of the true making of Tile, haue not done their effectuall indeuour and diligence in this behalfe, 17. E. 4. cap. 4. Looſe tenne ſhillings for each default.

If any perſon haue ſold or ſet foorth candles or other workes of ware to ſale, at higher price than after the rate of foure pence for the pound, ouer the common price of plaine ware betweene marchant and marchant, 11. H. 6. ca. 12. Ware workers. Forfeit the works, or the value: and to make Fine.

If any Clothmaker haue not ſet his ſeale of lead vnto his Cloth, thereby declaring the iuſt length thereof, to be tried by the water, 3. Ed. 6. cap. 2. Clothmaking and Dying. Fine.

If any Perſon haue ſtretched any Cloth aboue one yarde and a halfe in length, or one quarter of a yarde in breadth, or haue put to ſale, any Cloth that hath ſhrunke more in the wetting than is aforeſaide: Or haue ſtretched anie narrow ſtreit or Kerſey, aboue one yarde in length, and halfe a quarter of a yarde in breadth, or haue put anie ſuch to Sale that haue ſhrunke more in the wetting, 5. Edw. 6. cap. 2. Looſe forty ſhillings for each fault.

If any Dyar of Woollen cloth, haue died

any browne Blewes, Pewkes, Tawneies or Violets that were not perfectly boyled, grained or maddered vpon the Woad, & shot with good coyke or orchall sufficiently, 3. E. 6. cap. 2.

Looſe twentie ſhillings for each offence.

If any perſon haue Died any Wooll for Cloth called Ruſſetes, Marbles, Grayes, Bayes, or ſuch like, or for Hattes, or Cappes, vnleſſe it were perfectly woaded, boyled, and maddered; Or haue died with brazel, to the intent to make a falſe colour, in any ſuch Cloth or wooll: or haue put any flore, chalke, ſtarch, or other deceiuable thing vpon any Cloth (except certaine Deuonſhire and Cornwall straights, 3. E. 6. ca. 2.) Or haue occupied any pyron cards or picards, in rowing of any woollen cloth: or haue ſolde any Cloth by any leſſe meaſure than after the true content thereof by the yarde and inch: or haue put to ſale in this realme any cloth (being preſſed) to bee occupied in Englande, Wales, or Ireland, 3. E. 6. ca. 2.

Looſe fortie ſhillings for each Cloth, or wooll, ſufficient for a cloth.

Looſe twentie ſhillinges for each offence.

Looſe xl. s. for each offence.

Looſe them, & xx. ſhillings.

Looſe a noble for each yard

Looſe the cloth or the value.

If any Ouerſeers of cloth, appointed by the Iuſtices of peace for this yeare, haue refuſed to be ouerſeers, or haue not within their charge, made due ſearch thereof once euery quarter: And if any perſon haue interrupted them to make ſuch ſearch, 3. E. 6. cap. 2.

To looſe as the offendors them ſelues ſhoulde looſe.

Looſe twenty li.

If any Kentiſh broade cloth (except courſe cloth onely, not exceeding ſixe pounds price) haue

hath beene made, that contained not in length betwene eight and twenty and thirtie yards, being wet: and in breadth ſeauen quarters within the liſtes: and in weight ſeuentie ſixe pounds, being well ſcowred, thicked, milled and fully dyed, 5. Ed. 6. cap. 6. & 4. & 5. Ph. & Mar. cap. 5.

Loſe twentie ſhillings for each fault of breadth, or length: and the like for ech want of weight, aboue foure pound.

And ſo changing it after their rates for other countries, as by thoſe Statutes appeareth.

For regrating of wools by *Halifax* men, See 2. & 3. Phil. & Mar. cap. 13.

If any perſon haue vſed, or cauſed to be vſed, any racking, beating, or calking of any deceitful liquor, or other meane, with any kinde of linnen cloth, whereby the ſame became deceitfull, or the worſe for the good vſe thereof, 1. Eli. cap. 13.

Linnen cloth

Looſe the cloth: haue one moneths impriſonment, and pay fine.

If any owner of any Scite or Precinct, and Demeaſnes of any late diſſolued Religious houſe (that was in yeerly value vnder 200. li.) do not keepe an honeſt and continuall houſholde thereupon, 27. H. 8. ca. 22. & 5. El. cap. 2.

Scites of religious houſes.

Looſe xx. nobles for each moneth.

Note that the offences againſt the Statut of *Husbandrie* and *Tillage* 39. El. c. 2. which extendeth not to Kent, Eſſex, Suſſex, and many other ſhires, nor to the greateſt part of Wales, are enquirable ad determinable at the Quarter Seſſions: but I leaue them to the Iuſtices of thoſe ſhires in which they haue force.

2000. ſheep. Looſe 3. s. 4. d. for euerye ſheepe more.

If any perſon haue at one time kept aboue the number of 2000. ſheepe of all ſorts, againſt the purport of the ſtatute, 25. H. 8. cap. 13.

Faire & market for horſes.

If any owner, officer, or ruler of any faire or market haue not appointed one certaine open place ther, for the ſale of horſes, geldings, mares and coltes, and one ſufficient perſon to take toll, and keepe the ſaid place: And if any ſuch toll-gatherer, or his deputy haue taken any more than one peny toll for one contract, or for entring the names of the parties, and that in the ſame place only, and betwene ten of the clocke in the morning, & ſunne ſetting, 2. & 3. Ph. & Mar. cap. 4.

Looſe fortie ſhillings for ech default, and anſwere the partie grieued.

Entrie in the toll booke.

If any perſon haue in any faire or market, ſolde, giuen, or put away, any horſe, mare, gelding, colt, or fillie: vnleſſe the toll-taker, booke keeper, bailife, or chiefe officer thereof, wil take vpon him perfect knowledge of the ſame perſon his name, ſurname, and place of dwelling, or reſiancie, and ſhall enter the ſame into a booke kept for horſes ſold: or vnles the ſaid perſon do bring to ſuch toll-taker, booke keeper, &c. one ſufficient and credible perſon, that can and will teſtifie, that he knoweth the ſeller, giuer, or putter away, his name, ſurname, miſterie, & dwelling place: and there enter into ſuch booke, as well the ſame, as the name, ſurname, miſterie, and place of dwelling, or reſiancie of ſuch teſtifier, togither with the true price that ſhal be taken

ken for any ſuch horſe, mare, gelding, colt, or fillie ſo ſold: None ſhall ſo teſtifie, vnleſſe he doe in deede truly know the ſame, vpon paine to forfeit fiue pound for euery default in any the premiſes. Fiue pound. And the like paine vpon the toll-taker, or other officer aforeſaid, that ſhall refuſe to giue to the buyer, or taker of ſuch horſe, &c. a true note in writing of that his entrie, the party paying two pence for the ſame, 31. El. ca. 12.

If any inholder (dwelling in any City, Town corporate, or Market town, wherin is any common baker that hath beene apprentice there ſeuen yeares) haue within his owne houſe made any horſebread: or (dwelling in any other thorowfare) haue made it inſufficiently, and not of due aſſiſe. 13. R. 2. cap. 8. & 32. H. 8. cap. 41. Inholder. Horſe bread.

If any Inholder haue taken any thing for litter: or haue taken exceſſiuely for hay, or haue taken aboue one halfe penny in a buſhell of oates, ouer the common price in the market, 13. R. 2. ca. 8. & 4. H. 4. c. 25. Hay & oates. Looſe the quadruple value of that which hee hath taken more.

If any perſon haue bene retained into ſeruice to worke for any leſſe time than a whole yere, in any the arts of a clothier, wollen weauer, tucker, fuller, clothworker, sherman, dier, hoſier tailer, shoomaker, tanner, pewterer, baker, brewer, glouer, cutler, ſmith, ferror, currier, ſadler, ſpurrier, turner, capper, hatmaker, feltmaker, bowier, fletcher, arrowhead-maker, butcher cooke, or miller. And if any perſon being vn- Seruants not retainable for leſſe then one yeare. The retainer is voide. Refuſing to ſerue.

Prisoned til he will serue.

married (or vnder thirtie yeares of age, and married) and being compellable to serue in any of those artes, haue refused to serue.

Prisoned til he will serue.

If any person being betweene the age of twelue yeares and threescore, and being compellable to serue in husbandrie, haue refused to serue in husbandrie, after request thereof made by any person keeping husbandrie: And if any person haue giuen any wages, contrarie to the rates of wages of seruants and labourers appointed and proclaimed.

Greater wages. Loose fiue li.

Testimoniall.

If any person retained in husbandrie, or any the said Artes, haue after his retainer expired, departed out of one limite, towne or parish, into another without a testimoniall: And if any person haue accepted into his seruice, any so departing, without shewing such Testimoniall.

Prisoned for one and twentie dayes, and whipped then if he bring not a testimoniall.

Loose 5. li. for each offence.

Put away, or depart away. Loose fortie shillings.

If any person haue put away his seruant before the end of his terme, without reasonable & allowed cause before a Iustice of the peace or at the ende of his terme, without a quarters warning before giuen: & if any seruant haue departed without such cause before the ende of the terme, or at the end thereof, without such warning giuen before two lawfull witnesses.

Prisoned til he wil continue.

Vndertake worke, and not finish it. Loose one penny, for each houres absence.

If any artificer or labourer, hired by the day or weeke, haue not continued at his worke so manie houres in the daye as hee ought: or taking

taking any worke by the great, haue vnlawfully departed before the finiſhing thereof. Loſe fiue pound and haue one moneths priſonment.

If any ſeruant, workeman, or labourer haue wilfully and maliciouſly made any aſſault or affray vpon his maſter, or dame, or other perſon hauing the charge of ſuch workers or worke. Aſſault Maſter or dame. One yeares priſonment, and other open corporall puniſhment, not extending to life or limme.

If any Conſtable or head officer, haue not vpon complaint put into the ſtockes two dayes and one night euery artificer or perſon, meete to labour, that hath refuſed to labour in hay time or harueſt, for the getting or carrying of corne, hay or graine, being thereto appointed by a Iuſtice of peace, or ſuch Conſtable or head Officer. Labour in hay time & harueſt. Loſe 40. ſhillings.

If any perſon haue taken any Apprentice againſt the order of the Lawe: and if any perſon haue exerciſed any Art, not being brought vp therin as an apprentice 7. yeares, 5. El. c. 4. & 5. Apprentices. Loſe x. pound.

If the Churchwardens of any pariſh haue not euery ſunday leuied the money for relieſe of the priſoners in the Gaole, and once in euery quarter paide it to the Conſtable of the Hundred: or if that Conſtable haue not at euery quarter ſeſſions paide ouer the ſame to the Collector thereto apointed: or if ſuch Collector haue not weekly diſtributed the ſame for relieſe of the ſaid priſoners, 14. El. ca. 5. Priſoners relieued. Loſe 5. pounds Loſe 5. pounds Loſe 5. pounds

If any perſon hath (ſince the ende of the laſt Seſſion Cotages.

Seſſion of Parliament) made, builded: or erected, or cauſed to be made, &c. any manner of cottage for dwelling: or conuerted, or ordained any building, or houſing, to be vſed as a Cottage for dwelling: vnleſſe the ſame perſon haue laid thervnto foure acres (at the leaſt) of ground (to bee accounted by the Ordinance *de Terris menſurandis*) being his or her own freeholde and inheritance, lying neere to the ſaide Cottage to bee continually manured therewithall ſo long as that cottage ſhall be inhabited.

If any perſon haue willingly maintained or vpholden ſuch cottage, not hauing ſo many acres ſo lying and manured.

If there bee any Inmates, or mo houſholdes than one, dwelling in any one Cottage, by the placing or ſuffering of any owner or occupier of ſuch Cottage.

Inmates. But this ſtatute extendeth not to any Cottage in any Citie, corporate (or market) towne, or ancient Borough: Nor to the dwelling of any workers in Minerall workes, coale-mines, Quarries of ſtone, or ſlate, or about the making of Bricke, tyle, lime, or coale: ſo that they be not diſtant aboue one mile from the works, and bee vſed only for the habitation of ſuch workers: nor to cottages within a mile of the ſea, or vpon the ſide of any Nauigable riuer within the Admirals iuriſdiction: So as none dwell therein but Saylers, or men of Manuell occupation for the making,

making, furniſhing, or victualling of Ships, or veſſels vſed to ſerue on the ſea: Nor to any cottage in any Foreſt, chaſe, Warren, or parke inhabited onely by them that keepe the Deere, or game there: Nor to any cottage hereafter to bee made, wherein only a comon heardman, or common ſhepheard of any towne, or any poore, lame, ſicke, aged, or impotent perſon ſhall dwell: Nor which for any iuſt reſpect (vppon complaint to the Iuſtices of Aſſike at the Aſſiſes, or to the Iuſtice of Peace at the Q. Seſſions) ſhall by their order (entred in open Aſſiſes, or Q. Seſſions) be decreed to continue for dwelling, for ſo long time onely as by ſuch decree ſhall be limited 31. El. Reg. cap. 7. Nor extendeth to any Inmates to bee placed by the order of the Iuſtices in their Quarter Seſſion, with the leaue of the Lord of any Waſt or Commen, at the charge of the Pariſh, Hundred, or Countie. 39. El. ca. 3.

Caps.

If any perſon aboue 6. yeares of age (except maidens, ladies, gentlewomen, nobles, knights, gentlemen of xx. markes by yeare in landes, and their heires, and ſuch as haue borne Office of worſhip) haue not worne vppon the ſunday and holyday (except it bee in the time of his trauell out of the Citie, Towne or Hamlet where hee dwelleth) vpon his head, one Cap of wooll, knit, thicked, and dreſſed in *England*, and onely dreſſed and finiſhed by ſome of the trade of Cappers. 13. El. cap. 19.

Looſe 3. s. 4. d. for each day.

If

Silke in apparrell.

If any man borne within the Queenes dominions (except it be the ſonne & heire apparant of a knight, or the ſonne of one of higher degree, or ſuch as may diſpend xx. pounds by yeare, in lands, offices, Fees, or other yerely reuenues for terme of life, or be worth two hundreth pounds in goods, or haue been head officer in any citie, borough or towne corporate, or be the Queenes ſeruaunt in Ordinarie and wearing her liuerie) haue worne any manner of ſilke, in, or vpon his hat, bonet, nightcap, girdle, ſcabbard, hoſe, ſhoes or ſpurlethers: And if any perſon knowing any ſeruant of his to offend herein, haue not (within 14. daies next after ſuch knowledge) put him out of ſeruice, if hee were no apprentice or hired ſeruant, & if he were, then if he haue not put him away at the end of his Terme, or if, hauing put him away therefore, he haue retained him again within one yeare next after that offence, 1. & 2. Phil. Mar. ca. 2.

Loſe x. pound for each day.

Looſe 100. li.

The Statute of apparel (made 24. H. 8. c. 13.) is not thought altogether meet for this time, as it may appear by ſome proclamations publiſhed

Bridges.

If any Bridges in the highwaies (being out of the Cinque Ports, and members thereof) bee broken or decayed, to the annoyance of paſſengers: and if yea, then what Hundred, Citie, Towne, Pariſh, or perſon certaine, or bodie politique, ought of right to repaire or amend the ſame, 22. H. 8. ca. 5.

If

If the Conſtables and Churchwardens of any parish, haue not in Eaſter weeke called their parishioners together, & appointed Ouerſeers of the worke for amendment of the highwaies, leading to any Market, or haue not appointed the ſix dayes for that worke: and if any ſuch Ouerſeers, haue refuſed that charge. And if any perſon (hauing a plow land in tillage or paſture, or keeping a draught or plowe) haue not found one waine or cart, furniſhed to worke 8. houres, euery of the ſaid daies: Or if any other perſon (being aſſeſſed in ſubſidie to 5. pounds in goods, or 40. ſhillings in landes) haue not likewiſe found two able men: or if any other houſholder or Cotager, haue not by himſelfe or another, ſo wrought euery of the ſame dayes. Highwaies. Fine. Looſe xx.s. Looſe x.s. for euery draught. Looſe xij.d. for each day.

If the hedges, ditches, trees, and buſhes, in & on each ſide of any ſuch high way bee not kept low, ſcoured, and cut downe by the owners of the groundes adioyning: If any ſuch ouerſeer, haue not within one moneth after any of the ſaid offences done, preſented the ſame to the next Iuſtice of the peace: & if any perſon occupying land adioyning to any ſuch High way, haue caſt the ſcouring of any ditch thereof into the high way. Looſe x.s. for each default. Looſe xij.d. for euery rod.

If any Bailifes, Conſtables, ſurueyors or Churchwardens, haue not leuied the forfaitures for the offences aforeſaide, and employed them vpon their ſaid highwaies, and accounted thereof Bailifes and Conſtables to looſe fortie ſhillings. Surueyors and Churchwardens to be fined.

thereof, 2.& 3.Ph.& Mar.c.8.5.El.cap.13.18. El.cap.9.& 27.El.cap.11.

Highwaies in the Weald of Kent, Suſſex, and Surrey.

If any owner, occupiour, or Fermor of any maner of Iron worke, haue not (for euery three loades of Coale or Myne, and alſo for euery tun of Iron that he hath cauſed to bee carried by any Waine or Cart, betweene the xii. of October and the firſt of May, by the ſpace of one mile through any high way within the Weald of this Countie of Kent) paid 3.s.4.d. to the Iuſtice of Peace dwelling neere the place where the Highwaies were moſt annoyed: and haue not likewiſe (for euery 30. loades of coale or mine, and alſo for euery ten tuns of Iron ſo carried there betweene the firſt of May and the xii. of October) carried & laid one load of Synder, Grauel, Stone or chalk, in ſuch place of the ſaide highwaies, as was by ſuch Iuſtice, or (in his default) by the Surueyors of the highwaies there, appointed therefore, or els 3.s. in money for euery ſuch loade ſo due & not carried, to the handes of the ſaide Iuſtice or Surueyors, within 8. daies after demand thereof at his ſaid Iron worke. And if any of the laſt ſaid Surueyors haue not ſo appointed the place, or haue not demanded the ſaid money, or haue not at the next Quarter Seſſion of the Peace preſented the default thereof. 39.El.ca.19.

Forfait x.s. for euery loade, & for euery 3.s.

Loſe 40. ſhillings for euery default.

Vnlawfull games.

If any perſon haue (for lucre) maintained or kept any common houſe, alley, or place of bowling, copting, cloſh, cailes, tennis, dicing, tables, carding,

carding, ſhouegrote, or any other game prohibited by any former Statute (as football and caſting of the ſtone) or any other vnlawfull newe game now inuented: if any Artificer of any occupation, or any huſbandman, apprentice, labourer, ſeruant at huſbandry, iorneyman, or any ſeruaunt of Artificer, or any mariner, fiſherman, waterman, or ſeruingman, (other than of a Nobleman, or of him that may diſpend one hundred pounds by yeare, playing within the precinct of his maſters houſe) haue plaied out of the Chriſtmaſſe at any of the ſaid vnlawfull games, or in in the Chriſtmaſſe out of the houſe or preſence of their maſter, 33. H.8. cap. 9. & *vide* 12. R. 2. cap. 7. & 10

Looſe fortie ſhillings for euery day.

Looſe 6. s. 8. d. for euery time.

If any perſon haue ſhot in, vſed or kept any handgun, but ſuch as is in ſtock & gun one yard long: or any hagbut, or demyhake: not being 3. quarters of a yard long. 33. H. 8. ca. 6.

Croſſebowes and Guns. Looſe 10. li. for euery offence

If any perſon (not hauing one hundreth pounds reuenue by the yere) haue carried in his iourney any Croſſebowe bent, or Gun charged, vnleſſe it be to the muſters: If any perſon haue ſhot at large (other than at a Butte or Bank of earth in place conuenient) at any thing with any Gun in any Citie, borough or market towne, or within a quarter of a mile of any of them, or haue commanded his ſeruant to ſhoote in croſſebow or Gunne, at any thing other than a Butte or Banke of earth: or if any perſon (not hauing

Looſe x. pound for each offence.

uing an 100.li. by yeare, or not dwelling within fiue miles of the Sea coaſt, or not dwelling in a houſe two furlongs diſtant from any Citie, Borough or Towne, do keepe or haue in his houſe any Croſſebow. 33.H.8.ca.6.

But ſuch as are charged to find a gun by the ſtatute (4.& 5. *Phil. & Mar.* ca.2.) & their ſeruants may ſhoote at a Butte or Banke, and at their owne proper games, ſo that they cary not the ſame in a High way, except it bee going to or from the *Musters*, or to or from the defence or ſeruice of the realme.

Looſe fortie ſhillings. If any perſon (hauing an hundred poundes by yeare, and hauing ſeiſed any Croſſebowe or gun by vertue of this Act) ſhaue not broken the ſame in peeces within 20. dayes next after ſuch ſeiſure: *ibidem*.

Archerie. If any Marchant ſtraunger, beeing of any Countrey from whence Bowſtaues haue beene

Looſe 6.s. 8.d. for ech bowſtaffe. or ought to be ſent into this land, haue not (for euery tunne weight of burden that his veſſell containeth) brought hither foure Bowſtaues, 12.Ed.4.ca.2.33.H.8.ca.10.& 37.H.8.ca.7.&

Loſe 13.s. 4.d. for each But. 13.El.ca.14. & for euery But of *Malmeſie* ten Bowſtaues, 1.R.3.ca.11.

Archerie. If any man being the Queenes ſubiect, and not hauing reaſonable cauſe or impediment, and beeing within the age of ſixtie yeares (except

cept Spirituall men, Iuſtices of the one Bench or other, Iuſtices of Aſſiſe, and Barons of the Eſchequer) haue not a long Bow and arrowes readie in his houſe, or haue not vſed ſhooting therein: or haue not for any man childe in his houſe (betweene ſeauen yeares and ſeuenteene of age) a Bow and two ſhafts, and for euerie ſuch beeing aboue ſeuenteene yeares, a Bowe and foure ſhaftes, or haue not brought them vp in ſhooting. If any man vnder the age of foure and twentie yeares, haue ſhotte at ſtanding pricks: or (being aboue that age) haue ſhot at any marke vnder eleuen ſcore yardes with any prickſhaft, or flight.

Looſe 6. s. 8. d. for each moneth.

Looſe 6. s. 8. d. for euerie ſhot.

If the Inhabitants of any Towne haue not made and continued their Buts as they ought to doe.

Buttes.

Looſe 20. s. for euery 3. moneths.

If any Bowyer haue not for euerie Bowe that hee made of Ewe, made alſo foure other Bowes of apt wood to ſhoote in: Or haue not ſold his Bowes for all ages, at their due prices: If any ſtraunger borne, not beeing a Denizen, haue vſed to ſhoote in a long Bowe, without the Queenes licence: Or haue conueyed out of her Maieſties Dominions, any long Bowe or ſhaftes, without ſuch licence. 33. Hen. 8. cap. 9.

Bowyers.

Looſe 3. s. 4. d. for each bow that ſhall want.

Looſe his bow and arrowes.

Looſe them, & haue priſonment till hee make fine.

If any temporall perſon, hauing eſtate for life in freeholde lands, or tenements, to the value of 200. li. by yeare, or vnder, and not aboue

Armour.

Looſe for 3. moneths want of

- Horſe or gelding, tenne pounds.
- Demilance and the furniture, three pounds.
- Corſlet, xx. ſhillings.
- Bowe, ſheafe, and skull, tenne ſhillings.

400. li. Or (not beeing otherwiſe charged) and hauing fees, annuities, or copihold lands, for life to the value of thirtie li. or aboue, or hauing goodes to the value of tenne li. or vpward, haue not, and keepe not in a readineſſe, ſuch horſes, geldings, weapon, armour, or other furniture for the warres, as after the proportion of his ability he ought (by the ſtatute thereof made) to haue and keepe, 4. & 5. Ph. & Ma. ca. 2.

Horſe, for apparell.

If any temporall perſon of full age (whoſe wife not being diuorſed, nor wilingly abſenting her ſelfe from him, doth weare any gowne or peticoat of ſilk, or any veluet in her kertle, or in any lyning or part of her gowne (other than in cuffes or purfles) or any French-hood or Bonet of veluet with any habiliment, paſſe, or edge of golde, pearle or ſtone, or any chaine of golde about her necke, or vpon any her apparell, haue not found and kept a light horſe furniſhed, except he haue bene otherwiſe charged by the ſtatute to find horſe or gelding, 33. H. 8. cap. 5. 4. & 5. Phil. & mar. cap. 2.

Looſe x. li. for euerie three months want

Common armour.

If the inhabitants of any pariſh, towne or borough, haue not, or keepe not ſuch common armour and furniture for the warres, as haue bin appointed for them by the commiſſioners thereto aſſigned, 4. & 5. Ph. & Ma. cap. 2.

Looſe for euery 3. months after the rates beforeſaid.

If

If any perſon being generally or ſpecially commaunded to muſter before any (hauing authority for the ſame) haue without true and reaſonable cauſe abſented himſelfe, or haue not brought with him in a readineſſe, his beſt furniture of array and armour for his owne perſon. 4. & 5. Phil. & Mar. cap. 3. **Muſters.** Haue ten daies priſonment, or pay fortie ſhillings fine.

If any perſon (authorized to muſter, or to leuie men for the Queenes ſeruice in warre) haue taken any reward for the diſcharge or ſparing of any perſon from that ſeruice: or if any perſon hauing charge of men for warrefare, haue not paied to his Souldiours their whole wages, conduit, and cote mony, or haue for any gaine licenced any of them to depart out of the ſeruice 2. E. 6. ca. 2. *ibidem.* **Captaines.** Loſe ten times ſo much, or twentie li. Looſe tenne times ſo much, and to the Souldiour treble ſo much as is not payed.

If any Souldiour ſeruing the Queene in her wars, haue giuen away, wilfully purloined, or put away any horſe, gelding, mare, or harneſſe, wherewith he was ſet forth, 2. & 3. E. 6. cap. 2. **Souldiours.** Priſonment till he make ſatisfaction.

If any perſon haue conueyed, ſolde, or giuen, into any place beyond the ſea, out of the queenes dominions, or to any Scottiſhman, to bee conueyed into Scotland, any Horſe, Gelding (or mare aboue x. s. price) without the Queenes licence vnder her great ſeale or priuy ſignet, vnleſſe it were to ſerue the Queene in her warres, 1. E. 6. cap. 5. **Conuey horſes, &c.** Forfait the horſe, mare, or gelding, and loſe fortie pound.

If any perſon haue put to feede in any foreſt,

Horſes and mares for breede. Forfeit the horſe.

chace, moore, mariſh, heath, common or waſte ground, within this ſhire, where any mares are uſed to bee kept, any ſtoned horſe, being aboue two yeares olde, and not being fourteene handfuls high, betweene the loweſt part of the hoofe, and the top of the wither: If any ſuch forreſt or grounds haue not bin yearely driuen within fifteene dayes after Michaelmaſſe by the owners or officers thereto appointed, 32.H.8.cap.13.

Looſe 40.s. for euery time.

Note the Fennie places that be excepted by the ſtatute 8.El.cap.8.

Sea watch Fine.

If watches haue not beene made vpon the ſea coaſts in ſuch places, and with ſuch number of people, and in ſuch manner as it was wont to be, 5.H.4.cap.3.

Parliament.

The Statute of leuying the wages of the knights of the Parliament (made 23.Hen.6.ca. 11.) hath no common vſe, and is therfore pretermitted.

Note alſo, that theſe Statutes following, are to bee openly publiſhed at any Seſsions *of the Peace, viz.*

Purueiours.

The ſtatutes (36.E.3.cap.2.3.& 4.) ſhall be proclaimed by the Iuſtices of peace euery yere and therof to enforme the people, 23.H.6.c.2.

Victuallers.

Al former ſtatuts for victuallers being in force ſhal be proclaimed two times yerely in the ſeſſions

ſions of Iuſtices of the Peace, 23. H. 6. cap. 13.

The act for Archery 33. H. 8. cap. 9. muſt bee proclaimed at the ſeueral Seſſions of the peace. Archerie.

Of the Enditements, and Preſentments, giuen by the Iurors: and of the Matter and Forme, and receiuing, and reiecting of them.

Cap. v.

THe preparation to this Enquirie, thus made, let vs go neerer, & looke alſo into the perfourmance of the ſame. The vnderſtãding or knowledge, which the Iuſtices of the Peace doe take by the trauell of theſe Enquirours, is by the meane of their repoꝛt put in writing, and commonly called, an Enditement or Preſentment: betwene the which two woꝛds (howſoeuer they be confounded, or not rightly diſtinguiſhed, in common ſpeech) me thinketh that there doth eaſily appeare a true and certaine difference.

For I take a Preſentment to be, a meere denunciation of the Iurors themſelues, or of ſome other Officer (as you ſhall heereafter heare) without any other information: and an Enditement to be, the Verdite of the Iurours, grounded vppon the accuſation of a third perſon: ſo that a Preſentment, is but a declaration of the Iurours (or Officers) without any bill offered Preſentment and enditment

offered before: and an Enditement is their finding of a bill of accusation to be true.

The one seemeth to come of the Greeke Ἐνδείκνυμι. I accuse: the other of the French *presenter*, to offer vnto a man, or to set before him.

Some extend the word Enditement to Felonies, and other capitall crimes: & Presentment, to Nusances and such inferior faults only. But, taking them at aduenture (as others doe) let vs consult with our bookes, that we may learne by them, what points be requisite to the making of a good Presentment or Enditement.

An Enditment therfore ought to be the verdite of Iurors that be charged to enquire of that offence which is presented by thē. For, if A. be endited of stealing the goods of B. and pleadeth thereto Not guiltie, and the Iurie findeth that C. stole the goods, and that A. tooke them from him, but not feloniously: this Verdite shall not stand for an enditement against C. because that Iurie had no charge to enquire generally who did the felony, but to trie specially whether A. were thereof guiltie, or no, 13. E. 4. cap. 3.

Enditement.

But if A. be arraigned vpon an Enditement of murder (taken before the Coroner) & is found Not guiltie: now, the Iurie ought to find, who is guiltie thereof: and if they say, that C. killed the man, that verdite shall serue for a good Enditement against C. because the Iurie had taken so much into charge, *ibid.*

This

This alſo is generally true, that all Bils, Informations and Enditements grounded vppon penall ſtatutes (wherein the prince onely is to reape the forfaiture) ought to bee commenced within two yeares next after the offence committed: and if the ſuite bee giuen to any other perſon, for himſelfe and the Prince, that ought to commence (for the Prince) within two yeres and (for euerie common perſon) within one yeare, next after the offence done: And otherwiſe it is meerely voide: vnleſſe ſhorter time be limited by that ſpeciall Statute vppon which the Information, Enditment (or preſentment) is made and framed, as it is by the newe Statute of decaying houſes of Husbandry 13. Eliz. cap. 5. & 39. Eliz. cap. 1.

Furthermore, all Enditements, (forasmuch as they be in the nature of a declaration) ought to containe certainty: and therefore (as ſaith M. Marrow) fiue principall things bee (moſt commonly) requiſite in preſentments before the Iuſtices of Peace, *videlicet*.

1 The name, ſurname, and addition of the partie endited:

2 The yeare, the day, and place, in which the offence was done:

3 The name of the perſon, to whom the offence was done:

4 The name & value of the thing, in which

the offence was committed:

5 The maner of the fact, and the nature of the offence: as the maner of the treason, murder, felony, or trespasse.

The name and surname. The name and surname of the party endited must be certainly expressed: and if the Enditement bee of an accessarie in felony, the name of the principal must bee set downe also. For if the enditement be, *quod* A. *mandauit cuidem ignoto occidere* B. *id quod fecit*, this is vicious, but in treason, trespas, or matheme, where al be principals, it may be, *quod procurauit personas ignotas*, to doe the treason, trespasse, or matheme, Marr.

Addition of estate, degre &c. Besides the name and surname of the partie endited, there ought also (by the Statute 1. H. 5. ca. 5.) in euery presentment wherein processe of outlawrie lieth to be added, his estate, degree, or mysterie, and the Countie, Towne, Hamlet or Place, where hee is, or was conuersaunt. And euen so ought it to haue beene at the common lawe also, as touching names of dignitie, made by creation, as Duke, Marques, Earle, Vicount, Archbishop, Bishop, Knight, or Serieant at the Lawe, because euery of these titles were accounted parcell of the name: but it was not so, for the names of Baron, Banneret, & Esquier (which are but names of dignitie without creation) nor for Chancellor, Treasurer, Chamberlaine, Sherife, Coroner, Escheator, Bailife, Deane, Archdeacon, Deacon, Prebendarie, or

Parson

Parſon (which are names of dignitie by reaſon of office onely) vnleſſe the Preſentment did charge them in reſpect of their offices: for then the name of office alſo, as Bailife or Eſcheator, ought to be vſed in the enditement. Marr.

But now, Baron, Knight, Eſquire, Gentleman, Alderman, Widowe, Singlewoman, Deane, Archdeacon, Parſon, Doctor, Clarke, pariſh Clarke, are good Additions of eſtate or degree (as I take it) within the meaning of this ſtatut of Additions: But Farmour, Seruant, Butler or Chamberlaine are not, becauſe they be common to gentlemen and yeomen, and thereby vncertain. So Chopchurch, Merchant, Grocer, Mercer, Tailor, Broker, Husbandman, Hoſtler, Labourer, Lighterman, Waterman, Spinſter &c. be good Additions of miſterie. But Citizen is not, becauſe it is no miſterie, art or degree: Neither is Extortioner, Maintainer, Vagabond, Heretike, Dicer, Carder, or ſuch like, any good addition: becauſe they are euery one euill, and againſt the law. Degree or miſterie.

And this part of the Addition of eſtate, degree, or miſterie, muſt alwaies bee knit to the proper perſon: For, *Sybilla Batt. nuper de* T. *in comitatu Eb. vxor Ioannis Batt. nuper Spinſter*, was reiected: becauſe Spinſter was more properly to bee referred to Iohn (which is the laſt Antecedent) than to Sybilla. *Collect. Dyar* 47.

Alſo by the ſaid ſtatute (as I ſaid) the Addi- Place.

tion

tion ought to comprehend the Countie, and the Towne, Hamlet or place (knowen out of any Towne or Hamlet) whereof the partie is, or was: So that if there be diuers Hamlets in one Towne, he may be named either of the Towne or Hamlet: But if hee bee named of a place knowen, and the place bee within a towne, then hee must bee named of the Towne, 35.H.6.30. And if both the towne and the parish doe beare one name, he may be named of the one, or of the other of them: But if there bee two Townes in one Parish, then hee ought to bee named of the Towne, and not of the Parish, 5.E.4.129.22. Ed.4.2. & 22.H.6.41.

An Enditement against A. the parson of Dale, is not good, without naming the place of his abode: because hee may lie at another place than where his benefice lyeth. 25.El. *Cur. Repo. Compton.*

Alias Dictus. As for the *Alias Dictus* (which is often put in the Addition) the vse thereof is chiefly in Writs, grounded vppon especialties, and to make the writte and the writing to agree. For (as touching Enditements) if the partie be not well named, both for his name of baptisme, surname, misterie, or degree, and place, at the first: then cannot the *Alias Dictus* make that good which was euill before.

And it appeareth (1.Ed.4.2. & 2.E.4.16.) that the Addition of the degree or misterie must alwaies

alwaies be ſuch as ỹ party hath at ỹ very time: But the Addition of the place may bee of ſuch, where hee was at any time before, ſo that then the word *nuper* be vſed with it.

Furthermore, the Enditement muſt contain the day, yere, and place in which the offence was committed. 8. E.4. 8.2. H. 7.7. & 25. E.3.43 And therefore, if the Enditement ſuppoſe it the 1. day of March, without any more, that is not good: But if it be the 1. day of March laſt paſt, without ſhewing in what yeare, that is good inough: for the certaintie may be found out by the Stile of the Seſſions. So if it bee the tenth day from Eaſter, Anno 23. Eliz. that is good: Likewiſe if it be in the Vtas of the holie Trinity: and it ſhall be there vnderſtoode to bee the very day of the Vtas (*videlicet*) the eight day after the Feaſt, and not *quarto die* after the Vtas: But if it be *In feſto ſancti Petri*, it is not good, becauſe there be diuers Feaſtes of Saint Peter, and none without addition, ſaith 3. Hen. 7. Fitz. Enditements 22. The yere, day, and place.

If the Enditement bee, that A. ſtroke B. 19. *die Maij, anno Reginæ nunc* 28. whereof B. languiſhed vntill the 21. day of the ſame moneth, *quo quidem* 19. *die*, hee died of the ſame ſtroke: this is faultie, becauſe it ought to bee, whereof he died the ſaid 20. day, &c.

If it be 29. *die Februarij*, it is good inough in the Biſſextile (or Leape yeare) which happeneth

neth once in euery foure yeares, and which afterdoeth 29. dayes to that moneth. But if it shoulde bee, of a day and yeere which is not then come, there is no reason to thinke it good.

If it be *Anno Domini*, 1599. the yeare shalbe accounted after the erronious computation of the Church of *England*, and not *Stilo nouo*, as it is now at *Rome*, and in other Countries abroad, which also truely is not yet rectified.

If the offence be done in the night before midnight, the Enditement shall suppose it to bee done in the day before: and if it happen after midnight, then it must say it to be done that day after. If it be *In festo*, of any Saint, it shall bee construed to be in the very day of the Feast, and not in the Eue. But if the Presentment be in the Negatiue, or in the affirmatiue (rising vppon a Negatiue) as that A. hath not scowred such a Sewer, or that by the not scowring thereof such Meadowes bee drowned, in these cases there needeth no yeare, nor day, because it affirmeth a present euill. Marrow.

But, as a man may be too negligent in omitting, or in not hitting the time: So also may hee be ouer curious in doubling it without cause: for if hee frame the Enditement, that A. stole certain goods, such a day, and such another day, that is faultie, and vncertaine, because one Felonie cannot be twise committed. 2. H. 77.

And not onely this certainty of the time, but that

that of the Place alſo muſt bee contained in the Enditement: for it was adiudged (25.Ed.3.43.) that a man ſhould not be put to anſwer to an enditement of killing the Kings Deere, becauſe there was no place named, in which the offence was done. So an enditement ſuppoſing a felonie to be done in ſuch a place of ſuch a Countie, where in truth there is no ſuch place in that coũtie, is meerely voyd by the Statutes, 9.H.5.c.1. & 18.H.6.ca.12. Place.

If a man being ſtricken in Middleſex, had died thereof in *Eſſex*, the bookes, 3.H.7.12.4.H.7. 18.6.H.7.10.7.H.7.8.10.H.7.28. & 11.H.4. &c. did not agree, in which of theſe Counties he ſhuld be endited. But ẏ ſtatut (2.& 3.E.6.c.24.) taketh order, ẏ if the ſtroke (or poiſoning) happẽ to be in one county, & the death in another countie, the enditemẽt in the county where the death is, ſhalbe good: and likewiſe, that if a murder, or felonie, bee done in one county, & a man becommeth Acceſſarie thereto in another county, the enditement againſt the acceſſary ſhalbe good in that Countie wherein hee becommeth acceſſarie.

Where (by the way) you may ſee in plaine words of this ſtatute, that Iuſtices of the peace may take Enditements of Murder, as of Murder, though M. Fitz. (fol.17.) denyit, ſaying, that they cannot enquire of Murder ſauing onely as of Felonie, or Manſlaughter.

And

And you ſhall reade of an Enditement of Murder (before them) receiued 3.H.7.5. agreeable whereunto was the opinion of Hales and Portman, Iuſtices, as I haue ſeene in a Repoꝛt of Daliſon Iuſtice. And of the ſame minde alſo were the Iuſtices of the Kings Bench. 6.Ed.6. Collections. Dyar. fol. 69.

If a man be robbed by the high way in *Middleſex*, and apprehendeth the theefe by Huy and Cry in *Eſſex*, hauing the goods about him: Now may that theefe bee endited of Felonie in *Eſſex*, but not of Robberie by the high way: for he is a Felon of thoſe goodes whereſoeuer hee ſhall bee found with them: But hee is no robber by the way, ſaue onely in that ſhire where the way is. *Et debet* (ſaith M. Bracton) *quiſque iuri ſubiacere, vbi deliquit.* Albeit the ſtatute (25.H.8. ca. 3.) hath now equally depꝛiued him of his Clergie in both the ſhires.

The name of the perſon offended.

The certaintie of the name of the perſon to whom the offence is done, is alſo in moſt caſes requiſite. But yet if the Enditement bee, *quod bona & catalla cuiuſdam hominis ignoti felonicè cepit*, oꝛ *quendam ignotum felonicè depꝛædauit*, it is good, becauſe of the Queenes aduauntage of foꝛfeiture thereby. Fitz. enditement. 12. And by the opinion of Rede and Fineux, *Trin.* 12.H.7. (repoꝛted by Dyar. 285.) an Enditement of affray and aſſault, *in quendam ignotum*, is good inough, becauſe the partie is at no miſchiefe thereby,

thereby, seing that if he should bee afterward endited of that offence by the very name of the person (supposed in the first enditement to bee vnknowen) yet might he helpe it by taking auerment, that it was the same & none other offence.

You may see an Enditement (Fitz. Endit. 9.) *quod* A. *verberauit, & 20. Iaccos pretij, &c.* was thought sufficient, without shewing to whome the Iacks did belong: whereat M. Stanford: (fol. 95.) maruaileth, saying that he sawe no cause why it should bee good, vnlesse it were for that the matter could not bee made more certaine. But peraduenture certaintie in Enditements, was not in those dayes thought so needefull, as now it is holden.

If the goods of a Parson of a Church bee taken, the Enditement must bee, *bona rectoris*, and not *Ecclesiæ*. And if the goodes of the Church, then *Bona Parochianorum, in custodia gardianorum*, and not *bona ecclesiæ*, 37. H. 6. 30. If they be the goods of a Maior and Communaltie, and the Maior dieth before the Enditement, then it shall bee *bona communitatis*, saith Marrow: but enquire of that, because they haue no such name of Corporation.

If the Enditement bee, *quod A. verberauit B. & vnum equum pretij 20. solid. felonicè cepit*, and doth not say, *ipsius B.* yet it is good inough: 30. H. 6. Fitz. Endit. 9. But if it bee, *quòd vnum equum prædicti I. cepit*, & there were no mention of

of I. before, then it is voide. 9. E. 4. 1.

If the goodes of a man bee taken, and he maketh his executors, and dyeth, the Enditement shalbe, *bona testatoris*: but if they were taken after his death, it shalbe, *bona testatoris in custodia executorum existentia.* If the Enditement bee, *quod A. furatus est tunicam hominis ignoti, quem inuenit mortuum*, that is not good, 11. R. 2. Fitzh. Endit. 15. If a man take away a coat Armour, which hangeth ouer a Tombe in a Church, the Enditement shall say, *bona executoris*, of him whose Tombe it is: but if a graue Stone be taken away, the Enditement shalbe, *bona ecclesiæ*: Marr. If my goods be taken by a Trespassour, & another taketh them from him, the Enditement shalbe, *bona* of him which had the last possession. But if I baile goods to one, from whom they be robbed, then it shalbe, *bona* of me in his keeping, Marr. If an enditement be, *Bona capellæ in Custodia &c.* or *bona Domus*, or *Ecclesiæ tempore vacationis*, it is good. 7. E. 4. 14.

The name & the value of the thing.

The name (and value) of the thing in which the offence is committed, ought also to bee comprised in the Enditement: for an Enditement of the taking *bona & catalla*, whether it be in trespasse or felonie, is not good, for the vncertaintie what goodes they bee: And if it bee of dead thinges, it may bee *bona & catalla*, expressing the names thereof in certainty: But if it bee of thinges liuing, it shall not say, *bona & catalla*, but

but *equum bouem ouem, &c.*

Againe, the value (or price) of the thing is commonly to be declared: in Felonie, to make it appeare from petit Larcenie: and in Treſpaſſe, to aggrauate the fault and fine: But yet an enditement of the taking of Beaſts *feræ naturæ*, as Deere, Hares, Partridges, or Pheſants, is not good, vnleſſe they bee taken in a Parke, or Warren, ỹ be liberties. 8. E. 4. 5. So of Charters, becauſe their value cannot be eſteemed.

In all caſes (ſaith M. Marr.) where the number ought to be expreſſed in the enditment, ther alſo it muſt be ſaid, *Præty*, or *ad valentiam*: as if it be of the taking of doues, in a doue-houſe, or yong hawkes in a Woode: And where it is of a liue thing or things, it muſt be *prætij*: and ſo of a dead thing in the ſingular number: but if it bee of dead things in the plural number, thẽ it muſt be *ad valentiam*, and not *prætij*. Again, if it be of a dead thing that goeth by weight or meaſure, the forme is to ſay *prætij*, and not *ad valentiam*. Prætij, and not ad valentiam &c.

If the enditement be of taking away coine, which is not currant, it ſhall ſay, *prætij*: otherwiſe it is of mony currant, becauſe that carrieth his value and price with it. If it be *quod proditorie fecit groſſos, vel denarios*, it ſhall be *ad valentiam*, and it ſhall not ſay, 20. *libras in denarijs*, or *in pecunia domini regis*, but *ad inſtar pecuniæ domini regis*. Mar.

Sundrie other daintie and nice differences

doth M. Marrow make, where a man ſhall ſay, *pratij*, and where *ad valentiam*, binding the enditment to that rule whith the Regiſter taketh for the originall writs of Treſpaſſe: but forasmuch as Nele, 9. Ed. 4. 26. ſayeth, that Enditements be not tied to that forme, and becauſe that rule of the Regiſter is not very conſtantly obſerued in Treſpaſſe it ſelfe (as a thing not materiall, in the opinion of Fitz. in his Nat. Br. fol. 88.) I thought it beſt to make choiſe of theſe (that I haue) for publike vſe, and to leaue the reſt for priuate learning.

The maner of the fact and nature of the offence.

To the further certaintie of the enditement, the very maner of the fact it ſelfe, and the nature of the offence, ought to bee mentioned alſo: for if the Enditement be, *quod* A. *captum pro felonia, felonicè & voluntariè ad largum ire permiſit*, this lacketh the certaintie for what felony he was taken, and is thereby voide 8. Ed. 4. 3. And ſo, if the enditement be, *quod felonicè fregit priſonam apud* A. and doe not ſhew for what felonie hee was impriſoned there. So, if it bee that a man made a hundred ſhillings of Alchemie *ad inſtar pecuniæ dominæ Reginæ*, and do not ſhew like to what mony, as groats, or ſhillings, &c. it is voide, Fitzh. Endit. 10. And therefore, in Murder or Manſlaughter, it doth well to expreſſe the ſtroke whereof the death enſued. Collect. Dyar. 96.

If the Enditement bee, that A. ſpake ſuch words

woꝛds againſt the Queene, and lay them down incertaine, *vel hiis ſimilia*: it is voide foꝛ the incertaintie. *Brookes action ſur caſe* 112. And if it be, that A. and B. *manu forti intrauerunt in tenementum &c.* that alſo is inſufficient foꝛ the like incertaintie: becauſe the woꝛd *tenemeutum* may as well extend to a houſe oꝛ cotage, as to lande, meadow, paſture, &c. Dalyſon.

So, if the Enditement runne thus: *Apud* C. *in comitat. predict. inſultum fecit, & ipſum cum quodam cultello, pretij &c. felonicè percuſſit, & ex malitia ſua præcogitata murdrauit*: it is not ſufficient, without ſhewing the place where he murdered him, which may bee in ſome other place than where hee aſſaulted him. Collection Dyar 69. And an enditement of ſelling tanned leather, was diſliked 1. R. 3. cap. 1. becauſe it neither contained the place where, noꝛ the perſon to whom the lether was ſold, both which be materiall and trauerſable.

If the Enditement be, that a man is a common theefe, without ſhewing eſpecially in what thing, it is nothing woꝛth, 22. lib. Aſſ. Pl. 75. & 29. 45. And ſoꝛ if it bee of a generall extoꝛtion againſt an Ordinaries, without ſhewing in what, by 25 Ed. 3. ſtat. 3. cap. 9. And ſo alſo, if the enditement ſtand vpon theſe termes onely, *Inſidiatores viarum, & depopulatores agrorum*, by 4. Hen. 4. cap. 2. And thereupon the Court ſaid 17. Ed. 4. 4. that vpon ſuch an enditement,

the party ſhalbe diſmiſſed. Howbeit the commiſſion of the peace hath the words, *in inſidijs iacuerint*, but it goeth further, *ad gentem noſtram mayhemandam.*

Neither is it good in an enditement againſt an acceſſarie, to ſay, that he receiued the goods, without telling, that he receiued the Felon, 27. lib. Aſſ. Pl. 69. 9. H. 4. 1. & 25. E. 3. 39. nor to ſay, that hee *ſcienter felonem domina regina apud* A. *recepit*, without ſhewing what felonie he committed, 7. H. 6. 65. nor without telling, that he (knowing it) receiued him felonioufly, 7. H. 6. 42. vnleſſe he receiue one that is attainted of felonie in the ſame countie: for then hee muſt at his perill take knowledge of the attainder, and ſo no ſuch mention of knowledge needeth to be vſed, as it is holden 8. E. 4. 3. But enquire thereof.

And if ſuch an enditement be, *Sciens ipſos* 4. *homines feloniam, &c. feciſſe apud* D. *felonicè recepit*, it is not good, for that it ſheweth not, which of them he receiued, 30. H. 6. 2. and yet, if foure be endited iointly, then are they alſo echone ſeuerally endited thereby, 6. E. 4. 5. Markham.

Nature of the offence.

Concerning the nature of the offence, that is to be obſerued: that in an Enditement of treaſon (preſentable before the Iuſtices of Peace) the word *proditorie* ought bee vſed: In the Enditement of murder, *murdravit* is neceſſarie, 9. Ed. 4. 26. and that word alone implyeth

ex ma-

ex malitia præcogitata, Collection Diar. 69. But if without *murdrauit*, it be *quod* A. *occidit* B. *ex malitia præcogitata & voluntariè*, it is not enough, becauſe one man may kill an other ſo, in a wager of battell, and yet bee no murderer. And for the ſame reaſon, if it be of Manſlaughter, it muſt be *felonicè*.

An enditement was, that the ſonne had taken the ſicke father, & caried him into the cold weather, whereof he died, but it was diſallowed becauſe it lacked *felonicè*, Fitz. Endit. 3. Againe, if the enditement be of Burglarie, then it muſt bee *Burglariter*, or *ea intentione ad feloniam, ſiue murdrum faciendum*: for it is not enough to ſay, *felonicè fregit domum manſionalem in nocte*. And if it be of rape then it muſt ſay, *felonicè rapuit*, for (without *rapuit*) if ſufficeth not to ſay *felonicè cepit Aliciam, & eam carnaliter cognouit*. 9. E. 4. 27. & 11, H. 4. 12.

If it be *furatus eſt*, it ſeemeth to Marrow to be good without the word *felonicè*, but 18. E. 4. cap. 10. is againſt him.

If it be *felonicè abduxit vnum equum*, it is not of value without ſaying, *cepit*: neither is *cepit* good alone, without *abduxit*: for it muſt be *felonicè cepit & abduxit*, Fitz. Endit. 3. And if it be, *felonicè ſuccidit arbores & illas aſportauit*: or *vi & armis ſuccidit arbores, & felonicè aſportauit*, neither of them will make it felonie, becauſe the trees be a part of the freehold, whereof no felony

can be committed: 12.lib.Ass.pl.32. But if it be *vi & armis succidit arbores, & eas felonice* (at an other day after) *cepit & asportauit*, that wil make it felony, as I haue said already. And if the Enditement be of petite Larceny, it ought to haue *felonice* in it, 27.H.8.27.

And albeit the Enditement bee but of a Maiheme, it must say, *felonice mayhemauit*, and yet mayheme is no felony, but an hainous, and (as it were) a felonious trespasse. But where in an Enditement of felonie, the word *felonice* wanteth, there the Enditement may neuertheleſſe stand good to make it a trespasse, 2.H.7.7.6.H.7.4.& 18.Ed.4.10.

And in an enditement of trespasse or felony, it seemeth that the wordes *contra pacem* ought to be yet vsed: but the necessitie of the words, *vi & armis*, (viz.) *cum baculis cultellis, &c.* bee taken away by the statute 37.H.8.ca.8. Neuertheles M.Stanf. fol.94. is of the opinion, that it is not amisse to vse those words, so long as the circumstances of the fact do require them: for (saith he) The circumstances of an act, doe either aggrauate or diminish the offence therein.

If the enditement bee of forcible entrie, then the words *vi & armis*, be needlesse, because they are necessarily implied in the word Force, Mar. And if the enditement be founded vpon a Statute, it ought to say, *contra formam statuti, in huiusmodi casu prouisi, ac editi:* or where many statutes

ſtatutes do concerne one offence, (as in the caſe of Liueries and ſuch like) *contra formam diuerſorum ſtatutorum*, without ſpecial naming of anie: and then the beſt ſhall bee taken for the Queene. But an enditement of a Riot, without ſaying, *contra formam ſtatuti, &c.* is not good, as may appeare in the Trauerſe, cap. 17. following, becauſe it is no Riot, but by that ſtatute. And yet, it is not of neceſſitie, that the ſtatute be verbally rehearſed, but onely that the offence againſt the ſtatut be ſufficiently and with full words deſcribed, *Comment.* 1. & 79.

In the twentieth yeare of queene Elizabeth, a man was indicted vpon the ſtatutes 1. Elizab. cap. 1. & 13. Eli. ca. 2. for aiding another knowing him to be a principall maintainer of the authoritie of the ſee of Rome, *contra formam ſtatutorum prædictorum*: but becauſe the enditment wanted certaine material words (expreſſly mentioned in the acts) viz. vpon purpoſe and to the intent to ſet forth and extoll the authoritie, &c. the enditement was thought inſufficient by the greater part of the Iuſtices (aſſembled for that purpoſe) notwithſtanding the words *contra formam ſtatutorum prædictorum* were therein contained, Collect. Dyar. 363.

Againe, it is not ſafe to recite the dayes or places, of the beginnings, continuances, prorogations, or diſſolutions of the Parliaments: leaſt (by miſtaking any of them) the whole

enditement fall to the ground thereby. *ibid.* 203

Thus farre of theſe pointes by way of ſhort rule and direction: for the better imitation and practiſe whereof, you may vſe the helpe of ſuch formes of enditements as the Appendix at the end of this worke well affoord you. Now let vs with a few words conſider what inditments be receiuable by the Iuſtices of Peace, and what ought to be reiected by them.

Enditements, to be receiued or reiected.

Generally, they may receiue Enditements before themſelues, of all cauſes being either within their Commiſſion, or within the Statutes whereof they haue to enquire. And they may alſo receiue enditements taken before the Sherife in his Turne lawfully, that is to ſay, ſo that the Turne bee holden within the moneth after Eaſter, or within the month after Michaelmas, and ſo that thoſe enditements or preſentments be indented & ſealed between the Sherife and the Iurors, and ſo that they be made by the oath of twelue men at the leaſt, and that thoſe Iurours bee of good fame and *legales homines*, that may diſpend yearely twentie ſhillings of freehold, or twentie ſixe ſhillings eight pence of copyhold, W. 2. cap. 14. 1. E. 3. cap. 17. 31. E. 3. cap. 14. 1. E. 4. ca. 2. & 1. Ric. 3. cap. 4. And for this purpoſe the ſaid ſtatute 1. E. 4. cap. 2. binds the Sherife to certifie to the Iuſtices of peace at their next ſeſſions the enditements found in his Turne or Lawday. It ſeemeth alſo (by way of admitting)

admitting) in the booke 27.H.8.2.that the like ought to be done of the presentments of felonie in any Leete, by vertue of the saide statute of 1. Ed.4.ca.2. But that is further to be enquired of, for I find no better warrant for it.

This is certaine, that Iustices of the Peace ought to receiue Enditementes founde in anye Leetes or Lawdayes, vpon the statute made for the breeding of horses: to which ende also, the Court holders of such Leetes are bounde to certifie the same vnto them within the space of fordayes. 32.H.8.cap.13.

But Iustices of the Peace haue none authoritie to receiue an Enditement, of the killing of a man *se defendendo*, saith Stanf. 15. as hee had heard say: but inquire further therof: for though it be not felonie (as appeareth by the statute of Glouc. ca.9.) Yet be there other words in their Commission extending to giue them power to heare and determin of such an offence. But they are not to receiue an Enditement of the killing of a Hart proclaimed, for the Iurisdiction of it belongeth to the Iustices of the Forest, 21.H.7. 30.Fineux. And (as it seemeth) they may reiect an Enditement that findeth any matter of Record as Vtlawry, or such like, vnlesse it be shewed vnto the Iurors *sub pede sigilli:* for Iurors are to find matters in deed only, and not of Record, 1.H.7.6.& 3.H.7.1.& 10. And so, if the Shirife will offer Enditements of Liueries, Rauishmēt

of

of Women, or of felonies by ſtatutes, or of ſuch other cauſes (wherof they haue no power to enquire in their Turnes) the Iuſtices of the Peace ought to reiect them, 4.Ed.4.31, 8.Ed.4.5.22, E.4.22. & Stanford 87.

The duetie of Iuſtices, about Enditements.

Thus much for the better aſſiſtance of our Iuſtice of the Peace, I thought meete to ſay of Enditements: not only becauſe they be the chief baſe & ground-worke wherupon the whole Trial is afterward to bee built & framed: But alſo becauſe the Iuſtices (beeing Iudges of the Court) ought of Office to ſee, that the billes of Enditement haue ſufficient matter and forme in them. 24.E.3.74.

And for that end, it is the maner (in ſome places) to command, that the Enqueſt take no Bils but onely ſuch as the Iuſtices themſelues haue firſt peruſed. Howbeit, as it is certaine that the Enqueſt may ſafely doe the contrary, ſo long as the Bils do carry good matter & allowable forme ſo I will aduiſe, that the Iuſtices ſhall rather peruſe the Bils after that the euidence ſhall bee thereupon giuen to the Iurie, then to put their pens into them before that the Enqueſt ſhall be enformed: taking it to be, not only no hinderãce at all to the ſeruice, but alſo the moſt warie and ſecure way for the Iuſtices themſelues to walke. For, though it bee ſaide (35.H.6.14. & 12.E.4. 18.) if a Bill of Enditement bee deliuered to a Iuſtice of Peace, at (or before) the Seſſions, which

which he promiſeth to read, and to deliuer to the Iurie, and ſo doth accordingly, that hee ſhall not be charged for it in a Writ of Conſpiracie: yet may it be thereupon doubted, whether he ſhalbe excuſed, if (vpon conference had) he do buſie himſelf either to drawe, engroſſe, or amend the Bill before it bee preferred to the Enqueſt that ſhall haue it. And, ſeing that the Iuſtices do commonly receiue the Bils from the Enqueſt, with their expreſſe aſſent to amende any defect of certainty in the forme only: and may alſo award a *venire facias* againſt the Endictors to amend a bill vpon their firſt oath, at any time before it bee remoued, (8.H.5.8.& Stanf.97.) ſo that the buſines is not a whit impeched by this forbearance, there is no cauſe (as I think) for the Iuſtices of the peace to anticipate the matter before the right time: but rather to leaue the firſt drawing and ingroſſing of the Bils, to the Clarke of the Peace or other miniſters of the Court, and (after the euidence giuen) thē to conſider, whether they be formal, or ought to be reformed.

Of the Preſentments and Informations of Officers, and other men.

Cap. vi.

HAuing ſhewed howe theſe Iuſtices take knowledge by the labour of Iurors in Enqueſts: it followeth to declare alſo how they may haue vnderſtanding

vnderſtanding by other men: And that is to bee done, either by the preſentment of publique officers, or by the Information of priuat perſons.

Preſentments of Iuſtices of Peace and Conſtables.

In ſome caſes therefore, theſe Iuſtices may heare one another, for euery Iuſtice of the peace may (vppon his proper knowledge) make preſentment at the Seſſions, of any offence done againſt the Acts (2. & 3. Phil. & Mar. cap. 8. & 5. Eliz. ca. 13.) concerning the amendment of the high waies. And in this, and ſuch like caſes, his repoꝛt hath the foꝛce of a Preſentment of xii. men: So that he and his fellowes may proceed vpon it. 21. H. 6. 5.

Of like value is a Preſentment made at the next Seſſions by ſearchers appointed to examine the true making of Tile. 17. E. 4. cap. 4. And of ſome ſuch like ſtrength alſo (as I thinke) is the preſentment of the Conſtables, concerning ſundry pointes contained in the ſtatute of *Win.* 13. E. 1.

But I doubt, whether any ſuch foꝛce bee in a Preſentment there made by the Surueyors of the highwayes in the Wealdes of Kent, &c. by oꝛder of the ſtatute 39. Eliz. cap. 19. Foꝛ (as I thinke) that amounteth to none other, but only to giue matter to the Iuſtices of peace, to charge the Enquirors therewithall.

Information by priuat men.

This Court may alſo be giuen to vnderſtand by the meanes of priuate men: and that either foꝛ the Queene onely, oꝛ foꝛ the Queene and them-

themſelues, or (in ſome ſpeciall cauſes) for thē-ſelues without the Queene.

That which is for the benefit of the Queene, or for her and the partie, is ſometimes mooued by the free offer of him that openeth the matter, and ſometimes wrought by commandement of the Court.

The free motion of the partye, is ſometimes by word onely, which is properly but a Suggeſtion: and ſometimes by writing, named a bill, plaint, complaint, or Information: all which bee not alwayes of one force in this buſineſſe. *Free and voluntarie Information.*

For, albeit that wee reade (1.E.5.6.) that the Court of Chancerie will ſometimes both take knowledge, and alſo award Proceſſe vppon an Information by word in the behalf of the Prince and that 39.H.6.41. alſo admitteth ſuch a matter: Yet I thinke that before Iuſtices of the peace, theſe Suggeſtions and Informations both (be they by word, or writing) are but of the force to ſtirre vp the Iuſtices to recommend the cauſe to the Enqueſt, and not to awarde any Proceſſe vpon them: vnleſſe it be in certaine caſes, where that validitie is ſpecially giuen them by the ſtatutes, as you ſhall hereafter perceiue.

There was once a time (I confeſſe) when Iuſtices of the peace might haue awarded Proceſſe vpon an Information (for the King only) of ofkences againſt any penall lawes, euen as they may yet vpon Enditements againſt the Peace: but

but that lasted not long, & therefore that course is holden now in speciall statutes onely.

Proclamation

Neuertheles, at euery Sessions (saith Iudge Prisot. 35. H. 6. 15.) the Iustices of the Peace do vse to make Proclamation, that if any wil informe for the Prince, hee shall be heard: & thereupon any man may come in, & may both informe the Iustices of the Peace, & giue euidence to the Enquest, without danger of Conspiracie, by the opinion of the Court in the last said Booke.

And as that which ariseth vpon Presentment or Enditement, is properly called the sute of the Queene: (as I told you out of M. Fitz.) So this other (whether it be Bill, Plaint, Complaint, or Information) is more aptly termed the sute of the party: at whose sute, the Iustices of the peace may heare of diuers offences: either for himself, or for the Queen. And in other statutes at large such rules are to bee followed, as they themselues doe prescribe.

In this Information, the statute of Additions (1. H. 5. c. 5.) seemeth (vpon the bare words) to haue no place: for Informations be not mentioned in it: and vppon that reason, the Court (13. H. 7. 21.) did hold it cleere, that if Rescous be returned by the sherife against certaine persons, without their Additions, yet in that case they may well be outlawed vpon it.

Forced Information.

The other compulsorie information, groweth by examination of witnesses called into the Court,

Court, and is set forth in the statute of Drouers and Badgers (5. El. cap. 12.) where it appeareth, that (vpon the examination of two lawfull witnesses) the Iustices of Peace may make Processe, as if it were vppon an Inquisition of twelue men. The like may they doe, vpon the statute of Armour, 4. & 5. Phil. & Mar. cap. 2. And the verie like also may they doe vppon the Statute made against Forestallers 5. Ed. 6. cap. 14. which last saide Statute seemeth (for this point) to haue beene followed, as a Paterne, by the other two: so rightly they treade in the steps of the same.

Hereunto also you may adde the examination of the Master and Mariners of shippes, wherein corne or victuall shall bee transported against the meaning of the Statute 1. & 2. Phil. & Ma. cap. 5.

Thus much, of the knowledge of causes exhibited by such as either doe it at large for the Queene, only to haue the offence punished, or be specially allured thereto by regard of benefite growing in common to them with the Queene thereby. Now of those that seeke to informe the Court, for profit ensuing to themselues alone. Suit betweene parties.

The knowledge that commeth this way, is by the priuate suite and proper action of the partie, and is therefore in the statute (11. Hen. 6. cap. 6.) termed a suite betweene partie & partie: whereof that statute had no lesse consideration, then

than of thoſe other ſutes that be for the Queene her ſelfe: and therefore prouided, that they alſo ſhould not bee diſcontinued by newe Commiſſions of the Peace to be made.

I knowe, that there bee not many Statutes which doe giue power to the Iuſtices of Peace, to hold Plea of Action betweene party and partie: and I thinke it hath not beene often experimented vpon thoſe very ſtatutes which doe giue it: and how the Iudges doe expound this preſent ſtatute (11.H.6.) I cannot tell. Neuertheles becauſe I may neither wittingly conceal any ſuch part of their authoritie & Iuriſdiction, (although it were ſo but in mine owne opinion) nor ſafely report it without ſome proofe and warrant, I will giue you a few examples of this kind (as I take it) and will leaue the reſt to further ſearch.

The Iuſtices of Peace haue power to enquire, heare, and determine of all the defaults againſt the ſtatute (made 3.H.6.c.11.) concerning the leuying of the wages of the knights of the Parliament, as well by enquirie at the kings ſute, as by action at the ſute of the party.

So may they heare and determine, by Information, Action of debt, or bill, the offence againſt the ſtatute of Labourers, 5.El.ca.4. And likewiſe, by Information, or any other Action, the offences of taking Fiſh, Deere, or Hawkes, forbidden in the ſame Parliament.cap.21.

In which, and ſuch like, the Iuſtices of Peace ought

ought to proceede after the vsuall manner of other Courts of Record at the common Law (if I doe not mistake it) and therefore I will go no further with it, but will prosecute that hearing and determining that more properly and commonly pertaineth vnto them, if first I may shew you, how they are sometimes preuented in that behalfe.

Of the Impediments of proceeding vpon *Enditements*, before the Iustices of Peace: and therewithal of the Certiorari to remoue Records.

CAP. VII.

IT falleth out not seldom, that when Iustices of the peace haue taken an enditment found before them, they cannot proceed to hearing & determining vpon it: either because it is grounded vpon some such statute as giueth vnto them no further power, but onely to enquire thereof: or else because the enditement is taken out of their hands by *Certiorari*, and conueied to Iustices of a higher authoritie, at the sollicitation, & by the meanes of some parties grieued, to the end that they may either trauerse it aboue, or ther auoid it for insufficiencie, of forme, or matter.

Where Iustices of peace may enquire onely.

And therefore Iustices of the Peace may onely enquire of certaine the offences against the

Acts (1. El. ca. 2. & ca. 3. 5. El. ca. 1. 13. El. ca. 2.) touching the knowledging of the Queenes ſupremacie, or the ſeruice of God, or comming to the church, or the eſtabliſhment of true religion: as you may ſee, 23. El. ca. 1.

And they may onely enquire of any the treaſons, or miſpriſions of treſons, made by the ſame Act, 23. El. cap. 1.

Neither can they go any further, then only to inquire of, & to endite the offenders againſt any the Articles of the Act made (23. El. cap. 2.) concerning ſeditious rumours againſt the Queene

In the reſt (ſo farre as I haue found) their power of Enquirie is accompanied with the authoritie to heare and determine alſo. For this want of Juriſdiction is not found in the Commiſsion of the Peace it ſelfe, but only in certain ſtatutes, that (for waighty cauſes) doe reſtraine this further proceeding.

By what meanes ſuch Enditements ſhal be remooued to thoſe higher Courts. I will ſhewe you when I come to ſpeake of Certifying the Records of the Seſsions: & wil now goe on with thoſe other Enditments that be remoued by labour of the parties.

Enditements remooued by labour of the parties.

Albeit that in the remouing of pleas, betweene party and party, from inferior to higher Courts, by *Tolt, Pone, Recordare &c.* there was wont to be a probable cauſe alledged, for which the ſame were remooued: yet in this caſe of the Crowne

Crowne there needes no cauſe to be compriſed in the writ of *Certiorari*: becauſe they all be the courts of the Queene againſt whom the offence is committed, and it breedeth neither iniurie to the offendor, nor loſſe to any other perſon, in what Court ſoeuer the offence be tried.

This *Certiorari* then, may commaund either the record it ſelfe, or *tenorem Recordi*, to be ſent vp, & it ought to be obeyed accordingly. For, vpon faile thereof, firſt an *Alias*, then a *Pluries* (*vel cauſam nobis ſignifices*) & laſtly, an Attachment ſhal go out againſt them that ſhould ſend it, as M. Fitz. noteth in his Nat. Br. fo. 245. but I haue heard, that they vſe alſo a *Subpœna* at this day.

And albeit the *Certiorari* be a *Superſedeas* of it ſelfe, yet may the partie vppon the *Certiorari* purchaſed, haue a *Superſedeas* alſo, directed to the ſherif, and commaunding him that he arreſt him not vpon that Record before the Iuſtices of Peace, Fitzh. *ibid.* fol. 237. In which place alſo hee doubteth, whether the Iuſtices of Peace themſelues ought of dutie to award their owne *Superſedeas* to ỹ ſame effect, after that the writ of *Certiorari* is brought to their hands.

This writ of *Certiorari* is euer directed to the Iuſtices of peace, & yet (as you haue heard) the *Cuſtos Rotulorum* onely hath the keeping of theſe Records: but the ancient Commiſsions of the peace had no *Cuſtos Rotulorum* ſpecially named in them (as I haue tolde you) and then

this certifying belonged to them all, which forme the writ retaineth to this day. And if it fall in question, whether such a *Certiorari* were deliuered to the Iustices of Peace or no, that must be tried (saith the booke 10. H. 7. 24.) by the verdit of twelue men.

Now, if a *Certiorari* come to the Iustices of peace to remoue an Enditement, and the partie sueth not to haue it remoued, but suffereth it to lie still, then the Iustices of Peace may proceede notwithstanding the Writ, as Hubbert the Kings Atturney said, 6. H. 7. 16. For otherwise the triall of a felon (if the enditment were of Felony) might bee delaied & deluded also. But yet Keble helde opinion against him, & was feareful that in such a case it might proue felony to mak execution of the felon after such a writ receiued: and (to say the truth) the Iustices ought of office to send it away, because the writ containeth in it selfe a commaundement to them so to doe.

And if a *Certiorari* come to the Iustices of Peace to remoue an Enditement, and in trueth the Inditement was not taken til after the date of that *Certiorari*: yet, if the Enditement be remoued thereby, it is good enough, for that they both be the Queenes courts, 1. Ric. 3. 4. and in such a case it is now vsuall to remoue it.

The maner of the Certificat.

In the making of a Certificat vpon this *Certiorari*, the Iustices of the Peace ought neither to omit that which doth authorize them, nor to exceede

exceed y authority which belongeth vnto them.

For on the one side, if they certifie an Enditement of Felony, or of a riot (as taken *coram Iusticiarijs ad pacem*,) it was not thought enough, without saying further, *Necnon ad diuersas felonias, &c.* and otherwise, it was doubtfull whether the Endited shall be quite dismissed or no, because the Iustices of Peace had then no record at all remaining with them (for the clarke of the Peace maketh his entrie accordingly,) & that record which they sent vp, is insufficient. And therefore, the Clarke of the Crowne was forbidden to receiue any such Certificat. 12. H. 7. 25. But happily the new words in the reformed Commission of the Peace, will now dissolue that prohibition.

On the other side, if they certifie an Enditement of felony not determined into the Kings bench, they ought not (without warrant) to certifie an other record of the acquitall of that Enditee for the same matter: for nothing ought by them to bee sent thither without warrant, but that which is Executorie, and needeth the helpe of that higher court. 8. E. 4. 18

And if a *Certiorari* be, to send vp the Enditement of A. in which Enditement some others be endited together with the same A. yet neede not the Iustices of peace to make Certificat concerning any but A. 6. E. 4. 5. For although they be named iointly, yet bee they indited seuerally

(as I haue ſaid before) & the Queene may pardon A. without forgiuing the other, 6. Ed. 4. 5. Markham.

Againe, if the Enditement be of the ſtealing of two horſes, & the *Certiorari* ſpeaketh but of one horſe: it ſeemeth that they neede not to certifie it at all, becauſe of the variance: for it is certaine, that they of the Kings Bench will not arraigne the Enditee vpon it: but will rather write again to know, whether there be any Enditement that agreeth with the Writ. 3. lib. Aſſ. pl. 3. *cur.*

Finally, it is noted (8. H. 5. 5) that Hankford the chiefe Iuſtice of the Kings Bench, obſerued this order, that he which brought thither an Enditement (taken before Iuſtices of the Peace) ſhould endorſe his name vpon the backſide of it: which I note, not to teach them of the Kings Bench, but to let the Iuſtices of Peace ſee, that there is ſome heede to be taken of him by whom they ſent vp their Enditements.

Of the ſundrie ſorts of Proceſſe vppon Enditements and Informations: and of the Superſedeas for ſtay of them.

Cap. viii.

THe Court being thus made priuie and poſſeſſed of cauſes, muſt of duty proceed to the handling (or hearing) and triall of them: the which becauſe

becauſe it cannot indifferently do, vnleſſe it keep one eare for the offender, that he alſo may bee heard in his owne diſcharge, as others were heard to lay the charge vpon him: the maner is (if he be abſent) to award proceſſe againſt him, to come in, and to make his anſwere.

But if he be preſent in Court, & confeſſe the Inditement, then needeth there no Proceſſe at all: for he ſhall be committed foorthwith to priſon, vntill that he hath made his Fine, or giuen ſuerties for it, 1. H. 7.

Commonly an Inditement or Information, (being but an accuſation or declaration againſt a man) is of none other force, but onely to put him to anſwere vnto it. And hereof all proceſſe hath the name, becauſe it proceedeth (or goeth out) vppon former matter, either Originall or Iudiciall. Proceſſe whereof it is named.

Howbeit I make difference, whether this proceſſe be grounded vpon an Enditement, or vpon ſome other information: for they be not al one: vnleſſe it be (in a few ſtatutes) ſo ſpecially prouided: although the ſtatute (33. H. 8. ca. 10.) did once coniopne and couple them.

The authoritie of making proceſſe vpon inditements, is giuen by expreſſe wordes in the commiſsion: and in other caſes (where it is not namely giuen) it is implyed of congruence (or rather of neceſſitie) in the words heare and determine: which cannot bee performed, vnleſſe Authoritie to make out proceſſe.

the partie either do come in *gratis*, or be brought in by the power of proceſſe.

This Proceſſe ought alwaies to bee in the name of the Queene, thus: *Elizabeth Dei gratia &c. Vicecomiti Kancie, &c.* And therefore alſo (ſeeing ſhe is party) it muſt ſay, *non omittas propter aliquam libertatem quin &c.* Fitz. *prerog.* 21.

Teſte of the proceſſe.

And the *Teſte* thereof may be vnder the nams of ſome two Iuſtices, ſo that it bee made ſitting the court in the Seſsions, *Commiſsion del peace*, and Brooke *Tit. Peace* 6. and 7.

New commiſsions of peace do not diſcontinue the old proceſſe

But now, whereas the Commiſsion giueth to the preſent Iuſtices, authoritie to make proceſſe vpon Inditements, taken as well before former Iuſtices, as before themſelues: all that doing was wont to be diſcontinued in lawe by the comming out of a new Commiſsion of the Peace, vntill that the ſtatute 11. H. 6. ca. 6. did eſtabliſh, that no pleas, ſutes, or proceſſe (to bee taken before Iuſtices of the Peace) ſhould bee diſcontinued by a new Commiſsion of the peace to bee made: but that they ſhould ſtand in their ſtrength, and that the Iuſtices (aſſigned in the ſame new Commiſsion) ſhould haue power to continue the ſame, and to heare and determine all that which dependeth vpon them. And of the like effect, there is a branch in the latter end of the ſtatute. 1. E. 6. cap. 7.

Enditement before Sheriffes

Furthermore, whereas Sheriffes (and their Bailiffes) vſed to arreſt men, and to proceed vpon

on enditements found in their Turnies, or Lawdaies: another ſtatute (made 1. Ed. 4. cap. 2.) wringeth that power out of their hands, and deliuereth it ouer to the Iuſtices of the Peace alſo: appointing them to proceede vppon them, as if they had beene found before themſelues.

Proceſſe of Vtlawrie.

Nowe, ſeeing that this Proceſſe of the Seſſions is ſent out to this end, that either the partie ſhall come in, to anſwere and to bee iuſticed by the law: or elſe that he ſhall (for his contumacy) be depriued of the benefit of law (for ſo much in effect do the words of the Commiſſion, *Quouſque capiantur, reddant ſe, aut vtlagentur*, import in them) it followeth, that in all caſes of Enditements (if the party be returned inſufficient) the Proceſſe of Vtlawrie, lieth againſt the offender, if he be not taken before, or do not otherwiſe offer and yeeld himſelfe. And then the power of theſe Iuſtices endeth with the vtlawrie: for they can make no *capias vtlagatum*, but muſt certifie the Vtlawrie into the bench of the Queene.

A good while after that Commiſſions of the Peace were firſt awarded, there was not giuen by them any power to make out any Proceſſe of Vtlawrie: for I haue told you of a Commiſſion of the Peace (20. Ed. 3. *Part.* 1. *Patent. in dorſo*) wherein were words authoriſing the Commiſſioners to arreſt all ſuch as ſhould be endited before them: but by and by this followeth there. *Et ad nomina eorum qui fugerint, & coram vobis iuſticiari*

iuſticiari noluerint, certificandum in Cancellaria, &c. So that if they might not get thē arreſted, they coulde goe no further, but to certifie their names onely.

The generall Proceſſe vpon Enditements of Treſpaſſe.

Now the meane to this Vtlawrie is not all one in all caſes: for, vppon Enditement of Treſpaſſes againſt the Peace, or ſuch other contempts, the Proceſſe is one: and vppon enditements of Treaſon (or Felonie) it is another.

Vpon Enditements of Treſpaſſe againſt the Peace, of Conſpiracies, & of Routes in preſence of the Iuſtices, or in affray of the people, if the offendors may not be found, nor brought in by Attachment or Diſtreſſe, (by reaſon of their inſufficiencie) the proceſſe of Vtlawrie is to be awarded by the ſtatutes, 18. Ed. 3. Stat. 1. & Stat. 2. ca. 5. The like is againſt ſuch as be endited vppon the ſtatute of Liuerie, 8. H. 6. ca. 4.

And a *Venire facias* firſt, and then (if thereupon he be returned ſufficient) a *Diſtringas*, and ſo the ſame Proceſſe infinite till he come in: but if a *Nihil habet, &c.* be at the firſt returned againſt him, then a *Capias alias* and *pluries*, and after an *Exigent* (as it ſeemeth by M. Marrow, and the olde precedentes, agreeing with the Common Courſe, as I take it) is the very ordinary Proceſſe vpon all enditements (not ſounding in Felonie, or greater offence) whether they bee of Treſpaſſe againſt the Peace, or of contempt againſt penall lawes: vnleſſe it be otherwiſe ſpecially

cially prouided by thoſe ſame Statutes, whereupon ſuch Enditements bee altogether grounded. And of this ſort theſe be or were ſome.

The ſtatute (22. Hen. 8. cap. 5.) concerning Bridges in highwaies, alloweth ſuch Proceſſe as the Iuſtices of the Kings Bench doe vſe, or ſuch as the Iuſtices of the Peace themſelues ſhall thinke meete by their Diſcretion, for the ſpeedie amendment of thoſe Bridges. Speciall Proceſſe.

Vpon enditements of Liueries, maintenance, Archerie, vnlawful games, &c. by the ſtatute (33 H. 8. ca. 10.) there was giuen one *Venire facias*, one *Capias*, and then the *Exigent*: But it is to be weighed, whether the ſtatute (37. H. 8. cap. 7.) which vtterly repealeth that ſtatute (33. H. 8.) doe tranſferre the maner of that Proceſſe vnto the ancient Quarter Seſſions (as it doth ſundry other parts of the ſaid ſtatute) or no.

The ſtatutes of Labourers (23. H. 6. ca. 13.) gaue (after Enditements grounded thereupon) an Attachment, *Capias*, and *Exigent*: But I thinke it no great doubt, but that point is taken away for Labourers, by the new ſtatute (5. El. cap. 4.) and ſtandeth good for none, except it be for Victuallers onely.

The ſtatute 5. E. 6. ca 25. giueth power to the Iuſtices of Peace, to enquire of Alehouſekeepers, whether they haue done any act to the breach of their Recognuſance. And if any matter be preſented, then to award Proceſſe againſt the Proceſſe vpon Recognuſance.

the offender, to ſhewe why hee ſhould not forfeit his Recognuſance: but what this Proceſſe ſhall be, I will not determine: For, I doe not finde, that in any other caſe (though it appeare that a man hath forfaited his Recognuſance) the Iuſtices of the Peace can award any *Scire facias*, or other Proceſſe to call him in vpon it: but rather to certifie the ſame into higher courts, that from thence Proceſſe may iſſue out, to call the partie to his anſwere.

Proceſſe into other ſhires.

Some other ſtatutes there bee alſo, that haue extended the authoritie of the Iuſtices of Peace (in ſending Proceſſe beyond the bounds of their owne Commiſſion. For, by the ſtatute (1.E.6. cap.1.) three Iuſtices of the Peace (the one being of the *Quorum*) may make Proceſſe againſt ſuch as bee thereupon endited for deprauing the Sacrament, by two Writs of *Capias*, and the *Exigent*, and by *Capias vtlagatum*, into any place within the Queenes dominions.

So, if a ſeruant depart into another Shire, the Iuſtices of the peace of that Shire, (where the departure was) may graunt Writs of *Capias* to the Shirif of that other Shire (where the ſeruant is) returnable before themſelues, 5.El.ca.4.

The like may they doe (by the Statute 22. H.8.cap.5.) where a decaied bridge lieth in one Shire, and the perſon or lands (chargeable therto) doe lie in another Shire.

They may alſo award Proceſſe of Attachment

ment into any forraine ſhire againſt the accountants for money leuied towardes the making of any Gaole, 23. H. 8. c. 5. & 5. El. c. 24.

But if the Enditement be in one Countie, & the Enditee bee named to bee (then, or *Nuper*) dwelling in any other Countie, there is a ſpeciall courſe of Proceſſe in that behalfe for his benefite, appointed by the ſtatute (8. H. 6. c. 10.) both for Treaſon, Felonie, and Treſpaſſe.

For (before any *Exigent* ſhall be awarded) one *Capias* muſt be ſent out, and returned: and then a ſecond *Capias* ſhall go (into the County where hee is ſuppoſed in the Enditement to bee, or to haue beene conuerſant) returnable before the ſame Iuſtices of the peace, before whom the Enditement was taken three moneths at the leaſt after the date thereof (for all Counties be nowe holden from month to month by 2. Ed. 6. ca. 25.) by which laſt Writ. the Shirife ſhall be commanded to take ỳ Enditee, if he may be found within his Bailiwike: and if not, then to make Proclamation in two Counties (before the returne of that Writ) that the Enditee ſhall appeare before the ſaid Iuſtices of the ſaide Countie (where the Enditement was taken) at the day contained in the laſt ſaid *Capias*, to anſwere to his offence: at which day if he come not, then the *Exigent* ſhall be awarded againſt him, and otherwiſe not.

And by the equitie of this Statute of 8. H. 6. ca. 10. (ſaith M. Marr.) if the Enditee be impriſoned

ſoned in another Countie, the Iuſtices of Peace may awarde an *Habeas corpus* to remoue him before them.

But if it bee mentioned in the Enditement, that the Enditee is dwelling in another county, by the *Alias dictus* onely: then is it out of the caſe of that ſtatute, 8. H. 6. becauſe the *Alias dictus* is not to be trauerſed, 1. Ed. 4. 1.

Superſedeas to ſtay Proceſſe.

But yet you muſt preſuppoſe, ỹ all this proces of outlawry may be ſtaied by a *Superſedeas*. And Fitz. in his Nat. Br. (fo. 137.) hath the caſe, that if an *Exigent* go out vpon an enditement of treſpaſſe (found before Iuſtices of ỹ peace) the party may find ſuerties in the Chancery, (body for bodie) to appeare at the day of the Writ, & may thẽ alſo haue a *Superſedeas* from thence to the Shirif, commaunding him to forbeare to take him, & to let him go if he then haue already taken him for that cauſe. And againe, you may ſee in the new booke of Entrees (fo. 546.) the Proces vpon ſuch an Enditement ſtayed by a *Superſedeas* iſſuing from one Iuſtice of the peace alone, & teſtifying, that the partie came before him, and found ſuerties *de ſine aſſidendo*. But, as I beleeue the former, ſo will I not perſwade the practiſe of the latter: becauſe I thinke it not in the lawfull power of any one Iuſtice of the peace, to awarde any ſuch warrant, but that it muſt bee done by two Iuſtices at the leaſt, (the one beeing of the *Quorum* alſo) as the Commiſſion now ſtandeth.

I haue yet to ſpeak of Proceſſe vpon Enditements of Felonies, wherein I will be ſhort, that I may paſſe ouer to other things. Proceſſe vpon Enditements of treaſons & felonies, &c.

It ſeemeth by M. Marr. that the Proceſſe at the common lawe vppon Enditements of Felonie, was but one *Capias*, and then the Exigent. For ſo it was vpon an enditement of death, *lib.* Aſs. 22. pl. 81. & Stanf. 67. But the olde Precedents (grounding themſelues vpon the ſtatute, 25. E. 3. ca. 14.) do vſe the mention of two writs of *capias* before the *Exigent*. For that ſtatut prouideth, that after returne of *Non eſt inuentus*, vpon the firſt *capias*, an other *capias* ſhall bee incontinently awarded, whereby the Sherife ſhall be commanded to ſeiſe the cattels of the Enditee and ſafely to keepe them, til the day of the *capias* returned: and if he then alſo returne *Non eſt inuentus* and the Enditee commeth not in, the *exigent* ſhalbe awarded, and the cattails ſhalbe forfeited: But if he come and yeeld him, or be take, before the returne of the ſecond *capias*, then the goods and cattels ſhall be ſaued vnto him.

And here alſo the Iuſtices of Peace haue power to ſend into a Forraine Countie, for, whereas by the common Lawe no man coulde bee Attached vppon an Enditement, or Vtlawrie of Felonie, but onelie in the Countie wherein he was endited or outlawed, whereby many euill men were much incouraged: the ſtatute (5. E. 3. c. 11.) did take order, that Iuſtices (aſſigned Proceſſe into forrain ſhires.

to

to heare & determin Felonies) might direct their writs to any County in England, to take ſuch Enditees whither ſoeuer they were remoued.

On the other ſide, if the enditement be found in one County, and the Enditee is therein named to be then dwelling in another countie: I haue tolde you already (in this Chapter) what Proceſſe belongeth to it, and therefore I will in hand with Proceſſe vpon Informations.

Proceſſe vpon Informations

The power of making Proces vpon Informations proceedeth from ſpecial ſtatutes, & may not therfore varie frō their direction, although they themſelues doe varie greatly one from another.

Liueries.

For vppon an Information giuen for the Queene before Iuſtices of the Peace, vppon the ſtatute of Liueries (made 8.E.4.cap. 2.) they ſhall award ſuch Proceſſe as is made vpon an Originall Writ of Treſpaſſe done againſt the Queenes Peace: becauſe the Information it ſelf is (by force of that ſtatute) in ſteed of an Originall Writ.

Alehouſe.

And vpon Information made vnto them, that an Alehouſe-keeper hath done any act whereby he hath forfaited his Recognuſance, they may (as I ſaid) award Proceſſe againſt him, to ſhew why he ſhould not forfait his Recognuſance, by the ſtatute 5.E.6.cap.25. But learne if that bee meant of a *Scire facias*, or of ſome other Proces. For the reſt, I leaue them to further ſearch of ſuch as ſhall haue cauſe to marke them.

Of

Of hearing, vpon Confeſsion.

CAP. IX.

THe party being thus brought in (or otherwiſe yeelding himſelf) to anſwere: Iuſtice requireth, that hee be heard to ſpeake, and therfore he may (as his caſe will ſerue) either confeſſe, or deny, the offence wherewith he is burdened.

And this Confeſſion is of two ſorts, Free, or Forced: and that former is of two kindes alſo, abſolute or after a manner.

In the free & open (or abſolute) confeſſion hee taketh the fault vpon him, and yeeldeth himſelfe ſimply to ſuch paine as ỹ court wil inflict for it. Free Confeſſion.

And this free confeſſion is of great force in the law: for if it be vpon an enditement of Batterie, and (after ſuch confeſſion had for the Queene) the partie beaten will alſo bring his Action of Treſpaſſe for his owne damage: then ſhall the defendant be concluded by his former confeſſion vpon the enditement, ſo that he ſhal not be receiued to ſay the contrary. 9. H. 4. 8. & 11. H. 4. 65.

But the other (which I call confeſſion after a maner) is only a not denying, in which the partie doth cunningly, and (after a ſort) take the fault vpon him, without plainly confeſſing himſelfe guiltie thereof: as where hee putteth himſelfe in *Gratiam Reginæ*, & *petit admitti per finem*,

nem, without any more, or sometime (by Protestation that he is not guilty) pleadeth his pardon: and such a confession (if I may so call it) doth not so conclude him, but that he may afterward plead Not guiltie in any Action brought against him, 9.H.6.60 *Cur.* & 11.H.4.65. And yet M.20.R 2. (as M. Statham reporteth) the case is generally set down, that if he once mak a fine, he shal be estopped by it. Neuertheless I thinke, that the distinction (which I haue layed) will reconcile the variance.

But here it is good to learne, whether the Iustices be compellable to admit such a confession by a manner, being altogither deuised in fauour of offendours, and for deceiuing of the Queene: or whether they may driue the party either to an absolute confession (for increase of the Fine) or to his Trauerse, that (failing therein) he may be imprisoned, and fined also.

Forced Confession. The forced confession wherof I spake, is that which the Iustices doe wring out of the partie by the examination of himselfe, in such cases wherein that examination is permitted, But because I intend to speake of Examination by it selfe, I will reserue this til I come to that.

Of

Of hearing, by Diſcretion.

CAP. X.

WHether the offendor ſhal freely confeſſe the fault, or finely yeelde himſelfe to Grace, or pleade his pardon without confeſſing it, yet then is that matter fully heard, and the Court made ready to determine of it: But if hee ſhall denie the fact, then muſt ſome other courſe of hearing (or triall) be taken for it. Denial of the offence, tried.

And that is in ſome caſes, by Diſcretion of the Iuſtices: in ſome other caſes by examination of the parties or witneſſes: & in ſome other caſes by certificat of other men: but in moſt caſes by Trauerſe or Arraignment, both which laſt tryals are performed by the verdite of xii.

For Iuſtices of the Peace can not (vppon an Inditement of Maiheme) make the Triall by their own view or inſpection, as the Iuſtices of the Kings Bench may doe ſaith Marr.

The ſtatute 11. H. 7. ca. 3. pretending, that offences (committed againſt the Statutes of Riots, Retainers, Maintainers, Embraceries, Extortions, Vnlawfull games, and ſuch like miſdemeanors) were neither accordingly puniſhed before Iuſtices of the Peace, (by reaſon of the great corruption and fauour of the Enqueſtes, ſworne and charged thereupon to enquire before them) nor could be otherwiſe conueniently

corrected by order of lawe, vnleſſe they were found and preſented by twelue men therto duely ſworne: did enact, that from thenceforth Iuſtices of the Peace, vpon information made (for the king) before them, ſhould haue full power by their Diſcretion to heare and determine all offences and contemptes againſt many penall lawes then in force, and not repealed.

But as one ſaid, *Ex bonis legibus, mala exempla*: ſo, the parliament, 1. H. 8. ca. 1. complained, that many men were deceitfully entrapped, and wrongfully condemned thereby, and therfore it reſumed that power: yea, and the king withall chopped off the heads of ſome of them that had filled his fathers purſe by the execution of that and ſome other penall ſtatutes.

So that now again the trial of offences ought (for the moſt part) to proceed, either after the generall order of the common Lawe, or vpon ſuch ſpecial examination (or other proofe) as ſome ſtatuts do giue in ſpeciall caſes: & this hearing (at libertie and diſcretion) hath ſeldome any place.

But whereſoeuer it is permitted, that counſell which M. Bracton lib. 1. giueth, is to be harkened vnto: In iudiciall hearing of a fault (ſaith he) beſides the body of the fact it ſelfe, theſe ſeuen circumſtances are to be weighed, namely the cauſe, the perſon, the time, the place, the quantitie, the qualitie, and the euent.

And for proofe, that hearing by diſcretion, is yet

yet in ſome ſoꝛt ſuffered, take this foꝛ example.

The Iuſtices of peace may heare by their diſcretion, as well by examination, and otherwiſe, at the ſuite of the king, oꝛ of the party, the offences done againſt the ſtatut pꝛouided foꝛ the true making of Tiles, 17. E. 4. cap. 4.

But how farre this diſcretion, and the woꝛd Otherwiſe may bee extended in this, & ſuch like caſes, it cannot wel be foꝛetold, foꝛ it is referred vnto them, and they muſt take counſell *ex re, & ex tempore*, foꝛ it.

Of Hearing (or Triall) vpon Examination.

Cap. xi.

THe obſtinacie of euill doers, that would ſhewe no conſcience in acknowledging of their faults, & the coꝛruption of Iurors that woulde pꝛeſent nothing that lay onely in their owne knowledges, haue begotten and bꝛought into our law, this triall by examination, wherewith it was not befoꝛe acquainted.

And yet this manner of Triall is not looſely permitted to Iuſtices of ỹ peace, but in caſes only, where either the ſtatuts do generally referre the triall to their diſcretions, oꝛ elſe do ſpecially authoꝛize them to take the Examinations.

The Examination then, is ſomtimes of the ofLl 3 fenders

Examination, of the parties.

fenders themselues, somtimes of witnesses that can speake to the matter, and somtimes both of the parties and witnesses: of euery of which I will giue you an authoritie, or twaine, & leaue the rest to your owne reading and examination.

Liueries.

Upon apparance (after Processe) against the offenders of these statutes of Liueries, the Iustices of peace may examine them, and thereupon conuince them, so as if they were therof conuict by Enquest 8. H. 6. cap. 4. & 8. E. 4. cap. 2.

Deere haies &c.

They may also call before them, & examine al such as shalbe suspected to keepe Deere haies, or Buckstals, or that vse to stalk or to take yong herons against this statute, & may (finding them faulty) commit them to prison, til they find suerties to pay the forfeiture, 19. H. 7. ca. 11.

Examinations of others.

And because it is often seene, that those which haue committed an offence, will also increase their fault by denying the same, therefore some statutes (as I said) do appoint, that the Iustices of Peace shall take the examination of others, besides the offendors themselues.

False tokens.

And therupon, the vsers of false priuy tokens, or of counterfeit letters, may be tried out by the examination of witnesses, 33. H. 8. cap. 1.

Hawks egges

And the vnlawful takers of Hawkes egges or Swannes egges, may bee detected & conuinced by information, and such proofs, 11. H 7. ca. 17.

Now, wheras also some statuts do enable the Iustices of peace to heare & determine, by the generall

neral vſe of ỹ word Examination, without ſhewing of what perſons: it ſeemeth to me, that they may thereupon examine, as well the parties, as other witneſſes.

Such an one is the ſtatute prouided for the true making of Tiles. 17. E. 4. ca. 4. Such an other is the ſtatut, made for the examination of offences done by Coroners 1. H. 8. ca. 7. And ſuch an other alſo is the ſtatute ordained for the examination of putting into Foreſts or Waſtes any ſtoned horſes being vnder the height of fifteene handfuls, 32. H. 8. ca. 13. But (to put away all doubting) the ſtatute againſt Logwood giueth expreſſly the examination both of Parties and witneſſes 39. Eliz. cap. 11. Coroners. Stoned horſes.

Thus far of Examinations: which whether they ought to bee taken vpon oath, or no, where the oath is not namely giuen, you may coniecture by that which I haue already ſaide thereof in the ſecond Booke: and yet (for more ayde towards your reſolution) I ſay now, that theſe Examinations ought alwayes (in my ſlender iudgment) to be taken vpon oath, the rather becauſe the triall heereof dependeth vppon them, whereas thoſe others are but to enforme the Iurie towards an Enditement onely, inſomuch as notwithſtanding the examination ſo taken, yet the parties are bounde to giue the matter of them in euidence againe, *Viua voce*, when the triall ſhall be made.

Of Triall (or Hearing) by Certificate.

Cap. xii.

BEfore ſome other Iudges, the lawe hath allowed Triall by ſundry ſorts of Certificat: as from the Queenes Lieutenant, in the caſe of Eſcuage: from the Biſhop, in the caſes of Baſtardie, Bygamie, Excommunication, &c. and in ſome other caſes from other men: but before Iuſtices of the peace I haue not hitherto found any triall by Certificate, appointed by ſtatute, but in this onely caſe following.

Armour. If any man (being impeached vpon this ſtatute of Armour, for not hauing his appointed furniture) ſhall alledge, that the ſame furniture ſo lacking, could not be conueniently prouided, for want of the ſame within the Realme: this ſhall be taken for a good anſwere (in caſe it bee true) but if it be denied or trauerſed, iſſue ſhalbe ioyned vpon it, and the Triall ſhall bee onely by Certificat to be made by the L. Chancellor, L. Treſurer, L. Preſident of the counſell, L. Steward of the Queenes houſe, L. Priuie Seale, L. Admiral, and L. Chamberlaine of the ſaid houſhold, or by three of them, in writing vnder their ſcales, 4. & 5. Phil. & Mar. cap. 2.

As

As for the Certificat of the offence, and of the Recognuſance taken by two Iuſtices of the Peace (one being of the *Quorum*) of him that hath obſtinately kept a common Alehouſe againſt the ſtatute, 5. Ed. 6. cap. 25. that is made a ſufficient conuiction of the ſame offence, without further Triall thereof to be had at the Seſſions of the Peace: the which, and the reſt of that ſort, I doe therefore ouerpaſſe here. Alehouſe keepers.

Of Hearing (or Triall) by Trauerſe.

Cap. xiii.

The moſt ſolemne and auncient Triall of the fact againſt an offendour that will not confeſſe it, is that which wee ſee performed by the verdite of twelue good and lawfull men of the Country, and it alſo doth beſt content and quiet the guiltie man, for that it paſſeth by his owne Countrimen, Neighbours, and Peeres, according to the auncient libertie of the land, whereunto euery free borne man thinketh himſelfe inheritable.

And thereupon it is named (in Mag. Cart. cap. 29.) *Legale iudicium parium ſuorum*, the lawfull iudgement of a mans owne Peeres, or Equals: becauſe, as the Nobilitie, ſo alſo the Communaltie, are to be tried, in treaſon, felonie, or miſpriſion of treaſon, not the one by the other, but each

each by men of their owne eſtate and calling: I meane by the word Nobilitie, as our own Law ſpeaketh (which calleth none Noble vnder the degree of a Baron) and not as men of forraine countries doe vſe to ſpeake, with whom euerie man of Gentle birth is accounted Noble: for we dayly ſee, that both Gentlemen and Knights doe ſerue in the Parliament, as members of the Communaltie.

Howbeit, in caſes of forcible Entrie, Riot, Rout, vnlawfull aſſembly, or ſuch like, they of the Nobilitie ſhall be tried by twelue men, euen as other inferiour ſubiects. 3. & 4. Phil. & Mar. reported by Dalyſon.

This Triall happeneth before Iuſtices of the Peace, ſometimes vpon Trauerſe, & ſometimes vpon Arraignement.

But yet, ſome things be comon to them both: For, if the party charged, wil Demurre in Law vpon the euidence, the Iuſtices ought to record his Demurrer: So, if he will plead (in Juſtification) any matter of Record that is before other Iuſtices, they ought to giue him day to bring it in. Marr. So alſo, if the Iuſtices (thinking an enditement to be voide) haue diſcharged the priſoner, paying his fees: yet (vpon change of their opinion) they may ſtay him againe, at any time before Judgement. Fitz. Endit. 27.

But if hee pleade a pardon before them, in which certaine perſons bee excepted, and the Queenes

Queenes Atturney is not preſent to ioyne iſſue, that he which pleadeth it is one of thoſe that be excepted, then they themſelues may ſupply the office of the Atturney, in that behalfe. 8.E.4.7.

Whereupon alſo I gather this generall learning, That they ought not to ſuffer the Queene to be diſaduantaged, where it lyeth lawfully in their power to preuent it. The Queens aduantage.

And if an Inditement be chalenged, for ſuch cauſe as theſe Iuſtices will not allowe, then may they ſeale a Bill of that exception for the partie, if he will write & require it according to the ſtatute, W.2.cap.30. as M. Mar. writeth.

The Trauerſe tooke name of the French, de Trauerſe, which is none other then *de tranſuerſo*, in Latine, ſignifying, on the other ſide: becauſe, as the Enditement on the one ſide chargeth the partie, ſo he on the other ſide commeth in to diſcharge himſelfe. For, whereas the Arraignment proceedeth vpon him that is vnwillingly brought in by proceſſe, the trauerſe is (for the moſt part) freely tendered by the partie ſelfe.

To Trauerſe an Enditement then, is to take iſſue vpon the chiefe matter thereof, which is none other to ſay, then to make contradiction, or to deny the point of the Enditement. As, in a preſentment againſt A. for a high way ouerflowen with water for default of ſcowring a ditch, which he, and they (whoſe eſtate he hath in certaine Trau. ſe.

taine land there) haue vſed to ſcowze or cleanſe: A. may Trauerſe, either the matter (viz. that there is no high way there) or that the ditch is ſufficiently ſcowzed: or otherwiſe, he may Trauerſe the cauſe, viz. that hee hath not that land, &c. or that he and they (whoſe eſtate, &c.) haue not vſed to ſcowze the ditch. 5.H.7.3.

And this libertie of Trauerſe is commonly reſtrained to Enditement of Treſpaſſes, Contempts, Riots, &c. and other inferiour offences, within the Commiſſion or Statutes, authoriſing the Iuſtices of Peace: and is not vſually extended to Treaſon, or Felonies, as you ſhall hereafter ſee.

Trauerſe before Iuſtices of the Peace.

M. Brooke noteth, that it is not much vſed to Trauerſe Enditementes before Iuſtices of the Peace, but rather to remoue them into the Kings Bench, and to trauerſe them there: Howbeit, common experience at this day can ſhew many Trauerſes before Iuſtices of the Peace alſo.

And there is no doubt, but that as Iuſtices of the peace haue power to awarde Proceſſe, and the parties alſo haue libertie to ſpeake for themſelues: So (hauing ſpoken) the Iuſtices may Heare and Determine of their ſpeech, whether it touch them in freehold or otherwiſe.

For although it bee holden (2.R.3, 11.19 H. 8.11. & Fitz. tit. Aſſ. 442. and in other Bookes) that a man ſhall not bee receiued to trauerſe a Preſent-

Preſentment, vnleſſe it doe charge him in his freeholde: yet Huſſey and Fairefax ſaid (5.H.7. 4.) that a preſentment (not concerning freeholde) which is founde before Iuſtices of the peace, may bee trauerſed: and whether they meant it of a Trauerſe in the Kings Bench, or before Iuſtices of the Peace, it maketh no difference, becauſe the reaſon is all one, that is, If Proceſſe bee awarded, the party may come in, and offer his Trauerſe, and otherwiſe the Proceſſe ſhould be in vaine.

Hereunto agreeth Moubray (41.E.3.26.) ſaying further, that in a Leete ſuch a preſentment is not Trauerſable, becauſe out of a Leete no proceſſe can be awarded vppon it. And this peraduenture is the reaſon of the booke (8.Ed.4. cap.5. and of M. Marr,) where they ſay, that a Preſentment of bloudſhed found in the Shirifs Turne, and ſent (as it ought to bee) to the Iuſtices of Peace, cannot bee trauerſed before them: as whereupon they can neither make Proceſſe, nor diſcharge the party by way of Plea.

So that this ſeemeth a generall learning, that whereſoeuer any Proceſſe *adreſpondendum* goeth out vppon ſuch an Enditement as is trauerſable, there alſo the party may offer, & ought to haue, his Trauerſe againſt it.

But Marrow ſaith, that if a man be of an Enqueſt that endited him of Treſpaſſe, or ſuch like (ſo that vpon the matter, hee indited himſelfe) this

this is ſo ſtrong, that he ſhall neuer be receiued to Trauerſe it.

It is not my meaning to peſter this Booke with Precedents: But yet, forasmuch as in the Record of one Trauerſe, there is at once diſcouered, the Stile of the Seſſions, the Enditement, the Proceſſe to anſwere, the Trauerſe it ſelfe, the Verdite, and Iudgement therupon, the proceſſe of execution, the yeelding of the parties, & the aſſeſſement of their fines: ſo that it alone may ſerue in ſteed of all, I truſt it ſhall not be troubleſome to inſert it.

Somerſ. Stile of the Seſſions.

Alias, ſcilicet ad Seſſionem pacis, tentam apud Bridgewater, *in comitatu prædict. die Martis proximè ante feſtum Sancti Matthæi Apoſtoli, anno regni Dominæ noſtræ* Elizabethæ *Dei gratia, Angliæ, Franciæ, & Hyberniæ Reginæ, fidei defenſoris, &c. viceſimo, Coram* Iohanne Stowell *milite*, Humfrido Waldron *vno magiſtrorum Curiæ Cancellariæ dictæ Dominæ Reginæ, & aliis ſocijs ſuis Iuſticiarijs dictæ Dominæ Reginæ ad pacem in comitatu prædicto conſeruandam, Necnon ad diuerſa felonias, tranſgreſſiones, & alia malefacta in eodem comitatu perpetrata audienda & terminanda aſſignatis, per ſacramentum* 12. *Iuratorum extitit præſentatum, quod* Iohannes Long, *de &c.* R. M. *de &c.* & T. L. *de &c. cum diuerſis aliis ignotis malefactoribus, & pacis dictæ Dominæ Reginæ perturbatoribus,*

turbatoribus, modo guerrino arraiati, uniti, & aſſembłati, 20. *die Iul. in nocte eiuſdem diei, anno, &c. Vi & armis* (*videlicet*,) *Baculis, gladijs, clipeis, pugionibus, falcaſtris, & alijs armis, tam inuaſiuis, quam defenſiuis, apud* C. *&c. clauſum cuiuſdam* Wil. Willet (*vocatum* B.) *illicitè, riotosè, & routosè, fregerunt, & intrauerunt, & octo plaustra fæni* ad valenciam. &c. *ad tunc & ibidem exiſtentia, de bonis & catallis dicti* Wil. Willet *ad tunc & ibidem iniuſtè & illicitè ceperunt & aſportauerunt, contra pacem dict. Dom. Reginæ. &c.* Et contra formam Statuti inde editi & prouiſi, *Per quod præceptum fuit vicecomiti, quod non omitteret &c. quin venire faceret eos ad reſpondendum, &c. poſtedque ſcilicet prædicto die Martis proximè ante feſtum Sancti Matthæi Apoſtoli anno viceſimo ſupradicto, coram præfatis Iuſticiarijs venerunt prædicti* I. L. R. M. & T. L. *in propriis perſonis ſuis, & habito auditu Indictamenti prædicti, ſeparatim dicunt, quod ipſi non ſunt inde culpabiles, Et de hoc ponunt ſe ſuper patriam: Et* Adam Martin, *qui pro Domina Regina in hac parte ſequitur ſimiliter, &c. Ideo veniat inde Iurata coram Iuſticiarijs dictæ Dominæ Reginæ ad pacem in comitatu prædicto conſeruandam aſſignatis, &c. ad Seſſionem pacis apud* Welles, *&c. die Martis proximè poſt Epiphaniam Domini tunc proximè futuro tenendam. Et qui, &c. Ad recognit. &c. Quia tam, &c. Idem dies datus eſt tam præfato* Adam Martin, *qui ſequitur, &c.*

Proceſſe to anſwere.

Trauerſe.

Iurie.

Day giuen.

quàm

quàm præfatis I. L. R. M. *&* T. L. *&c. Ad quas quidem Seſſiones pacis, tentas apud* W. *prædict. in comitatu prædicto die &c. Coram Domino* T. P. G. N. *&* H. P. *milit. & ſocijs ſuis Iuſticiarijs dictæ Dominæ Reginæ ad pacem in comitatu prædicto conſeruandam, Necnon ad diuerſa felonias, tranſgreſſiones, & alia malefacta in eodẽ comitatu perpetrata audienda & terminanda aſſignatis, venerunt tam præfatus* A. M. *qui ſequitur &c. quàm præfati* I. L. R. M. *&* T. L. *in propriis perſonis ſuis, Et Iuratores prædicti per vicecomitem comitatus prædicti ad hoc impannellati, & exacti (videlicet,)* Iacobus F. Gen. I. G. *&c. ſimiliter venerunt, qui ad veritatem de præmiſſis dicendam triati & iurati, dicunt ſuper Sacramentum ſuum, quod prædicti* I. L. R. M. *&* T. L. *culpabiles ſunt, & eorum quilibet culpabilis eſt de tranſgreſſione, contemptu, & riotto prædictis in Indictamento prædicto ſuperius ſpecificatis, modo & forma prout ſuperius verſus eos ſupponitur : Ideo conceſſum eſt per curiam quod prædicti* I. L. R. M. *&* T. L. *capiantur ad ſatisfaciendum dict. Dominæ Reginæ de finibus ſuis, occaſione tranſgreſſionis, contemptus & riotti prædict. Qui quidem* I. L. R. M. *&* T. L. *ad tunc & ibidem præſentes in Curia petierunt ſe ad finem cum dicta Domina Regina occaſione prædicta admitti. Et inde ponunt ſe ſeparatim in miſericordiam* D. R. *Et aſſeſſatur finis eiuſdem* I. L. *per Iuſticiarios prædictos, ad 3. libr. 6. ſol. 8. denar. Et finis eiuſdem* R. M.

Verdict.

Judgement.

Capias pro fine.

Ponunt ſe in miſericordiam Reginæ.

Fine aſſeſſed.

R.M. *Aſſeſſatur ad 20. ſolid. Et aſſeſſatur finis eiuſdem* T.L. *ad quinque libras, bonæ & legalis monetæ Angliæ, ad opus & vſum dictæ Dom. Reginæ.*

And this is to be noted, that this record was afterward remoued into the kings Bench, & that the party was diſmiſſed there, for want of thoſe words in the enditment, that you ſee vnderlined in other letters, in two ſpecial places of ỹ ſame. Enditement voyde.

Of Triall vpon Arraignment, and therwithall of the *Triall* of *Felonies*, and what Pleas or other helpes may be vſed therein.

Cap. xiiii.

ARraignment and Trauerſe doe not ſo much differ in the nature (or ſubſtance) of the Trial it ſelfe, as in the order or vſage of the ſame. For as there is no enditement Trauerſable by the party, but that he may alſo be arraigned vpon it: ſo likewiſe is there no enditement, wherupon the party may be arraigned, but that he may alſo (if he wil) tender his trauerſe vnto it. Difference betweene Trauerſe and Arraignment.

The difference then ſtandeth in this, that commonly, he (which is to bee arraigned) commeth in by compulſion of bond, or proceſſe, and is touched with matter concerning life & death, or ſome ſuch hainous offence, and pleadeth generall Not guiltie to the enditement.

Commonly I say, because although he come in freely, and be indited of some inferior offence, yet he may be neuertheleſſe arraigned: neither is hee of neceſſitie driuen to pleade Not guiltie (which runneth to the fact) but may (if the caſe will ſuffer) pleade a Iuſtification or matter in Law, though it be in caſe of Felony.

It ſeemeth to haue borrowed the name out of the word Array, either of the pannel or Iury: becauſe he that is araigned, muſt be tried by them being firſt called, arrayed, ſworne, and tried, in order for that ſeruice: or elſe, of the array of the priſoners, that be peruſed and arrayed in order before they come to triall.

If I ſhould heere rippe vp, and proſecute at full (as the place offreth me occaſion) the whole learning that belongeth to the Arraignment and triall of Felons, as well for the taking of Chalenge and pleading of Iuſtification, matter in lawe, pardon, an other time acquite, and an other time attaint: as alſo for the hauing of Sanctuarie, and ſauing by Cleargie: I ſhould but *actum agere*, and yet not doe it halfe ſo well as you may finde it in M. Stanford: beſides the which, I ſhoulde endeuour to teach them, of whom I my ſelfe may better learne ſeeing that the vſe of theſe matters is either reſerued til the comming of the graue Iuſtices of gaole deliuerie, or elſe is perfourmed by other men of Lawe that can enfourme themſelues ſufficiently therein.

in. And yet conſidering that theſe things doe many times fall in vſe, & that it were vnſeemely for our Iuſtice of the Peace to be altogether ignorant therin, I wil ſhortly runne ouer them, if firſt I may offer to conſideration a point or twaine, whereof it peculiarly behoueth our Iuſtices to be aduertiſed.

The firſt thing is, that there bee ſundrie felonies, and ſome enditements of felonies alſo, the which (as it ſeemeth to me) Iuſtices of the peace cannot heare, or trie at al: the ſecond, that in the handling of thoſe very Felonies wherwith they may deale, there be yet certaine conſiderations peculiar to the Iuſtices of the Peace onely, and not common to them with other Iudges.

Felonies not triable before Iuſtices of Peace.

Of that firſt is the felony for Forgerie by the ſtatute, 5. Eliz. cap. 14. after conuiction for a former offence: and that felonie (after a former conuiction alſo) for ſlaunderous ſpeech againſt the Queenes Maieſtie, in offence of the ſtatute made 23. Eliz. cap. 2.

Neither doth the hearing and trial of that felony of a ſeruant (taking the goods of his maſter after his death) belong (as I haue ſaide) to the Iuſtices of Peace in the Countrey: becauſe they can not take notice of his default in the Kings Bench, by which default it firſt beginneth to be felonie, 33. H. 6. cap. 1.

The like though for vnlike reaſon, is to bee ſaid, of the felonious embezeling of any the re-

cords of the courts at Weſtminſter, againſt the ſtatut, 8. H. 6. ca. 12. And of an Acceſſary in one countie, where the felony was done in an other countie, vpon the Statute 2. & 3. E. 6. ca. 24. becauſe the iuriſdiction ouer theſe Felonies is not committed to the Iuſtices of the peace, but remitted to other Iudges by the very ſame Statutes.

And ſo of the Felony of conſpiring the death of the king, or of any lord of the realme, or of any of the kings counſel, or of the Steward, Treaſurer, or Controller of the Kings houſe, becauſe it is to be tried by them of the Checkroll of the ſame houſhold, 3. H. 7. cap. 14.

Furthermore, they can not make Triall of ſuch as were endited of Felonie before the Coroners, or, before the Iuſtices of Gaole delyuerie, or of Oyer and Terminer, if the ſame perſons were not Iuſtices of peace alſo in the ſame ſhire, ſo as the enditements may be vnderſtood to bee taken by them as before Iuſtices of the peace: for their Commiſsion and authoritie extendeth onely to ſuch as ſtand endited, before themſelues, or former Iuſtices of the Peace, or the ſherife in his Turne.

Things peculiar to Iuſtices of the peace in the triall of felonies.

Thus farre of the firſt point: Touching the ſecond it ſeemeth by Marr. and M. Fitzh. fol. 16. that albeit two Iuſtices of the Peace, (the one of them being of the *Quorum*) may heare and trie Felonies: yet no Iuſtices of the Peace haue authoritie

thoritie to deliuer Felons by proclamation, or without sufficient acquitall: nor yet to deliuer such as be in prison for suspition of Felony.

For they must proceed by enquiring, hearing and determining, as their commission appointeth them, and not ridde the gaole otherwise, as the Iustices of Gaole deliuery may doe. And therefore such persons, (if they cannot be endited) must either remain the comming of the Iustices of Gaole deliuery, as the common maner now is, or else (being remooued into the Kings Bench) they are either to bee deliuered thence vpon the writ *de gestu & fama*, as the old order was, or by such other meane as they at this day doe vse therein.

These Iustices of peace can take no appeale of any approuer, nor other, before them, say all the Iustices of the common place, 2. H. 4. 19. and so it is clearly holden 9. H. 4. 1. because their cõmission stretcheth not so farre, but onely to such felonies as fall out by Enquirie before themselues, or their former fellow Iustices, howsoeuer the booke 44. E. 3. 44. vpon the statute, 5. E. 3. cap. 11. or the statut (8. H. 6. cap. 10.) may seeme (to a running Reader) to allow that power vnto them. And therefore M. Stanford fo. 95 worthily doubteth of this matter.

But howsoeuer that be, yet seemeth it to me no lesse reasonable then seruiceable, that if one felon will accuse an other before Iustices of the

Peace, they may take his confeſſion and repꝛie him, and thereupon cauſe the other to be inquired of, and ſo pꝛoceed againſt him.

Furthermoꝛe, they can not arraigne a man vpon his abiuration, ſaith Marr.

It hath alſo been thought vnmeete, that they ſhould trie a felon the ſame day in which they awarded the *venire facias*, againſt the Iury 22.E 4.44. Fitz. *tit. Coron.* 44. but that hath no neceſſitie, and the law is now otherwiſe taken.

Marrow ſaith, that they cannot award the writ, *Venire facias tot matronas*, to trie whether a woman (arraigned beꝛoꝛe them) be with child, oꝛ no: but, ſeeing it ſtandeth with law & reaſon, to ſtay hir foꝛ the time (that the child may be pꝛeſerued) I cannot but doubt of this opinion.

They may giue Cleargie to a felon, if the Ordinarie (oꝛ his deputie) bee pꝛeſent to take him: but if they be abſent, he muſt be repꝛied, becauſe (as Marrow ſaith) theſe Iuſtices can ſet no fine vpon the Ordinary foꝛ his abſence: no moꝛe than if he will accept one to reade as a Clarke, where in trueth hee cannot reade at all. But if you looke vpon M. Stanford lib. 2. ca. 45. he wil perſwad you, that the ordinary is not the Iudge but a Miniſter, in the triall of Cleargie: and that Cleargie may lawfully be giuen and allowed in his abſence.

Of the Fine foꝛ his default at theſe Seſsions, I am a litle doubtful, as I haue ſaid beꝛoꝛe: but touching

touching the allowance of Cleargie to the offendor, I see no cause at all why it may not belong to the Iustices of Peace as wel as to other Iudges: seeing that they be Iudges of the felony, as other Iustices are: & otherwise al men might be defeated of that priuiledge.

Marrow saith also, that if Bigamie (that vngodly and popish counterplea) had beene alleaged against one that praied his Cleargy, the Iustices of peace could not haue written to the Ordinarie to certifie the same. But let that passe, as not worth the debating.

And if a man (outlawed of felony by Processe before the Iustices of Peace) be brought before them, and do alleage, that he was (at the time of the vtlawrie pronounced) out of the Realme in the Queenes seruice vnder such a Captaine: or that he was then imprisoned in an other Countie: they can neither write to the Captaine, nor into the Countie, by the opinion of Marrow.

But I wil acquaint your consideration with the statutes 22. H. 8. cap. 14. & 32. H. 8. cap. 3. where you may reade to this effect. All manner of forraine pleas (triable by the countrey) hereafter to bee pleaded by any person or persons arraigned vpon any Inditement for any petite treason, murder, or felony, shall forthwith bee tried before the same Iustices before whome such persons shall bee arraigned, and by the same Iurors of the same Countie that shall trie

the ſaid petite treaſon, murder, or felony, without any further reſpite or delay, in whatſoeuer place of the realm the matter of the ſame plees be ſuppoſed, or alleadged.

Thus much onely, of things reſtraining the Iuſtices of Peace in the Trial of Felonies: wherin alſo they are not nowadaies much occupied, the rather becauſe they commonly defer it till the comming of the Iuſtices of Aſſiſe, by reaſon that the ſtatuts 1. & 2. Ph. & M. c. 13. & 2. & 3. P. & Ma. c. 10. do inioine them to certifie at the next generall Gaole deliuery, both the examinations & bonds that they ſhal take, concerning felons & ſuſpects that are brought before them. Neuertheles their power is no whit reſtrained, to proceede before the cõming of thoſe Iuſtices.

This I may ad (not as a reſtraint, but for an enlargement of the authoritie of Iuſtices of the peace) that if they ſee cauſe, and doe write to the Clarke of the Crowne of the Kings Bench, for the names of any perſons being other where attainted of Felony by Vtlawry, or being clarkes conuicted or attainted: he ought (without delay, and vnder the paine of xl. s.) to certifie the ſame vnto them, togither with the cauſes of ſuch attainder, or conuiction, 34. H. 8. cap. 14.

Theſe things thus premiſed, Let vs nowe ſuppoſe all impediment to be remoued, and ſet we the Felon at the barre, readie to take whatſoeuer lawful aduantage of Chalenge, plea, or other

other benefit, that may be allowed vnto him.

Challenge. It was euer permitted, that the Prisoner might challenge so many of the Iurie as hee would (shewing lawfull cause for it) as namely, to say, that he (whom he challengeth) was one of the Iurie which did indite him: for, of such an one it may be thought, that he will not falsifie his former oath, 25. E. 3. cap. 3. or to say, that he hath not lands of the cleare yearely value of forty shillings: for, such a one is disabled. 2. H. 5 c. 3. except it be in Cities, or such other franchises, where the value is measured by forty pound of goods moueable 23. H. 8. ca. 13. or to say, that he is not *probus*, or *legalis*, because he hath been attainted of Felonie, Forgerie, Periurie, or of such like, as are shewed before.

The common law hath also (in fauour of life) allowed vnto the prisoner his peremptorie challenge, without shewing any cause at all for it. But yet, forasmuch as it was long time doubtfull, how many he might so challenge, the same was put into certaintie (by the Statute, 22. H. 8. cap. 14.) and restrained to the number of 20. persons at the most.

Now if the triall bee of an Alien borne (for Felonie, or Murder committed by him) the Iurie shal be *de medietate linguæ*, that is, half of our Nation, and halfe of Straungers: except it be in the case of a Scot, whose Iury shalbe altogether English, as well because hee speaketh our language,

guage, as alſo for that he is reputed a ſubiect, & not an alien. *Collectum Dyar.* 304. & 357.

This ſhortly of challenge: which is but dilatorie, and to win time: and therefore let vs now heare what he may plead in chiefe as it were, & for the ſafetie of his life.

Another time acquite.

If the priſoner haue been at any time before lawfully acquited of the ſelfe ſame Felonie, or haue been orderly attainted of any other felony, he may ſafely reſt vpon it. For, as it is vnreaſonable, to drawe a mans life into double danger for one ſingle offence: So is it alſo vnprofitable, to condemne him that is already attainted. *Corone.* Fitzh. 132. & 28. Edw. 3. 90. And for the proofe of either of theſe his allegations, the Iuſtices ought to allowe vnto him conuenient time for the bringing in of the Record of the Court where he was ſo acquited, or attainted. *Corone.* Fitz. 232.

But becauſe each of theſe two points hath his ſeuerall conſideration in that which doth remain, I alſo will henceforth handle them apart.

If the priſoner be now arraigned of a felony, by the name of A. B. (by which name, as alſo by the name of A. C. hee is well inough knowen) then may he ſay, that he was before time acquited of the ſelfe ſame Felonie, before ſuch, or ſuch Iuſtices, by the name of A. C. auerring that hee is the ſame perſon, and that he is knowne by the one and the other calling. Lib. Aſſ. 26. pla. 15. &

11.

11.H.4.93. So, if he be arraigned of the Murder of a man (ſuppoſed by the Enditement to be ſlaine in the 30. yere of her Maieſties raigne) he may plead, that he was before time acquitted of the Murder of the ſame man, auerring that he was ſlaine in ſome other yeare, Lib.Aſſ. 22. pl.55. For, as in the former caſe, the ſame man may beare two names: ſo in the latter, one perſon cannot be twiſe killed.

But if the Felon were firſt acquited vpon an Enditement, which did not comprehend ſufficient matter of felonie in it: that will not helpe him now, becauſe his life was neuer put in ieopardie thereby: in ſo much as if hee had beene found guiltie thereupon, yet the Court woulde haue deliuered him, Stanford.106. Howbeit, if the Enditement had good matter in it ſelf, then may no Errour (committed in the Proceſſe) take the benefit of this plea from him, ſeeing that hee was arraigned vpon the Enditement, & not vpon the Proceſſe. 9.H.4. & *Coron.* Fitz.444.

Againe, if hee that ſtole goods were acquited in a Countie where hee ought not to haue beene tried for them, that is no lawfull acquitall to ſaue him from trial now: no more, then if a man were acquited of murder in an Appeale, at the ſuit of a yonger brother during the life of the elder: that is of no ſuch force, but that hee ſhall be arraigned at the ſuite of the Queene againe, Stanf.105. & 106. & 21.H.6.31.

Laſtly,

Laſtly, hee that is acquited as principall to a Felonie, may neuertheleſſe bee arraigned as an Acceſſarie (after the offence done) to the ſame Felonie: becauſe it is not the ſame, but another ſubſequent, and diuers offence. And yet, ſhall he neuer be arraigned, as an Acceſſarie (before the offence) to the ſame Felonie: becauſe, (as I haue ſaid heretofore) the Acceſſaries before the offēce, be the very cauſes of the fact, and do (as it were) inſeperably concurre with the principall; and be preſent with him in the doing of the ſame. Lib. Aſſ. 27. pla. 10. & Stanf. 105.

Another time attainted.

Now on the other ſide, ſince nothing can bee had of him that is already attainted, & hath therby loſt whatſoeuer hee might forfait: it hath alwaies beene thought meete to allowe him to plead it: & it is to no purpoſe to arraigne him of new, for that, or for any other Felonie, except it be in a ſpeciall caſe, or two, for ỹ benefit of other perſōs, which M. Stanf. hath briefly noted for vs.

The firſt, is for the aduantage of the Queen: For, if he that is attainted of Felonie, hath alſo committed Treaſon, then may hee be arraigned of the Treaſon, notwithſtanding the former attainder, to the ende that her Maieſtie may haue her prerogatiue in the Eſcheat of all his lands, of whatſoeuer other Lords they ſhall be holden. 1. H. 6. 5. And yet, if that Treaſon were committed after the Attainder for the Felonie, then (in the opinion of M. Stanf.) the title of Eſcheat (which

(which by that attainder did accrew to the other Lords) cannot be deuested and taken from them, by the subsequent Treason.

The second is, for the commoditie of Subiects, as in case where diuers men bee robbed of their goods by a Felon: there (though hee be attainted at the suite of one) yet ought he also to be attainted at the suit of the rest: ỳ each one of them may therby haue restitution of his goods, whereof otherwise for want of suit he should be denied. Stanf. 165.

But now, if he that was thus attainted, do afterward obtaine pardon of that felonie whereof he was attainted, then is he restored to the law, and is made answerable to all other Felonies that were committed by him, before the time of that Felony, wherupon his attainder was groũded. 6. H. 4. 68.

And if a man do commit two sundry felonies, and (beeing arraigned vpon the one) standeth mute at the barre, & hath therfore his iudgemẽt to be pressed: yet may he be arraigned vpon the other felonie: notwithstanding the former iudgment: because it is none attainder at all for his offence wherewith he was charged, but onely a punishment inflicted by the law vpon his contumacie & stubborn silence. Collection Diar. 308.

With this there was wont to be matched the plea, That the prisoner was another time conuict of felony, and deliuered to the Ordinary to make

Another time conuict.

make his purgation: which alſo was of equall force (with the former plea) to ſaue him from new arraignement. But the lawe of our time hath worthily taken that plea from the offendor and the offendor himſelf from the power of the Church.

For, as the allowance of the booke proceeded from the pride of Churchmen: Euen ſo were theſe conuicts ridiculouſly purged by them. For which cauſe, the ſtatute (1 8. El. ca. 6.) hath ordained, not onely that (after allowance of Clergie and burning in the hande) the priſoner ſhall be enlarged: but alſo that hee ſhall be put to anſwere to all the other Felonies, whereof hee is not before acquited, conuicted, attainted, or pardoned. And therefore, leauing it, let vs ſee how the offendor may bee holpen by pleading, & praying allowance of the Queenes pardon.

Generall pardon.

The pardon whereof the party may haue aduantage, is either generall, or ſpeciall: by generall I doe here meane that, which is giuen by Parliament to all men generally, or with the exception of ſome perſons. And of this pardon the Court ought of duty to giue allowance, though the partie neither pleade it, nor will accept the benefit of it. But, if it make ſpeciall exception of ſome perſons, then muſt the priſoner alleage that he is none of thoſe that be excepted, vnleſſe the act it ſelfe doe ſay, that he ſhall be holpen by it without any ſuch pleading 11. Hen. 4. 39. & Stanf.

Stanf. 103.

Touching this ſort of pardon, I will onely lay downe theſe few caſes: The ſeruaunt (that had killed his maſter) was endited of voluntary murder, without the worde *proditorie*, and was thereupon arraigned, and found guiltie. But becauſe the offence was petite treaſon indeed, and petite treaſon was then pardoned by the Parliament (5. Eliz.) though murder were therein excepted, Iuſtice Welſh thought it meet to repꝛie the pꝛiſoner, without giuing iudgement vppon him, Col. Dyar. 235.

A man ſtroke another in Febr. (13. El.) whereof he died in Iune next folowing, in which meanwhile all Felonies, offences, iniuries, and miſdemeanors, were pardoned by Parliament: and hee was diſcharged by that pardon, becauſe the ſtroke was the offence againſt the Queene, and that was paſt and pardoned though the death did afterward enſue vpon it. *Comment.* 401.

One that had committed Manſlaughter, was endited of Murder, and thereupon Vtlawed: afterward, the Parliament pardoneth all offences, &c. except perſons Vtlawed, or attainted of murder: the party reuerſeth the Vtlawꝛie, and then is arraigned of Manſlaughter: and it was much doubted, whether he ſhould be diſcharged by the Pardon, becauſe the perſons Vtlawed were excepted, whereas if the offences onely had beene excepted, it would haue made no

great

great queſtion. 29. Eliz. Report Crompton.

Speciall pardon. The ſpeciall pardon, ought to bee pleaded vnder the great Seale of England: for, that authoritie which ſome ſubiects in auncient time had to grant pardon, is reſumed by the Statute 27. H. 8. cap. 24.

And with this pardon, the party ought to bring a Writ of allowance, teſtifying that hee hath found ſuerties for his good port, according to the Statute, 10. E. 3. c. 2. Howbeit, that matter is many times diſpenſed withall, by meanes of a *Non obſtante*, that may be put into the pardon *Com.* 502. But let vs yet ſee, what the pardon hath within it.

If the pardon doe agree with the Enditement, as wel in the name, ſurname, and addition of the partie, as alſo in the point of the offence that is to be pardoned: then is there nothing to be ſaid againſt it. But, if the pardon be of all felonies, that wil not diſcharge him of petite treaſon, nor murder at this day (except it containe them in ſpeciall words) although before the ſtatute 13. R. 2. Stat. 2. cap. 1. ſuch a pardon was auaileable inough for them.

Neither is ſuch a pardon ſufficient to ſaue the life of him that is attainted of felonie, vnleſſe it haue words to pardon the attaindor, and execution, 9. Ed. 4. 29. No more than a pardon of the attaindor and execution, will deliuer him without words to pardon the felonie it ſelfe, 8. H. 4.

21.

21. So, wher the party is abiured for the death of a man, the pardon muſt of neceſſitie carrie words of abiuration. *Coron.* Fitz. 124.

And if the Queene do pardon to a Gaoler, the eſcapes of priſoners being in his ward for felony or treaſon, that ſhall extend to negligent eſcapes only, and to none other, *Grants* Fitz. h. 37. So, if ſhee pardon two men al felonies done by them, or any of them, that will not ſerue them apart, becauſe the firſt words be ioynt and not ſeuerall, wheras all felonies be of themſelues ſeuerall, 22. E. 4. 7. For in all theſe, & the like caſes, howſoeuer the fauour of life may deſire liberall interpretation: yet (forasmuch as the offence is againſt lawe) the grace and diſpenſation of the prince may not be ſtrained beyond the words.

The laſt helps for the priſoner, be Sanctuarie and Cleargie, whereas his caſe will afford him the one or the other of thē. For, if he were taken out of Sanctuary, he ought to pray (at the firſt) to be reſtored: & if he can read, he may (at any time) deſire of the Iudge the allowance of his booke. Sanctuarie and cleargie.

How each of theſe began at the firſt, and grew in time to be full ſummed, or how they ſhronke againe, and how their gayeſt feathers were at the laſt (by one and one) pulled from them: I may not here ſtand to diſcourſe, though it bee a peece, worthie both the handling and hearing. But forasmuch as our ſtatutes do many times match theſe twaine together, I will likewiſe

drawe them forth, as I shal fal vpon them, shewing you wher the one or the other, or both, be denied to the prisoner.

Once, or moe times. Where Cleargie lieth, it is graunted but once to one person, except he be within holy orders: for such an one may haue it often, 4. H. 7. cap. 13. 1. E. 6. cap. 12. & Stanf. 135.

Bigamy. *Bigamus*, (that is to say, he which hath beene twise married, or which hath married a widow) may haue his Cleargy at this day, though in old time it were a good counterplea against it. Collect. Diar 201.

Bastard. It was wont to bee doubted, whether a Bastard might haue the benefit of cleargy: because he could not be a Priest without speciall dispensation. Brooke, Bastardie 46.

Woman. And it was agreed by al the Iustices (2. & 3. Phi. & Mar.) that a woman shall haue none allowance of Clergie: but shee may haue (for once onely) the benefite of her belly, if it be found by women thereto appointed that she is with child Report Dalyson.

Witches &c. Coniurers, or Witches, their aiders or counsellors, shall neither haue Sanctuarie nor Cleargie, 5. El. cap. 16.

Iesuites &c. The receiuers or aiders of Seminary priestes or Iesuites are to be denied the fauor of Clergie, 27. El. cap. 2.

Take castles. Such as conspire to burne, take, or raze &c. any castle or bulwark of the Queenes, shal enioy neither

neither Sanctuarie nor Cleargie 14. Eli. cap. 1.

Hee shall haue no Cleargie that committeth any felonious rape, rauishment, or burglarie, 18. El. cap. 6. Rape: Burglarie.

Nor he which carnally and vnlawfully abuseth any woman being within the age of tenne yeares, 18. Eli. cap. 6. Rauish infant

Nor hee which is principall, or accessarie before, to the Felony of taking away of a maide, widow, or wife, that hath lands or substance &c. 3. H. 7. cap. 2. & 39. El. cap. 9.

Nor hee which committeth the detestable sin of Buggerie, 25. H. 8. ca. 6. & 5. El. ca. 17. Buggerie.

There lieth no Cleargie nor Sanctuarie for him which committeth wilfull murder, or poisoning of malice prepenced: or which robbeth another, in, or nigh the highway: or which stealeth any horse, or horses, gelding, or geldings, mare, or mares, or stealeth goods out of anye Church or Chappell: or which breaketh anie house feloniously by day or night, anie person being in it: or which robbeth any person in any part of his dwelling house, himselfe, his wife, children or seruants, then being there, or within the precinct therof, and being sleeping or waking, 23. H. 8. cap. 1. 32. H. 8. cap. 3. 1. E. 6. cap. 12. 5. E. 6. cap. 9. & 2. & 3. E. 6. ca. 33. Or which robbeth by day to the value of v. s. or vpwards, in any dwelling house, or outhouse thereto vsed, though no person were thā within it, 39. El. c. 15 Murder. Poisoning. Robbe in highway. Horse. Church. House.

Robbe boothe or tent.

He which robbeth any perſon in any boothe or tent, in any faire or market, the owner, his wife, children, or any ſeruant then being therein, either ſleeping or awake, is depriued of his Clergie, 1. E. 6. cap. 12. & 5. E. 6. cap. 9.

Commaunde murder or robberie.

Such as malicioully command, or hire any to commit petite treaſon, or wilful murder, or robbery, in any dwelling houſe, or in, or neare any high way, or without the Marches of Englande againſt Scotland: or willingly to burne any

Burne houſe or barne.

dwelling houſe, or any part therof, or any barne hauing corne therein, ſhall not bee admitted to their Cleargie. 4. & 5. Phil. & Mar. cap. 4.

Seditious words.

If any ſhall report falſe rumours againſt the Queenes Maieſtie, or ſhall deuiſe any write, or ſet foorth any writing containing ſlaunderous matter to her diffamation, or to the ſtirring of any inſurrection: or ſhall procure any ſuch writing to be ſet forth or publiſhed, ſhall not be admitted to his Cleargie. 23. Eliz. cap. 2.

With the Queens death

Such as by Coniuration, Calculation, or other vnlawfull meanes, ſhall ſeeke to knowe, and ſhall ſet foorth by expreſſe word or act, how long the Queene ſhall liue, or who ſhall raigne after her death: or ſhall will, or wiſh her death, ſhall looſe all benefite of Clergy and Sanctuary: and ſo ſhall their aiders, procurers, & abetters, 23. Eliz. cap. 2.

Souldier that departeth.

Cleargie and Sanctuarie bee taken from the Souldier that departeth without licence of the Lieutenant

Lieutenant or Captaine, 2. Ed. 6. cap. 2. & 4. & 5. Phil. & Mar. ca. 3. The cleargie is taken from the Souldiour or Mariner that wandreth begging, or shall exceede the time of his licence in his testimoniall, or Forge any such Testimoniall, or carrie the same Forged if he know it, 39. Eliz. cap. 17.

He that doth a Robbery or Burghlarie in one County, and is taken with the goods so robbed or stollen in an other County, shal loose his cleargie there, as he should doe where the robbery or burghlary was committed, 25. H. 8. cap. 3. & 5 E. 6. cap. 10. Carrie the goods into an other countie.

Sanctuarie and Cleargie be taken from him that secondly shal be convicted of the forging of false deeds, &c. 5. Eliz. cap. 14. Forgerie.

He which priuily taketh money or goods (ouer the value of twelue pence) from the person of another, not knowing it, is denied Cleargie, 18. Eliz. cap. 4. Cutpurse.

Cleargie and Sanctuarie be taken from him which calleth himselfe Egyptian, or which keepeth them companie against the statutes, 1. & 2 Phil. & Mar. cap. 4. & 5. El. cap. 20. Egyptian,

In all other cases (so farre as I yet find) the prisoner may enioy the priuiledge of Cleargie: yea, and in euery of these Statutes also that doe resume clergie, if so be that the Inditement doe not expressly mention the offence in the verie words of the Statute it selfe, the offendour may A consideration touching Cleargie.

eſcape by his Cleargie. For, if the enditment be *Murdrauit* onely, without ſaying, *Ex malitia præcogitata*: or if it be, that he procured a robberie in a dwelling houſe, without adding maliciouſly: or that he robbed one in the highway, and tooke tenne ſhillings from his perſon, without ſhewing that he made Aſſault vpon him, or vſed violence vnto him: or if it be of Burghlary, & doe lacke the word *Burghlariter*. Then (as M. Stanford warily noteth) the offence is not againſt the Statute, and conſequently the benefite of Cleargie is not pulled from the offendor, Stanford 130. Collection Diar. 183. & 224.

A ſcruple concerning clergie

The ſame M. Stanford (about the ſame place of his booke) moueth a doubt in this matter of Cleargie, very meete to be remembred here, and to bee reſolued in another place. When ſundrie of theſe ſtatutes which take away cleargie (in caſe wher the offendour is conuicted by the verdite of twelue men) doe ſpeake nothing at all of his attainder by Vtlawry: or by Parliament: nor of his ſtanding wilfully mute: nor of his challenging aboue twentie peremptorily, nor of his refuſal to anſwere directly to the offence: It is to be conſidered (ſaith he) whether in theſe caſes alſo, the Cleargie ſhall be denied vnto him. But ſince it becommeth not me to determine, where he doubted, I will here make an end of our Triall, and proceede vnto Iudgement.

Of

Of Iudgement.

Cap. xv.

The Iuſtices of Peace hauing thus ſifted & tried the cauſes in hearing either by the euidence giuen to the Iury, or by the examination of witneſſes, or by certificat alowed, or other lawfull, reaſonable, and diſcreet proofe, are now come to make an end, and to determine of it. For I may well apply that to Hearing and determining, which M. Bract. requireth to the making vp of a true Iudgment, that is, an equal and indifferent acceptation of the perſons: an earneſt examination, and thorow ſearch of the cauſe: a true deliuery of the ſentence: and a diligent execution of the ſame. Of theſe, the two firſt belong to hearing (or triall) which wee haue already handled: and the latter two be the very parts of determining, wherewith we haue now to deale. For Iudgement and Execution do make an end of the cauſe in controuerſie.

You haue read before, a generall learning in the Commiſſion: I meane, that if any difficulty do ariſe in determination vpon triall, the Iuſtices of Peace are reſtrained to proceede vnto iudgement: and you may reade 6. H. 7. 16. that if a *Certiorari* bee brought to the Iuſtices of the peace, they are ſtayed (by the opinion of Keble)

from determination, although the Record bee not thereby remooued from them.

But admitting that there is none impediment, let vs heare their iudgement.

Iudgements by diſcreation.

The iudgments then of the Iuſtices of peace, be in ſome caſes arbitrarie (or referred to diſcretion) & in other-ſome caſes preſcribed or limitted. Of the firſt ſort, take this one or two for all.

Falſe tokens.

He that is orderly conuicted before them in their generall Seſſions, of the deceitfull getting of any goods into his hands (by meanes of any falſe token, or counterfeite letter made in the name of any other) may be adiudged by them to ſuffer impriſonment, ſtanding on the Pillorie, or any other corporall paine, that they ſhall appoint, except the paines of death, 33. H. 8. ca. 1.

Seruant.

And that Seruant, Workman or Labourer, that ſhall ſo willingly and maliciouſly make aſſault or affray vpon his maſter or maiſtereſſe, or other that then ſhall haue charge ouer him, as that he ſhall deſerue further puniſhment than the impriſonment of one whole yeare, may bee put to ſuch further open puniſhment (ſo as it extend not to life, nor limme) as the Iuſtices of Peace in open Seſsions ſhall thinke conuenient, 5. Eliz. cap. 4.

Preſcribed Iudgements.

Their preſcribed Iudgements be of ſundrie formes, according to the natures of the offences (whereof they haue to iuge) which be diuers alſo.

For, vppon petite Treaſon committed by a man,

man, the ſentence ought to be that hee ſhall bee drawen and hanged: But againſt a woman, the Iudgement is all one, whether it be in high, or petit treaſon, that is to ſay, that ſhee ſhall bee drawen and burned. Stanf. 182.

Againſt Murder, & other Felonies, they muſt pronounce the onely vſuall iudgement, of hanging till death, in both the ſeres.

Vpon ſuch as bee conuicted of treſpaſſes, contempts, riots, and ſuch other offences, whereupon no certaine forfaiture is laid by Statutes, they muſt adiudge, that they be taken and ranſomed, and ſo to ſatisfie the Queene for their offences, by making their fines: and vpon offendors againſt ſuch penall lawes as do inflict any certaine paine, they ought to adiudge as the ſtatutes themſelues do direct their courſe.

For, vppon conuiction of the firſt offence, againſt the ſtatute of foreſtalling (5. E. 6. ca. 14.) they muſt award impriſonment for two months without Baile or Mainpriſe, and the forfaiture of the value of the goods ſo had: vpon the ſecond attainder (or conuiction) ſuch impriſonment for ſix months, and the double value of the goods: & vppon conuiction of the third offence, they muſt giue ſentence that the offendor be ſet on the pillorie, and to forfait all his goods, and further to haue impriſonment of his bodye during the Queenes pleaſure. Foreſtalling.

The iudgement of rr. K. forfaited, and to ſtand openly

openly on the Pillorie all the Market time (of one, or moe dayes) is also to bee giuen vpon him that vseth Logwood, contrary to the Statute 39. El. ca. 11.

Logwood.

Against him that shall bring, or procure to be brought into any ship, any kinde of sheepe, being aliue, to be conueyed out of any the Queens dominions, they ought, (for the first offence) to adiudge, that hee shall loose all his goodes to the Queene, and suffer imprisonment by the space of one whole yere, without Baile or Mainprise: and that at the yeares ende, hee shall (in the full market of some market towne) haue his left hand striken off, and nailed vppon the openest place of such a market, 8. El. c. 3.

Conuey sheep.

Against him, that is conuicted for the vnlawfull taking or slaying of any Deere, or for such taking of any hawke, or egges of hawke (contrary to the statut, 5. E. c. 21.) they must adiudge treble damnages to the partye grieued, three months imprisonment of the bodye of the offendor, and (after that expired) to finde suerties of his good behauiour for seauen yeares after, or els to remaine in prison vntill he shall finde such suerties during those seuen yeares.

Taking of Deere or Hawkes &c.

And vpon Certificate made at the next quarter Sessions of the Peace, by two Iustices of the Peace (the one of them being of the *Quorum*) against him that shall obstinately keepe an Alehouse, contrary to the statute, (5. Ed. 6, ca. 25.) the

Alehouse.

the Iuſtices are to aſſeſſe the fine of xx. ſhillings: the which I do purpoſely rehearſe, becauſe they are there warranted to aſſeſſe the fine, without proceſſe firſt made againſt the offendor, vnlike to the common order of aſſeſſing fines, as you ſhall ſee when I come to that matter.

It were more labourſome, then profitable, to runne ouer all the diuers Iudgements that Statutes do appoint, and it may ſuffice in this place to haue giuen this taſte of theſe, and therefore I will in hand with Execution.

Of the Proceſſe for the Fine of the *Queene*, and of the aſſeſſing thereof: and of Eſtreating for the *Queene*.

Cap. xvi.

Seeing that Execution is but a performance of the Iudgement, I ſhall not neede to make long enumeration of the ſorts of executions, which are within the power of the Iuſtices of Peace. For, beſides that by the knowledge of the one, the other is known alſo, the Iuſtices of the peace themſelues haue in many caſes perfourmed their duety in both, when they haue in the one pronounced that which is due to the offendor.

Howbeit, foraſmuch as that which they are to do by way of Execution, offreth profit, either to

Execution for the Queene.

to the Queen, or to her ſubiects: and that which pertaineth to the Queene, is wrought about, either mediately, firſt by Proceſſe (or Impriſonment) for the Fine: then by Aſſeſſing of the fine: and laſtly, by Eſtreating the ſame: or elſe immediatly, by Eſtreating of the penaltie and forfaiture: I will firſt beſtow a few wordes vpon the Fine and Eſtreats for the Queene, & then ſpeake of the benefit that belongeth to the ſubiect.

Where the Conuiction is for Treſpaſſes againſt the Peace, Riots, and ſuch other Contempts and offences againſt the Commiſſion or Statutes, for the which no certaine Fine is appointed: there (as you haue ſeene alreadie) the iudgement is, That the partie ſhall bee taken to ſatisfie the Queene for her Fine. And thereupon, the *Capias pro fine*, and (if the party cannot bee found) other Iudiciall Proceſſe goeth out, till he be Utlawed: vnleſſe it be in a verie few caſes where (by the words of the Statutes themſelues) they may proceede to aſſeſſe the Fine in the abſence of the parties, without calling them to it by any Proceſſe: for ſo it ſtandeth in the ſtatute of Alehouſes, 5. E. 6. cap. 25. (as I told you euen now) and in the ſtatute of Highwaies, 5. El. cap. 13.

But if the party bee brought in, then is hee a priſoner, and then are the Iuſtices of Peace (by their diſcretion) to aſſeſſe the Fine, and to eſtreat it, and deliuer him.

For

For in no case (as I take it) can they of themselues leuie any Fine or forfeiture, due to the Queene: insomuch as not they, but the Shirife is accountant for all such matters.

The imprisonment that I speake of, is only to the ende that the Queene may haue the Fine: and therefore, vpon the payment thereof (or vpon pledges found by Recognusance to pay it) the offender ought to be deliuered, 2. Mar. Brook Imprison. 100. Imprisonment.

Hereof also the Fine tooke first his name, of the Latine *Finis*, because it maketh an end with the Queene, for the imprisonment laid vpon the offence committed against her law.

And in that respect chiefly, doth it differ from an Amercement: For when the offendor hath not so deepely trespalled, that thereby hee deserueth any bodily punishment at all (as if hee bee *nonsuit* in an action, or doe commit any such like fault) he is said to fall into the kings Mercie, because he is therein mercifully to be dealt with. Difference betweene Fine & Amerciament.

And by the Great Charter (cap. 14.) that Amercement and summe of money, which he is to pay for the same, ought to be assessed and affeered by the good & lawful men of the neighbourhood, which also Glanuil lib. 9. c. 11. affirmeth to haue been the Law of the land long before that time, saying, *Misericordia Domini Regis est, qua quis per inramentum legalium hominum de vicineto, eatenus amerciandus est, ne aliquid*

quid de ſuo honorabili contenemento amittat.

But where the offence or Contempt falleth out to bee ſo great, that it aſketh the impriſonment of the body it ſelfe, and that during the Kings will and pleaſure: then is the party to redeeme his libertie with ſome portion of money, as he can beſt agree with the king, or his Juſtices, for the ſame: which compoſition, is properly called his Fine, or his Raunſome, and in Latine *Redemptio*, as may bee plainely ſeene by the ſtatute of *Marleb.* 52. H. 3. ca. 1. 2. 3. & 4. and by the ſtatute called Ragman, and diuers other ancient ſtatutes. Where (by the way) it ſeemeth by the property of the worde *Redemptio*, that the party offendor ought firſt to be impriſoned, and then to be deliuered (or ranſomed) in conſideration of his Fine.

Alſo wheras any ſtatute ſpeaketh of Fine and Ranſome both, (as 38. E. 3. c. 9. and others doe) it is taken, that the Ranſome ought there to bee at the leaſt treble ſo much as the Fine. Collect. Dyar. 232.

But nowe of latter time, the Juſtices themſelues haue in ſome caſes of Amerciaments alſo, vſed to aſſeſſe and rate the ſame without any other helpe: As where the officers of their Courts haue offended, 33. H. 6. 54. 34. H. 6. 20. & Lo. 5. Ed. 4. 5. which alſo ſeemeth to make another difference betweene the two wordes. But becauſe neither of theſe be ſtrictly obſerued, either in cõ-

mon

mon ſpeach, or in the vnderſtanding of the latter Statutes, I will no longer ſtand vpon it.

Now therefore, if the offence be Fineable, by generall words onely, without ſpeaking of any Fine, or without ſhewing by whome the Fine ſhall be aſſeſſed (for ſo it is comonly in the elder ſtatutes that do prohibite any thing to be done) there ẏ aſſeſſement therof belongeth to the Iuſtices before whom the Cõuiction is lawfully had. *Fine by diſcretion of the Iuſtices.*

Again, if it be Fineable by theſe (or ſuch like) words, At the Kings will, or At the Kings pleaſure (as you ſhall find it in many ſtatutes) then alſo the ſame Iuſtices (before whome the Conuiction was) ſhall aſſeſſe the Fine at their willes and pleaſures: For (ſay the Bookes 2. R. 3. 11. & 18. H. 8. 1.) the King (in all ſuch caſes) vttereth his owne will and pleaſure, by the mouths of his Iuſtices.

And yet ſome ſtatutes (vſing plainer ſpeech) do namely refer the Fine to the diſcretion of the Iuſtices of Peace.

For they may (vpon conuictiõ had before thẽ) ſet fine by their diſcretiõ vpon ſuch as take Salmons, or deſtroy ẏ frie of fiſh in riuers, againſt ẏ ſtatutes, W. 2. c. 47. 13. R. 2. c. 19. & 17. R. 2. c. 9 *Deſtroy the frie of fiſh.*

And as this is ſaid of the fine, ſo ſundry ſtatutes do giue the ſame power to ẏ Iuſtices of peace, in the executiõ of ẏ corporal punihment it ſelf: as you haue already heard in the caſe of counterfeiters of falſe letters or tokẽs, ẽ may read in other the

the ſtatutes at large. For, I labour to bee ſhort, and therefore I giue but an allay of each thing, knowing that theſe Iuſtices will not proceed to the execution of any ſtatute, without the ſight of the ſtatute it ſelfe, howſoeuer they ſhould find it alleaged by me.

And in theſe caſes (euen as in caſes of Amercements) the Iuſtices ought to take heede, that the Fines be reaſonable and iuſt, hauing regard to the quantity of the treſpaſſe, and to the cauſes for which they be made, as it is commanded by the ſtatute. 34. Ed 3. cap. 1.

Fine to be aſſeſſed openly.

But this Fine (or paine) awarded by the diſcretion of the Iuſtices of Peace, ſhall doe the more good, both to the Prince in profite, to the people in example, & to the Iuſtices themſelues in credit, if it be pronounced at the Bench openly (as it ought to bee) and not ſhuffled vp in a chamber (or corner) ſecretly, as in ſome places it hath beene vſed to be.

Mitigation of the forfaiture of a ſtatute.

I haue heard, that euen in caſes where the ſtatutes doe appoint a certaine forfeiture (as fiue pounds, or ten pounds, &c.) yet the practiſe is, to mitigate the ſame by diſcretion, if ſo bee that the partie will come in vppon the Enditement, and put himſelfe *in gratiam Regine*, (with, or without confeſſion of the fault, as I haue told you before) ſo that the Fine ſhalbe ſmall, where the fault was great, and the penaltie of the law it ſelfe not ſmall.

But

But this maner of doing is (in my minde) ſo voyd of ſound reaſon, that I cannot recommend it to the Iuſtices of Peace, but doe rather condemne it as a mockerie of the law. Yea, I find that ſundrie ſtatutes (fearing belike ſome ſuch thing) haue ſpecially preuented it, commaunding that Iuſtices of the peace ſhal aſſeſſe no leſſe Fine, then is in thoſe ſtatutes themſelues before hand appointed.

Such is the ſtatute, 17. E. 4. cap. 4. of Tiles: the ſtatute 33. H. 8. cap. 6. of croſſebowes and handgunnes: and the ſtatute 5. E. 6. cap. 25. concerning Alehouſes: & ſuch other may bee found, if the bookes of ſtatutes be well peruſed.

And although it may ſeeme good huſbandrie, to take ſuch a Fine by a maner of confeſſion before conuiction, rather than to hazard the loſſe of all the profite that may come to the Queene thereby (as indeede that muſt enſue, if no conuiction be had) yet who ſeeth not, that the other way is much more ſeruiceable, and that this is but to looke thorow the fingers (as we ſay) and to ſtrike or flap at a fault with a Fore taile, and none other.

But hitherto we haue not ſufficiently perfor- Eſtreting for the Queene.
med that, which the Commiſsion of the Peace hath in theſe words, *Saluis nobis amerciamentis, & aliis ad nos inde ſpectantibus:* and therefore, it is not enough to haue aſſeſſed the Fine, but wee muſt alſo diſcloſe the meanes by which, as well

this Fine (that is reduced to certainty by the discretion of the Iustices) as all other Amerciaments, and those other penalties and forfeitures also that are certainely prefined by words of the Statutes, may bee leuied and brought into the Queenes coffers.

Order was taken by an auncient statute (intituled *de Scaccario*, and noted to be made 51. H 3) that al Iustices, Commissioners, and Enquirers whatsoeuer, should deliuer into the Eschequer (at the feast of S. Michael yearely) the extracts of fines and amerciaments, taxed & made before them, that the king might be duely aunswered thereof. And the same (in effect) was afterward confirmed by an other Statute, entituled, *De forma mittendi extreta ad Scaccarium*, which although it be said to be made 15. Ed. 2. yet, forasmuch as it mentioneth that the former statut was made in the time of the father of the same king which made the latter, it must needs be, that either the one or the other of them was made in the time of king Ed. 1.

No doubt, but this ordinance doeth extend to the Iustices of peace, as a man may easily gather by words in the statute of Labourers, 5. El. ca. 4. and by the act of Sewers, 13. El. c. 9. & other statutes: But because it is verie generall, and hath nothing peculiar vnto them from other Iustices, I will discend to lower times, & looke there for neerer helps.

The

The ſtatute 12.R.2.cap.10. had allowed to euery of eight Iuſtices of the Peace foure ſhillings by the day, for the time of their Quarter Seſsions, to be paied (by the hands of the ſherif) of the Fines and Amerciaments comming of the ſame Seſsions. But, becauſe it was ſoone after ſeene, that it was a great delay to the Iuſtices of peace in this paiment, to expect the leuying of theſe fines & amerciaments by Eſtreats, firſt ſent vp to the Eſchequer, & then deliuered thence to the Sherife (which was at that time the common manner of leuying fines and amerciaments) therefore it was within two yeares after (*viz.* 14.R.2.cap.11.) prouided, that the Eſtreats of the Iuſtices of Peace ſhould bee indented (or doubled) and the one part thereof deliuered by them to the Sherife, to the intent that he may leuie the money thereof riſing, and pay the Iuſtices their wages by indenture between him and them to be made, and the barons of the Eſchequer may charge and allow him vpon the making of his account accordingly.

And hereby (as I thinke) the Eſtreates of the Iuſtices of the peace be now an immediat warrant for the Sherife, to leuie, not onely the fines and amerciaments, but alſo all other Iſſues, Penalties, Loſſes, forfeitures, and Summes whatſoeuer, ariſing before them: for the words of the ſtatute are generall, The money thereof aryſing: and therefore, whatſoeuer ſummes

are to be eſtreated into the Eſchequer, the ſame are alſo to be leuied by the Sherife.

Such order did the ſtatute take (33.H.8.ca. 10.of the fire weekes Seſsions) for the leuying as well of fines and amerciaments, as of paines, loſſes, & forfeitures of money: ſo did the ſtatute of Tillage (2.& 3.Phil.& Mar.ca.2.) by way of admittance rehearſe, that Iuſtices of the Peace may make out proceſſe for the leuying of fines and forfeitures before themſelues. So doth the ſtatute of Cotages, 31.El.ca.7.appoint, & ſo are the Eſtreats made, (for the moſt part) & the fines and forfaitures thereby leuied at this preſent time, if I be not deceiued.

And theſe are properly called Eſtreats, of the word *Extracta*, becauſe they bee ſhort notes (or Memorials) extracted or drawne out of the records, by the clarke of the peace, & by him inden- ted & deliuered ſunderly to the ſherife, and to the Barons of the Eſchequer, bearing this (or the like, title) *Extract. finium & amerciamentorum forisfactorum, ad generalem Seſſionem pacis tentã apud Maidſtone, &c. coram, &c.* For the whole forme of the making wherof, there is ful direction giuen to al Clarkes of Eſtreats by the ſtatut 7.H.4.cap.3. Whereunto I referre them.

Iuſtices of the Peace ought to haue care of eſtreats

Howbeit, I do not thinke, that in our caſe this duety of eſtreating is ſo peculiar to the Clarke of the peace, but that the Iuſtices of the Peace themſelues, ought alſo to haue a cõmon & care- full

full eye vnto it: For (if you remember) it is both ſpecially prouided for in the commiſſion, & alſo an article of their oath, to ſee vnto the faithfull entrie and certificat of the Iſſues, fines, forfeits and amerciaments, that do happen before them. And therfore, it were well done (in my opinion) if the Iuſtices would, by Turne (or otherwiſe) both take knowledge of things that haue paſſed before them, and alſo take order that the ſame be certified accordingly: leaſt otherwiſe it lie altogether in the power of the Clarke of the Peace to ſaue or ſlay (as one ſaid) the Sparrow that he holdeth cloſed in his hand.

Of Executorie Proceſſe, and execution for the parties that ſue, or for other perſons: and of reſtitution of goods ſtollen.

Cap. xvii.

Albeit that the Iuſtices of Peace haue this power, to make warrant for leuying the amerciamēts, fines and other forfeits that grow vnto the Queene by their ſeruice: yet is it commonly thought, that they may not (but in ſome caſes onely, and that by ſpeciall ſpeech of the ſtatuts) make execution (either for him that will ſue, or for any other) of ſuch part of the forfaiture, as the law doth affoord them.

For, moſt commonly the partie that will ſue, Apparel.

is put to his Action at the common law, for recouerie of that which hee is to haue: as, for his moitie of a forfeiture against the statute 24.H 8.ca.13.of apparel,he is perhaps driuen to this Action of Detinue:for his moitie growing vpon conuiction of any offence,contrary to the statut 13.El.c.14.concerning bringing ouer of Bowstaues,or contrary to the statute of Musters,4.& 5.Ph.& Mar.ca.3. he is to commence his Action(or Bill)of Debt:and so of sundry others,that are each where to bee found. But where they haue power,either by their commission,or by any statute, to heare and determine any cause at the suite of a priuate person,I do not see how the cause can well be said to be fully determined,til the complainant hath had the effect of his suite, which cannot be without execution.

Bowstaues.
Musters.

Forestallers. Doubtlesse,by special prouision,made in the statute 5.Ed.6.cap.14.against Forestallers,the Iustices of the peace may make execution of the one moity of the forfeiture for him that sueth, by *fieri facias*,or *capias*,as the Queenes Iustices at Westminster vse to do.

Armour. The like power in like words haue they, for leuying the moitie of any forfeiture against the statute of Armour, made 4.& 5.Phil.& Mar. cap.2.or against the statute (made 5.Eliz,cap. 12)concerning Badgers,Drouers &c.and their licences.

Liueries. For the moity growing to the Informer vpon the

the ſtatute of Liueries, (8.E.4.ca.2.) they ſhall make ſuch execution, as ought to bee had in recouerie of Debt or Treſpaſſe, at his own pleaſure.

They may alſo award execution for the partie that ſueth vpon the ſtatute of Flax & Hempe 24.H.8.ca.4. by ſuch Proceſſe as to them ſhall ſeeme by their diſcretion. Flaxe and Hempe.

And the Eſtreats (made by the Clearke of the peace) of forfeits for defaults of amending highwaies, are a ſufficient warrant to the Conſtables to leuy the ſame by Diſtreſſes, to the vſe of the Churchwardens of the Pariſh where the default was, towardes the amendment of the ſaide waies, 2. & 3. Phil. & Mar. cap. 8. & 5. El.ca.13. Highwaies.

And likewiſe the Eſtreats of the Iuſtices of Peace (of any fines aſſeſſed by them vppon preſentments in the Sherifes Turne) being inrolled, indented, and deliuered to the Sherife, are a good warrant vnto him to leuy the ſame to the vſe of him that was Sherife at the time of ſuch preſentments taken, 1. Ed.ca.2. Sherifes Turne.

So, many Iuſtices of the Peace awarde proceſſe of Execution, for leuying the forfeitures, vpon offences againſt the ſtatute 27. El.cap.7. of Iſſues loſt by Iurors. Iſſues.

So may they in like maner award execution by *fieri facias*, and *Capias*, of two third parts of the forfaitures (the one for the complainant, & Tillage.

the other for the poore) by the ſtatute of Huſbandry and Tillage, as the Iuſtices at Weſtminſter vſe to doe, 39. Eliz. cap. 2.

Periurie. So, vpon the ſtatut of Periurie, 5. El. ca. 7. 9. vpon the ſtatute, 5. Ed. 6. cap. 4. for drawing of

Striking. weapon to ſtrike in Church or Churchyarde. And peraduenture ſearch will affoord you ſome moe examples: but theſe may ſuffice for my deſire, which is not (in this, or any the like) to recount all, but to make good proofe of that which I offer and propound, the rather that the Iuſtices and Clarke of the Peace, may thereby take occaſion to looke vpon the Booke, whenſoeuer execution is praied for any cauſe, depending before them vpon whatſoeuer Statute.

Reſtitution of goods ſtollen. And becauſe the awarding of reſtitution of goodes ſtollen to the owner, or partie robbed, (after the attainder of a Felon by reaſon of the euidence giuen by them) is a maner of execution for the partie: I may without violence bring hither the effect of the Statute made vpon that point, and lying within the authoritie of Iuſtices of the Peace which ſtandeth thus. If any Felon of goods, money, or cattels (taken from any of the *Kings* ſubiectes) bee indited, arraigned, and found guiltie thereof, or otherwiſe attainted, by reaſon of *Euidence*, giuen by the partie robbed, or the owner of the ſaide goodes, money, or cattels, or by any other by their procurement: Then ſhall ſuch

partie

partie or owner be reſtored thereunto: and the Iuſtices (before whom ſuch finding guiltie, or ſuch attainder ſhall be) ſhall haue power to award Writs of Reſtitution therefore: 21. Hen. 8. cap. 11.

Of certifiyng the Recordes of the *Seſſions* of the Peace, to other Courts or Officers.

Cap. xviii.

AS we haue already manifeſted, that Iuſtices of the Peace haue not a ſufficient and thorow power (of themſelues) to heare and determine all cauſes whereof they haue in their Seſſions authoritie to enquire: So alſo bee there ſundry things determinable before them there, which neuertheleſſe may (in ſome reſpects) be brought to a ſecond handling: either to the end to reuerſe that which they haue done, or that their doinges may bee an euidence and teſtimonie in the triall of cauſes before other Iudges.

And becauſe this cannot in any ſort be performed, without the preſence of thoſe former Records (or the tranſcripts thereof) which began with the Iuſtices of the Peace: it is therefore requiſite, that they doe make Certificate of them vnto thoſe other Courts, or officers that ſhall be intereſſed to vſe the ſame.

But,

But, as this Certificat ought in ſome caſes to be made by the Iuſtices of the Peace, (or their Clarke) without any Writ of *Certiorari*, therefore directed: and in ſome other caſes they may ſpare to Certifie, vntill that Writ (or ſome other commaundement) bee brought vnto them: So alſo ſometimes they are to certifie and ſende vp onely a Tenor (or Tranſcript) as I ſaide, of the Record before them: and ſometimes the very Recorde it ſelfe muſt bee conueyed from them.

Certifie without the Writ of Certiorari.

The Clark of the peace muſt (vnder the pain of forty ſhillings) certifie into the Kings Bench, a true Tranſcript of euery Attainder, Vtlawrie, and Conuiction (had before Iuſtices of the peace in any place, except *Wales*, *Cheſter*, *Lancaſter*, and *Durham*) within fortie dayes after, if it be then Terme: and if not, then within twenty dayes after the beginning of the next Terme: that the ſame may there alſo appear of Record, to be vſed vpon cauſe as that Statute hath appointed.

And he muſt alſo deliuer to the Ordinarie, a Tranſcript of Clarkes conuicted or attainted, before the ſaid Iuſtices, 34. H. 8. cap. 14. But enquire whether this laſt be needefull at this day, by reaſon that Clarks be not now deliuered to the Ordinarie, by the Statute. 18. El. ca. 7.

And if a principall bee attainted of murder, or Felonie in one Countie, whereunto another is acceſſa-

acceſſarie in any other Countie: then vpon writing from the Iuſtices of Gaole deliuerie, or Oyer, and Terminer, to the *Cuſtos Rotulorum*, (where ſuch principall is attainted) he muſt certifie in writing vnder his Seale to the ſaid Iuſtices, whether ſuch principall be attainted, or otherwiſe diſcharged, or not: that they may proceede thereupon to the triall of the Acceſſarie, 2 Ed. 6, ca. 24.

But, in caſes where Iuſtices of the Peace haue power to receiue Enditements, and no power to proceed any further vpon them (whereof you haue already the examples, in the ſeuenth Chapter of this preſent booke) there they ought to ſend vp and certifie the Enditementes themſelues, and that of dutie (as I thinke) without any *Certiorari* commanding the ſame: becauſe, hauing none authoritie to heare and trie the offences, the Recordes thereof ſhall bee vnprofitable before them: and therefore they can haue no iuſt cauſe to retain them, & yet (for the more ſuerty) it is ſpecially commaunded (by 5. El. ca. 1.) that they ſhall certifie the preſentmentes of ſome offences againſt that Statute.

And ſo, if a man bound to keepe the Peace doe make default of apparance at the nert quarter Seſſions: the Recognuſance it ſelfe (together with the Record of that default) muſt bee certified into the Chaunceric, Kings Bench, or Exchequer, that execution vppon the Recognuſance

ſance may be had there, 3. H. 7. ca. 1. and ſo ought it (as I thinke) if it be preſented, that the party hath forfaited his Recognuſance by breach of the Peace: And likewiſe, if it bee preſented before them, that the chattels of a man attainted of Felonie, bee in the hands of another, For, in theſe and ſuch other caſes, where they cannot of themſelues proceede, they ought to ſend the Recordes to ſuch as haue authoritie to determine vpon them: and otherwiſe, they do not diſcharge that duetie, which the words *Saluis, &c. & aliis ad nos inde ſpectantibus*, in the Commiſſion doe ſeeme to expect at their hands. The abiuration of a Seditious Sectarie, being made in the open Quarter Seſſion of the Peace, ought to be certified from thence to the Iuſtices of Aſſiſe at the nert Aſſiſes, 35. El. ca. 1.

Abiuration.

Furthermore, the ſtatute of Purueyours (2. & 3. Phil. & Mar. ca. 6.) doth appoint the Iuſtices of the Peace, to certifie to the Treaſurer of the Queenes houſhold, the Dockets of Purueyors (brought to their Seſſions by Conſtables) that the ſeruing of ſuch Commiſſions, and the true anſwering of purueyances may be the better examined thereby: and although it may bee doubted, whether theſe be Recordes, or no, yet for that they are to bee certified from the Seſſions of the Peace, I ſticke not to affoord them this place. And if you will alſo repute in this number, the Licences (and ſuch other actes of that

that kinde) which paſſe at the Seſſions of the Peace, I will not be againſt it.

Touching the *Certiorari*, it is of force (if it be made accordingly) to remoue not onely Enditements, or other executorie Records, wherein the Iuſtices of Peace can goe no further, (& whereof I haue ſpoken already) but alſo the Records of cauſes, fully and lawfully heard and determined by thē: to the end that they may be reuerſed and adnulled in the Kings Bench, if good matter and cauſe do require it. Certiorari.

For, that preheminence hath the Kings Bench, as you may ſee by proofe: yea, all other the higher Courts, may write to the Iuſtices of Peace, to certifie their Recordes that doe make for the Trial of cauſes hanging in them, as you may reade 19.H.6.19. where they of the Common Place did ſende to the Iuſtices of Peace for an Enditement, becauſe in a Writ of Conſpiracy, (brought before them) it was materiall to haue it.

And yet, neither they of the Common Place, nor Kings Bench, doe vſe to write for Enditementes, or ſuch other Records, vnleſſe they bee thereunto induced by cauſe hanging in their owne Courts before them: For otherwiſe the right way to remoue them, is by *Certiorari* out of the Chancerie, from whence they may bee tranſferred (by *Mittimus*) to any other Court, 41 lib. Aſſ. Pla. 22. Knyuet chiefe Iuſtice.

Howbeit,

Howbeit, a man may gather vpon the booke (1.R.3.4.) that if any Record bee sent vp without warrant to such a higher Court, they may there proceede vppon it: because it is thereby made a Recorde in that Court: and that Court is the Court of the Queene, as well as the other.

Of the generall, (or Quarter) *Sessions* of the Peace.

Cap. xix.

WE haue hitherto laboured, and at the length run ouer, sundry things (which in the opinion of some men) bee common to all sessions of the Peace: And yet, because there be also certaine matters (as it seemeth to mee) appropriated, some to any, and others to some one, of the generall sessions: it remaineth that wee now distinguish the sessions of the Peace, and enter into consideration, what is a generall, and what a speciall session.

The generall Sessions.

The generall sessions of the Peace be those, which are prouided for the generall execution of the authoritie of the Iustices of Peace, whether you respect the limits of the place, within their Commission, or the bounds of power proceeding from the Commission and Statutes. For at these sessions (as saith M. Fitzh.) generally all

all things ought to be giuen in Charge that doe lie within the authoritie of theſe Iuſtices to bee determined.

Theſe be moreouer called the Quarter ſeſſions, becauſe they bee holden Quarterly or foure times in the yeare: and the Statute (4. Hen. 7. cap. 12.) termed them principall ſeſſions, for that in them chiefly the power of Iuſtices of the Peace doth ſhine and ſhew it ſelfe: in which reſpect 27. Eliz. cap. 19. and ſome other Statutes doe giue them the name of open ſeſſions alſo.

But wee ſhall not neede to dwell vppon the names, whereof there can bee no great controuerſie, ſeeing that they all do aime at one marke: yea rather becauſe theſe generall ſeſſions bee at this day diuerſly ſummoned, begun, and continued, in diuers parts of the Realme, it lyeth fitly in my way, to make examination of that diuerſitie in this doing.

For (to begin with the Summons) the manner is (in ſome ſhires) to ſummon yearely ſixe ſtanding Seſſions of the Peace: in others 8. in others 12. or 16. and in others otherwiſe. All which is done, chiefly vpon pretence to eaſe the inhabitants of the County, for whom it would otherwiſe be very painfull to trauel ſo often and farre, from all the parts of the Shire to any one place of the ſame. How many Seſſions.

And therefore, ſuch as doe maintaine 6. or 8. ſeſſions,

Seſſions, doe vſe to ſummon all the whole Shire to a couple of them, and to the reſidue they call onely ſuch parts of the Shire, as they doe there ſpecially appoint: But yet ſo, that (vpon the reckoning) each corner of the Countrey giueth attendance at foure ſeuerall Seſſions: which alſo falleth out accordingly in thoſe ſhires where they haue 12. or 16. Seſſions.

For albeit that they doe not at any one time ſummon the whole ſhire to any one place (as the others do) yet deuiding their ſhire into three or foure parts, and keeping foure ſeuerall Seſſions in each of thoſe parts, they alſo (as well as the other) doſerue their whole Country with foure ſundry ſittings. And therefore (in mine opinion) although none of theſe do follow the preciſe letter of the law (which requireth but onely foure quarter Seſſions in any ſhire) yet euery of them draweth neare to the true meaning of the Law, which looketh for nothing els but that the Court of theſe Seſſions ſhould yearely be foure times opened for the whole Countie.

But if there be any that do (for this purpoſe) diuide their ſhires into halfes, and do hold onely foure Seſſions in the yeare, that is to ſay, two in the one part, and two in the other, calling the one halfe of their Hundreds to thoſe two Seſſions at the one place, and the other halfe to the other two ſeſſions holden at the other place: theſe men (as ſome haue thought) doe neither retaine

the

the letter, nor attaine the meaning of the law, in this doing. For vpon the maner, no part of their ſhire hath any mo thē 2. Seſsions: which maner, who ſeeth not how much it may hinder Iuſtice?

I remember I haue read, that amongſt other the deſires of thoſe that accompanied Iacke Cade to Blacke-heath in Kent, this was one: that (for ſauing of labour) the Quarter ſeſſions might bee holden in two ſeuerall places of that ſhire: and it is very likly, that therupon the ſame were firſt kept interchangeably at two ſundrie townes. But, howſoeuer for the time it was thought good in a ſort, to yeeld to that importunitie of the common people: yet can ther no good reaſon be rendred, that the Seſsions ſhould bee now continued in the maner as they are.

For, if any will ſeeke to ſalue it, in ſaying, that they doe call the Conſtables of the whole ſhire to euery of thoſe Seſsions: yet they can not ſo eſcape: becauſe both reaſon it ſelfe, and their own experience herein doth informe them that it is likly, they ſhal haue mo preſentments, wher moe perſons (that can preſent of their owne knowledge) be aſſembled, & doe take the charge vpon them.

Beſides al which, theſe men do not bring eaſe, but trauel & delay to their country men: whome (by this meane) they doe compel, either to go far (out of one part into an other) to haue a fault puniſhed, or elſe to tarrie for helpe till a Seſsion

ſhal be kept in that quarter where they inhabit.

Neither may I well omit, that this doing may breede daunger to the Iuſtices themſelues, whileſt any of them (hauing taken a Recognuſance of a Tipler) doth not certifie it vntill the Seſsions happen to bee in his owne part, and in the meane ſeaſon, the next Seſsions of the peace (within the ſhire) chanceth to be holden in the other part: whereof what may follow, the ſtatute 5. E. 6. cap. 25. will tell you, and teach them. And like fault is it (though not like forfeit) ſo to retaine a Recognuſance taken for the Peace, as you may ſee by the ſtatute 3. H. 7. cap. 1.

The times of holding the Quarter Seſsions.

Thus much of the ſummons (or number) of the quarter ſeſsions: Now followeth the time in which they ought to bee holden: about the which alſo all counties do not agree: and therefore, it ſhalbe good (before other things) to peruſe thoſe ſtatutes, which doe (either in deede, or ſhew) concerne this point.

The ſtatute 25. Ed. 3. cap. 8. ordained thus: Item, that the ſaid Iuſtices make their ſeſsions in all the counties of England, at the leaſt foure times in the yeare, *viz.*

At { The Annunciation of our Lady:
Saint Margaret:
Saint Michael: and
Saint Nicholas.

The

The ſtatute 36. Ed. 3. cap. 12. ſaith, That the Commiſsion of the Peace ſhall make mention that the ſeſsions ſhall be holden thus.

- Within the *Vtas* of the Epiphanie,
- Within the ſecond weeke of Lent.
- Betweene Pentecoſt and Midſummer.
- Within the *Vtas* of Saint Michael.

The ſtatute 12. R. 2. ca. 10. doth afterward ſet the matter at libertie, ſaying, They ſhall hold their ſeſsions in euery quarter of the yeare at the leaſt. But they of Middleſex be excepted by 14. H. 6. cap. 4.

Laſtly the ſtatute 2. H. 5. cap. 4. doth reduce the times to certaintie againe, ſaying thus:

Ouer all the realme the *Seſsions* ſhall be.

In the firſt weeke after
- Saint Michael.
- The Epiphanie.
- The clauſe of Eaſter.
- The tranſlation of S. Thomas the Martyr.

The firſt of theſe foure Statutes, doth (in ſhewe, and in common opinion) concerne the ſeſsions of the Iuſtices of Peace, but in trueth it belongeth not at all to them: for it was made to direct the Iuſtices of Labourers in the times of holding their ſeſsions: and they were not Commiſſioners of the Peace, but ſpeciall Iu-

ſtices for the cauſes of Labourers alone, not reſiant in the country, but ſent downe for the time of that ſeruice, as it may expreſly appeare, not onely by the preamble and all the partes of the ſaid ſtatute it ſelfe, but alſo by the ſtatutes 28. E 3. cap. 5. 31. E. 3. cap. 6. & 34. E. 3. cap. 11. during all which time alſo, the Wardens of the peace were neither called Iuſtices by any ſtatut, nor authorized to deale with Labourers. For in 34. E. 3. ca. 1. they are called Wardeins, and the firſt name of Iuſtices of the Peace by any Statute that I haue ſeene, is found 36. E. 3. cap. 12. before mentioned, where it is ſaid thus, In the Commiſſions of Iuſtices of the Peace, and of Labourers expreſſe mention ſhal be made, that they ſhall hold their ſeſsions, &c. as before. And as for the aucthoritie ouer Laborers, that was firſt appointed to Iuſtices of the Peace by the ſtatute 42. Ed. 3. cap. 6. in the fourth chapter of which ſaid ſtatut, there were certaine Commiſſions diſliked (of which I believe that of the Iuſtices of Labourers was one) and order taken, that from thencefoorth ſome of the Iuſtices of the one Bench, or other, or Iuſtices of Aſsiſe, or Iuſtices of peace with other of the moſt worthie of the Countrey, ſhould bee named in all Commiſsions of Enquirie. So that wee haue not heerein to doe with the ſtatute 25. Ed. 3. cap. 8. and may therefore proceede to examine the reſt that doe follow.

The

The next is, the ſtatute 36. E. 3. cap. 12. But neither that maketh any lawe for holding the Seſſions of the peace at this day, as wel becauſe it was ſet at large by 12. R. 2. cap. 10. as alſo (if it were not) becauſe the Commiſsions of our time vſe no ſuch mention as it commaunds.

Then come we to 2. H. 2. ca. 4. which reſtraineth the libertie of 12. R. 2. ca. 10. and reduceth the times of theſe Seſsions to certaintie againe: and yet ſo, that the one of theſe ſtatutes doth not fret the other: for the latter is an expoſition of the former, ſo that it is al one as if they both had beene but one law, and ſhould haue ſaide. That the Iuſtices of Peace ſhall holde their Seſsions in euery quarter of the yeare at the leaſt, namely, in the firſt weeke after S. *Michael*, in the firſt weeke after the Epiphanie, &c.

Now to proue that the quarter Seſſion of the Peace, were or ought to be holden after the preſcript of this ſtatute 2. H. 5. ca. 4. vntill the time of the ſtatute 5. El. ca. 4. theſe be my warrants.

Firſt, M. Marrow ſaith plainely, that in his daies the Quarter Seſsions were ſo holden.

Secondly, foraſmuch as there can be no higher authoritie of expoſition, than to conſtrue one ſtatute by an other, I will ſhew you ſome Statuts alſo that haue accounted of theſe Seſsions to be holden accordingly.

At the generall Seſsions after the feaſt of S. Michael, the *Cuſtos Rotulorum*, or (in his abſence

ſence) the eldeſt of the *Quorum*, ought to appoint two Iuſtices of the Peace for the ouerſight and controlment of the ſherifes, and their Clarkes, &c. by the ſtatute 11. H. 7. ca. 15.

And at the generall ſeſsions holden at Michaelmaſſe, the Iuſtices of Peace ought to appoint ſearchers for Bꝛaſſe and Pewter, by the ſtatutes, 19. H. 7. ca. 6. & 4. H. 8. ca. 7. where the word (At) muſt of neceſſitie bee vnderſtood for (After) whether you wil take it accoꝛding to the ſaid ſtatute 2. H. 5. cap. 4. which ſaith plainely (After) oꝛ accoꝛding to 36. E. ca. 12. which ſaith Within the *Vtas* of ſaint Michael, ſeeing that the *Vtas* (as euery man knoweth) is alwaies after the feaſt, and not befoꝛe it.

But (to pꝛooue two at once) whereas the ſtatute 27. H. 8. cap. 5. had taken oꝛder for Iuſtices of the peace to be made in Chelhire, & certain other ſhires, & had willed ỳ they ſhould be ſwoꝛne to the keeping of their ſeſſions of the Peace, &c. as other Iuſtices of the Peace in other the counties of England were, it fel out, that the gentlemen & freeholders of the Countrey of Chelhire, were much troubled by attending yearely, both at the ſaid 4. quarter ſeſſions, and alſo at 8. oꝛ 9. countie courts which they had beſides, & thereupon it was pꝛouided (by another ſtatute 32. H. 8. cap. 43. that the adminiſtration of Iuſtice (befoꝛe time vſed in the ſaid county Courts) ſhould from thencefoꝛth bee done and executed at two

times

times in the yeare only, that is to ſay, at the ſeſſons next after the feaſt of S. Michael, and at the ſeſsions next after Eaſter yearely for euer.

I might adde, that the Quarter ſeſſions in the weeke next after the Clauſe of Eaſter, was tied to the Tueſday of that weeke, by the Statute 33. H. 8. ca. 10. And that it was not without ſome graue conſideration, that the Statute 2. H. 5. ca. 4. did commaund the ſeſsions of the peace to be holden ouer all England, in one and the ſelfe ſame weeke: but I thinke it clearely enough prooued, that hitherto theſe Quarter ſeſſions ought to be directed by that ſtatute: and therefore I will deſcend to the ſtatute 5. El. ca. 4. and weigh the time in which they ought to be holden at this verie day.

The words of that ſtatute be theſe: As much of all the ſtatutes heretofore made and euery braunch of them, as touch or concerne the hyring, keeping, departing, working, wages, or order of the ſeruants, workemen, artificers, apprentices, or labourers, or any of them, and the penalties and forfeitures concerning the ſame ſhall be repealed and vtterly voide and of none effect: And that all the ſaid ſtatutes, and euery braunch thereof, for anie matter contained in them, and not repealed by this Statute, ſhall remaine and bee in full force and effect, anie thing in this ſtatute to the contrarie notwithſtanding.

Upon this Statute ſome haue thought, that the ſaid Statute 2. H. 5. cap. 4. is repealed concerning the branch of the Seſsions: and others doe thinke the contrary: and therfore let vs hold the beame, and put in ballance their reaſons on either ſide.

They of the one ſide doe alleadge, that this branch of the Seſsions lieth in the midſt of that ſtatut (2. H. 5.) which was made for Labourers, and that it was onely meant of Seſsions to bee holden for the order of Labourers, & ſo is within the words of repeale.

And they ſay alſo, that it will fall out vnſeaſonably, to hold the Seſsions (eſpecially that after Michaelmas) according to this ſtatute, becauſe the ſame happeneth very neere to that terme of S. Michael, whereat the preſence of many of theſe Iuſtices is no leſſe requiſite then at the ſeſſions of the Peace.

They on the other ſide, doe gather vppon the ſaid words of 5. El. cap. 4. that ſome parts of the ſtatutes of Labourers muſt needes remaine in force, notwithſtanding thoſe words of repeale: for otherwiſe (ſay they) the makers of 5. Elizab. might (with leſſe labour of ſpeach) haue repealed them all at once.

And therefore they ſay, that two ſtatutes of Labourers, (*viz.* 12. R. 2. cap. 3. and 23. H. 6. cap. 13.) be yet in force, for ſo much of them as doth concerne Victuallers: and likewiſe, that ſo much

much of this ſtatute, 2. H. 5. c. 4. as doth concern the reſiancy of thoſe Iuſtices of the peace which be named of the *Quorum*, and the holding of the Quarter Seſſions, is vnrepealed alſo: for that they concern not the hiring, keeping, &c. or order of ſeruants &c. (which might be done without the Seſſions of the peace) but the generall ſeruice of the Commiſſion and ſtatutes that do authorize the Iuſtices of Peace, whereof alſo theſe Seſſions be called the Seſſions of the peace.

And it is not new (in their opinions) to find a generall ordinance in a particular ſtatute: as in the ſtatute 38. H. 8. ca. 39. made ſpecially for the erection of the Court of Surueyors, there is a generall lawe, that all obligations concerning the Kings commoditie, ſhall be made to himſelf by the words *Domino regi, &c.*

Neither was there euer (ſay they) any quarter Seſſions holden (onely for the cauſes of Labourers) by the Iuſtices of Peace, although the petite Seſſions of Conſtables were chiefly bent to that ſeruice.

And that the ſaid ſtatute 2. H. 5. did meane the very Seſſions of the peace, and no other, they offer to proue by the authoritie of thoſe ſelfe ſame Statutes, which be alleaged alredy for the holding of the Quarter Seſſions, vntill the time of this Act of Queen Elizabeth, for that they haue heretofore ſo conſtrued and taken the ſtatute.

But to make the proofe full, they adde, that euen

euen this same statute of repeale, 5. El. ca. 4. doth in a certaine place therof speake of the Quarter sessions to be holden after Easter, which cannot be vnderstood of any other of those statutes concerning the Sessions, but onely of 2. H. 5. cap. 4. because the rest (that haue certaintie) do appoint that session, either at the Annunciation of the blessed Virgine, or in the second weeke of Lent. And likewise that the statutes 8. El. c. 9. concerning the prices of vessels, of Sope, Ale, & Beere: and 14. El. cap. 5. and 18. El. cap. 3. concerning poore people and vagabondes, haue mention of the Quarter sessions, to bee holden next after Easter. Which Statutes, as they make not (in this point) any new Law, but be grounded vpon former Law, supposed to be in force: So allowing of any one of these foure Sessions, they doe therin giue allowance of all the other three also.

For answere to the obiection, of the neernes of the Michaelmas sessions, to the Michaelmas Terme, they say, that this was foreseene to the makers of that Statute, 2. H. 5. who do therein dispense with the absence of the Iustices of the Benches at *Westminster*, the Barons of the Exchequer, &c. And yet, to the ende, that they also might once in the yere be present at a session of the peace (for the better direction of that seruice) the statute 33. H. 8. ca. 10. did specially appoint, that the Easter sessions should bee holden yerely vpon the Tuesday next after Low Sunday,

day, in euery ſhire of the Realme.

Nowe, if it ſhall ſeeme to any man a ſtraunge thing, that I mooue queſtion of the time of holding theſe ſeſſions: I let him knowe, firſt, that it is one of the Articles of the Oath, miniſtred to the Iuſtices of Peace, that they ſhall holde their ſeſſions after the fourme of Statutes thereof made.

Secondly, that the articles of many ſtatutes, are inquirable (as it may ſeeme) onely at the Quarter ſeſſions: becauſe they are not in the Commiſſion at all, and the ſtatutes themſelues doe appoint of none other Inquirie touching them, but at the Quarter ſeſſions alone: and then, if the Iuſtices of Peace doe not hold their Quarter ſeſſions according to the times appointed by Lawe, they be no Quarter but Speciall ſeſſions, and conſequently, ſuch Statutes ſhall either not bee enquired of at all, or elſe enquired of without warrant, both which be very great inconueniences. So, that this matter (if it be not rightly conceiued,) tendeth both to the hurt of the conſcience, and to the hinderance of this ſeruice. And therfore it is to be wiſhed, that as the oath of the Iuſtices of Peace is one ouer all, and the ſeruice ought eche where to be alike: So it might be made knowen, either by declaration of theſe old lawes, or by ordaining of one new what ought to be vniformely done and followed in this behalfe.

Touching

How long the Quarter Seſſions ſhall continue.

Touching the continuance of theſe Quarter Seſſions, I haue ſhortly but this one thing to ſay: that almoſt two hundred yeres agoe, it was ordained by Statute (12.R.2.ca.10.) that they ſhould bee continued three dayes together (if neede were) vpon paine of puniſhment: And yet in theſe dayes of ours, wherein the affaires of the ſeſſions be exceedingly increaſed (and conſequently, more need to prolong them now, than before) many do ſcantly afford them three whole houres, beſides that time which is ſpent in calling of the Countrey, and giuing of the charge.

Things referred to the Quarter Seſſions.

But it is nowe more than time that I deſcend to ſome of thoſe ſtatutes, which do ſpecially relie vpon the Quarter ſeſſions: and therfore I will firſt beginne with ſuch as haue reference indifferently to any of them.

Pope.

The Iuſtices of Peace may in their open Quarter Seſſions, enquire of, heare, and determine, all offences (except treaſon, and miſpriſion of treaſon) committed againſt the Act made (23.El.cap.1.) for retaining the Queenes ſubiects in their due obedience.

Pope.

They may alſo in their open Quarter Seſſions, inquire of ſuch as doe extoll the vſurped authoritie of the ſea of *Rome* againſt the ſtatute 5. El.ca.1. And the Clarke of the Peace muſt read that Act at euery of the Quarter Seſſions.

Act read.

Seditious words.

And they may in their generall (or Quarter) Seſſions, enquire of ſeditious words & rumours vttered

vttered againſt the Queenes Maieſtie, 23. Eliz. cap. 2.

All the Articles, mentioned in the ſtatute (33. H. 8. cap. 10.) ſhalbe enquired of, and reformed by the Iuſtices of peace in their auncient Quarter ſeſſions. 37. H. 8. cap. 7. Execution of Statutes.

They may in their generall ſeſſions determin of the offences of killing and ſelling Wainlings vnder two yeares age, 24. H. 8. ca. 9. 13. El. ca. 25. & 27. El. ca. 11. and of the offences of not keeping Milch Kine and Calues, 2. & 3. Phil. & Mar. cap. 3. & 13. El. ca. 25. Wainlings. Milch Kine and Calues.

The Enquirie, Hearing, and determination of Foreſtallings, Ingroſſings and Regratings, may be at the Quarter ſeſſions, 5. Ed. 6. c. 14. Foreſtalling.

The Enquirie, whether Alehouſe keepers haue forfaited their Recognuſances, ought to be at the Quarter ſeſſions, 5. Ed. 6. ca. 25. Alehouſe.

The Fine for vnlawfull hunting by night, or with painted faces, ſhall be ſet at the next generall ſeſſions, 1. H. 7. ca. 7. Hunting.

Iuſtices of the Peace, may in their Quarter ſeſſions heare and determine offences againſt the ſtatute of Armour, 4. & 5. Phil. & M. c. 2. and may there enquire of, heare, and determine the offences of putting to paſture any ſtoned Horſes, &c. vnder the height appointed by the ſtatut, 32. H. 8. cap. 13. And may there alſo enquire of conueying Horſes into *Scotland*, 23. H. 8. c. 16. 1 E. 6. c. 5. & 1. El. c. 8. Armour. Horſes.

They

Highwaies. They may at their like ſeſſions, enquire of, & determine the offences of not amending the high waies, 2.& 3.Phil.& Mar,cap.8.5. El.ca. 13.& 18.El ca.9,

Keepe houſe-holds. In their Quarter and Generall ſeſſions, they ought to enquire of,heare,and determine the offences of not keeping continuall houſholdes vpon the Precincts of the late Monaſteries,27.H. 8.ca.5.5.El.ca.2.& 14.El.ca.11.27.El.ca.11.

Informers. And in their quarter ſeſſions, they may heare and determine the offences of Informers, 18. El.ca.5.& 27.El.ca.10. And at the like ſeſſions, they may doe the like for offendors in Periurie, 5.El.ca.9.27.El.ca,11.

Periurie.

Counterfeit Tokens or Letters. Such as bee ſuſpected of vſing counterfeite Tokens or Letters, may be called by proceſſe to the next generall ſeſſions,and muſt be conuicted there,33.H.8.ca.1.

Wood. Iuſtices of the Peace may in their open quarter ſeſſions, call before them the owner of a Wood, and twelue of the Comoners there, for ſetting out the fourth part thereof,35.H.8.cap. 17.& 13.El,ca.25.

Maſter and Seruant. The proofe of the ſufficiencie or inſufficiencie of the cauſe,for which the maſter may put away his ſeruant, or the ſeruant may depart from his maſter before the end of the terme, ſhalbe made at the quarter ſeſſions,5.El.ca.4.

Badgers. The licences for Badgers, Drouers, &c. are to be granted in the open quarter ſeſſions, 5.El. cap.

cap. 12. and the prohibition of transporting corne, is to be made by the more part of the Iustices of Peace at their quarter sessions, 13. El. cap. 13. Transporting Corne.

The offences against the newe Statute of Tillage, are to be enquired, heard, and determined at the Quarter (or Generall) Session, 39. El. cap. 2. Tillage.

If the Parish and Hundred be not able to relieue the poore of the Parish therin, then the Iustices of peace, (or greater number of them) may at their generall quarter sessions, rate any other Parishes &c. thereunto: and they may there by agreement with any Lord of Waste or Comon set vp habitations there for the poore, and place Inmates in the same, and they also may at such session assesse the Parents, or Children (being of sufficient abilitie) to relieue their poore & impotent Children and Parents, 39. El. ca. 3. Poore. Inmates.

The Iustices of peace (or more part of them) may at any quarter session giue order, for the erection of houses of Correction, and for Stocks of money and all other things necessarie for the same, or for the gouernement thereof: and they may Banniſh, or condemne to the Gallies, such Rogues as shall appeare to bee dangerous, 39. El. cap. 4. Houses of correction. Dangerous Rogues.

The deceitfull vsers of Logwood for dying, are to be tried and iudged to fine and Pillorie, at the Quarter sessions, 39. El. ca. 11. Logwood.

The

Malte. The Iuſtices of peace (or more part of them) may by their diſcretions in their open Quarter ſeſſions, reſtrain the conuerting of Barley into Malte, 39. El. ca. 16.

Highwaies. They alſo in their open Quarter ſeſſions, may conuict ſuch as carry not, or pay not, towards the amendment of the Highwaies in the Weald of Kent, Surrey, or Suſſex, as this ſtatute doth appoint, 39. El. ca. 19. and the preſentment of ſuch defaults ought to be made by the Surueyours of Highwaies, at the next quarter Seſſion after ſuch default, ibidem.

Northren clothes. The offences againſt the ſtatute concerning the deceitfull ſtretching, or tentering of Northren clothes, are inquirable and determinable before the Iuſtices of Peace at their Quarter ſeſſion: and thoſe defaultes are to bee preſented by the Ouerſeers, at the next Quarter ſeſſion after ſuch default made, 39. El. ca. 20.

Soldiours & Mariners. The Iuſtices of Peace (or more part of them) may in any Quarter ſeſſion, increaſe the rates for diſabled Soldiers and Mariners, not amounting aboue 4. d. for euery Pariſh together: they may there alſo appoint yearely Treaſorers therfore: and may likewiſe reuoke, alter, or diminiſh the Penſion of any ſuch Soldiour or Mariner, 39. El. ca. 21.

Soldiers. The Treaſorer of the monies for diſabled ſoldiers, ought to giue vp his account and charge at the ende of his yeare, at the Quarter ſeſſions:

And

And the aſſignment of the Penſions for ſuch Souldiours muſt bee made by the more part of the Iuſtices of the peace at the Quarter ſeſsions: and they may there ſet Fine vpon the Treaſurer that ſhal willingly refuſe to pay any of the ſame penſions, 35 Eli. cap. 4.

The aſſignment of ſuch as ſhal keepe any Tauerne to vtter Wine, ought by the ſtatute (7. E. 6. ca. 5.) to be made at the generall Seſsions. But is otherwiſe vſed, by ſpecial graunt. Tauerne.

A Beggers child may at the generall Seſsions, bee bound to ſerue any Subiect of this Realme, being of honeſt calling, 14. Eliz. cap. 5. & 18. El cap. 3. Beggers chyld.

The Dockets of Purueiors ought to bee deliuered ouer to the Iuſtices of Peace at the next generall Seſsions, 2. & 3. Phil. & Mar. cap. 6. Purueiors.

A decree may be made at the quarter ſeſſions for the continuance of a Cotage that hath not foure acres of ground, & there may the Iuſtices inquire, heare, and determine of Cotages & Inmates, in offence of the ſtatute, 31. El. cap. 7. Inmates.

All offences againſt any ſtatute for not vſing any Lawfull game, or for vſing any vnlawfull games, or for not hauing bowes and arrowes according to the Lawe, or for vſing any Arte or myſterie in which the partie hath not beene brought vp, according to the ſtatute therof, ſhal be ſued, or otherwiſe enquired of, heard, and determined, in the Quarter Seſsions of the peace, Lawfull games.

or Aſſiſes of the ſhire where they ſhall bee committed, or in the Leete, within the which they ſhall happen, 31. El. cap. 5.

Act read. The Act of rebellious aſſemblies (or the effect thereof) ought to be openly read at euery quarter ſeſſions, 1. Mar. Parl. 1. ca. 12. & 1. El. c. 17.

The Iuſtices of peace haue power (in their open Seſsions) to enquire, heare, and determine the defaults of Vnderſherifes, Clarkes of ſherifes or Vnderſherifes, and of Bailifes, &c. in not taking the oathes appointed by the ſtatute, 27. El. cap. 12.

Recuſants. The abiuration of a ſeditious Sectarie ought to be made in the open Quarter Seſsions of the peace, and there to be entred of Record: and the place certaine, and name of a Popiſh Recuſaunt (limited by this ſtatute vnto a place) ought to be certified by the Miniſter & Conſtable (that tooke and entred it) to the next Quarter ſeſſion of the peace, and ther be entred of record in the Rolles of the Seſsions by the Clarke of the Peace, 35. El. cap. 1. & 2.

And enquire of others, whether the Proclamation (ſet forth 4. H. 7. cap. 12.) be not yet to be read at euery quarter Seſsions alſo: for ſome doe thinke, that it was to endure for the time of that king onely.

The reaſon why ſome things bee repeated. These and ſome few others (which peraduenture I do omit) haue reference (as you ſee) to any of the ſame generall Seſsions: for ſo many of the which,

which, as be inquirable (and ought therefore to be giuen in charge) I may ſeeme either to haue committed Tautology in reporting them twice (or which is worſe) to haue writen a repugnancie, in that I did firſt deliuer them as common to all Seſsions of the Peace, and do now here reſtraine them as proper to the generall. But this is ſhortly the cauſe of my ſo doing. Some men be of the opinion, that theſe ſtatuts which be inquirable by expreſſe words at the quarter ſeſſions onely, may neuertheleſſe be enquired of at the ſpeciall ſeſſions alſo. And their opinion ſeemeth to bee backed by ſome words of the reformed Commiſsion of the Peace, where power is giuen vnto two Iuſtices of the peace (the one being of the *Quorum*) to enquire, heare, and determine of all offences, of which Iuſtices of the Peace lawfully may or ought to enquire: Neuertheleſſe, as the Commiſsion there ſpeaketh onely of enquirie, hearing, and determining, & not of other actes: So haue I hitherto doubted, whether that be true in all caſes, or no: for, as the Iuſtices of Peace haue none other warrant to enquire of theſe matters, but onely by thoſe ſtatuts which doe appoint the enquirie to be made at the quarter ſeſſions: So they ought to purſue that warrant, if they will take vpon them to enquire, and haue any care that their doings may be warranted.

And I thinke it bee no great doubt, but that

as the ſtatutes doe many times giue degrees of power, ſometimes in greater meaſure, & ſometimes in leſſe: So alſo, the ſame ſtatutes may reſtraine the authoritie of enquirie to ſome certaine ſeſsions, and ſpecially to the Quarter ſeſsions, in reſpect that they bee both more open, more commonly knowen before hand, and better furniſhed with Iuſtices, and conſequently the meeter for adminiſtration of Iuſtice, ſpecially in affaires of the weighter ſort. And, therefore I haue in this part labored, both to ſatiſfie their opinion in the one, and to ſerue mine owne fantaſie in the other.

Eaſter ſeſſions.

But now alſo, let vs looke out ſome ſuch things as be left onely to the Eaſter, Michaelmas, or Midſummer ſeſsions.

Prices of Veſſels.

The prices of veſſels, for ſope, ale, and beere, ſhall bee ſet and proclaimed by the Iuſtices of Peace, at their quarter Seſsions after Eaſter, 8. Eliz. cap. 9.

Wages of ſeruants.

The wages of ſeruants and labourers, are to be rated by the Iuſtices of peace at the Eaſter quarter ſeſsions, or within ſix weekes after Eaſter, Where thoſe Seſsions be vſually holden in one place of the ſhire by al the Iuſtices together: But where they are not ſo vſually holden (but in ſeuerall places for ſeuerall diuiſions) ther the Iuſtices of peace or more part of them (reſiant within ſuch diuiſion) ſhall at the ſame Quarter Seſsion, or at the time of the Eaſter ſeſsion (as is

aforeſaid) rate and ingroſſe in Parchment vnder their hands & ſeales, the Wages for labourers and ſeruants within that diuiſion, and the ſherif ſhal proclaime the ſame in places conuenient therefore 5. El. ca. 4. & 39. El. ca. 12.

Pooze.

And they muſt yerely in the ſame ſeſſions examine the performance, or not performance of ſo much of the ſtatut made for the pooze (14. El. cap. 5.) as is not altered, by 39. El. cap. 3.

Treaſorers for ſouldiers.

The accompt of the Treaſorers for diſabled Souldiours and Mariners, is to be made yearely at the Quarter Seſsion after Eaſter 39. El. ca. 3.

Michaelmas ſeſsions.

At the quarter ſeſſions to be holden after Michaelmas, the Iuſtices of Peace are to appoint ſearchers for braſſe and pewter, 19. H. 7. cap. 6. & 4. H. 8. cap. 7.

Braſſe and Pewter.

And at the generall ſeſſions after Michaelmas, two Iuſtices of the peace ought to be appointed by the *Cuſtos rotulorum*, or (in his abſence) by the eldeſt of the *Quorum*, for the ouerſight & controlment of the ſherifes bookes, &c. 11. H. 7. cap. 15.

Sherifes bookes.

Souldiors.

The weekely contribution of euery pariſh towards the reliefe of diſabled Souldiers & Mariners, ought to bee made from time to time by the more part of the Iuſtices of Peace in their quarter ſeſſions, to bee holden about the feaſt of Saint Iohn Baptiſt 35. El. cap. 4.

Particular ſtatutes.

In the number of particular Statutes, concerning the Quarter Seſsions, theſe may haue place.

Norfolke. 33. H. 6. ca. 7. For Atturneis in *Norfolke.*
Seuerne. 26. H. 8. ca. 5. For paſſage ouer *Seuerne.*
Cheſhire. 32. H. 8. ca. 43. For ſeſions in *Cheſhire.*
Halifaxe. 2. & 3. Ph. & Ma. Of wools in *Halifaxe.*
Algate. 23. El. ca. 12. For pauing without *Algate.*
Norfolke. 27. El. ca. 24. For the ſea bankes in *Norfolke.*

Of the Speciall Seſsions of the Peace.

CAP. XX.

THe ſpeciall ſeſſions of the peace, do vary from the generall, in this chiefly, that they bee holden at other times, when it ſhall pleaſe the Iuſtices themſelues, or any two of them (the one being of the *Quorum*) to appoint them. And this power they haue, not onely by the commiſſion, but alſo by the ſtatute 2. H. 5. cap. 4. which alloweth them to doe it more often then the foure times, if neede do ſo require.

They be alſo (for the moſt part) ſummoned for ſome ſpecial buſineſſe, & not directed to the generall ſeruice of the Commiſſion: And yet there is no doubt, but that all the Articles within the Commiſſion of the peace, are both inquirable & determinable at any ſpecial ſeſſion of the peace.

M. Fitzh. (as I haue already noted) vſeth a third difference betweene the generall and ſpeciall

ciall Sellions of the Peace: affirming, that whereas at the generall ſeſsions, the Iuſtices of Peace ought of duety to giue in charge, al matters (within the Commiſsion or ſtatutes) that are to be determined before them: yet neuertheleſſe at the ſpeciall Seſsions they are at libertie to giue in charge, either all, or any of them, as it ſhall ſeeme good vnto themſelues.

What things be inquirable, at the ſpeciall Seſsions of the Peace.

I will not gainſay, but that the Iuſtices of peace may at any ſpeciall Seſſion of the Peace giue in charge all ſuch ſtatutes as do giue vnto them a generall power of enquirie (without vſing mention of reſtraint to any Seſsion) as doth the ſtatut 25. H. 8. ca. 13. of ſheepe: yea, I will graunt, that they may alſo at their ſpeciall ſeſſions of the peace giue in charge to enquire vpon al ſuch other ſtatuts, as do vſe the word ſeſſions indifferently, without adding Generall or Speciall: of which ſort there bee a great many, as 5. E. 6. cap. 4. of fighting in Church or churchyard 14. H. 8. cap. 11. & 19. H. 7. cap. 11. of hunting, 5. El. cap. 13. of linnen cloth, 2. & 3. Phil. & Ma. cap. 7. of faires and markets, 5. H. 4. cap. 3. of ſea-watch, and 7. Ed. 6. cap. 5. of wines and ſundrie others. But whether they may there alſo enquire of ſuch other ſtatuts, as do only aſſigne the enquirie to be made at the quarter ſeſſions, you haue heard my minde, and read my reaſons in the chapter laſt before.

Howſoeuer it be, there might be great vſe of

The vſe of the ſpeciall Seſſions.

the ſpeciall ſeſſions of the Peace, if they were now and then holden (betweene the Quarter Seſſions) to deliuer the Gaoles of vnruly ſeruants, petite theeues, and ſome others. For it is dayly too wel prooued, that many (being ſent thither for correction) do ſucke nothing but corruption there: ſo as they bee woꝛſe when they come forth, then they were when they were firſt committed: which euill hapneth by long abode there in wicked companie: whereas, if they had moꝛe ſpeedy trial, both they ſhould be amended, and the countrie leſſe charged by it.

Forraine realmes and countries do reape the fruite of ſpeedie Iuſtice: and if our Gaoles in England were moꝛe often ſwept and emptied, I doubt not but that we alſo ſhould find a ſenſible profit to ariſe thereby.

Peraduenture ſome man will ſay, that by this meane wee ſhall draw vpon vs againe the ſame inconuenience of troubling the countrie that hapned by the ſix weekes Seſſions, which were therefoꝛe abrogated by the ſtatute 37. H. 8. ca. 7 But that is not to be feared: foꝛ whereas thoſe ſeſſions were to bee holden in euery limit of the ſhire, theſe may be kept only in the towne wher the Gaole ſtandeth: the which (ſince it is commonly populous) ſhall bee eaſily able to furniſh this ſeruice, without calling any other remote part of the Countrie vnto it.

The

The forme of the Precept for Summons of a *Speciall Seſſion*, may be thus.

MOilus Finch miles, Ioannes Boys & Henricus Finch armiger, *Iuſticiarij (inter alios) dom. reg. nunc ad pacem in comitatu Kanciæ conſeruandam aſſignati, necnon ad diuerſas felonias, &c. vicecomiti comitatus prædicti ſalutem: Ex parte dict. dom. Reg. tibi præcipimus firmiter iniungentes, quod non omittas propter aliquã libertatem infra Hundreda de* O. P. & Q. *aut eorum aliquod, in comitatu prædicto, quin venire facias coram nobis apud* R. *infra Hundredum de* O. *prædict. decimo die Aug. proximo futuro* 24. *probos & legales homines de eiſdem Hundredis, ad inquirendum tunc ibi, pro dicta domina Regina, tàm ſuper quibuſdam articulis in ſtatuto in Parliamento dictæ dominæ Reginæ nunc, anno regni ſui quinto tent. edit. artifices, laboratores ſeruientes & apprenticios concernentibus, quàm ſuper articulis quibuſdam in ſtatuto in Parliamento dictæ dominæ Reginæ anno regni ſui* 39. *tent. edit. roguos, vagabundos, validos mendicantes, & alios pauperes tangentibus. Proclamari etiam facias in idoneis locis per Hundreda prædicta, quod omnes qui verſus prædictos artifices, laboratores, ſeruientes, apprenticios, roguos, vagabundos, validos mendicantes, & alios pauperes ſeu eorum aliquos conqueri voluerint, ſint tunc ibidem coram nobis ad proſequendum verſus eos parati. Et ſis ibi tunc, vel vicecomes tuus, habens*

bens nomina Iuratorum prædictorū, & hoc nostrū Breue. Testibus nobis præfatis M.F. I.B. *&* H.F. *apud* [*in comitatu prædict. vltimo die Martij, Anno regni dictæ dom. nostræ Elizabethæ Dei gratia Angliæ, &c. Reginæ, &c.* 41.

Of the rewards and Punishments, due to *Iustices* of the Peace in respect of their Sessions.

Cap. xxi.

WEll and euil doing, do from the first to the last, deserue reward and punishment: & therefore as we closed vp the first part of this Treatise with them: So also shal this last Booke receiue the same conclusion.

The wages of the Iustice of the Peace at the Quarter Sessions.

Whilest it was at the libertie of the Iustices of Peace to hold their Quarter sessions as short time as they would, the Lawe did not allow thē any wages for their paines. But when the statute (12.R.2.cap.10.) had bound them (vnder paine of punishment) to continue their sessions three daies together (if the affaires of their office did so require) then the same statute thought it meete also, to allowe to euery of them foure shillings by the day, for the time of their session, to be paid by the hands of the Shirif, out of the Fines and Amerciaments rising of the same sessions: and that the Lords of Franchises, shoulde

be

be contributories to thoſe wages, after the proportion of their parts of the ſaide Fines and Amerciaments.

But, becauſe it was very Dilatorie for the Iuſtices of Peace, to take thoſe Wages, at the hands of the ſhirife (as I haue already touched) vpon the Eſtreat ſent out of the Eſchequer: and for that alſo it grewe in queſtion, whether ſuch Lords as were named in the Commiſſions of the Peace, ſhould be partakers of the ſame Wages: the Statute (14. R. 2. cap. 11.) did plainely prouide, that the Wages of theſe Iuſtices ſhould be leuied and paid by the ſhirife vpon Eſtreates doubled inuented between the ſhirife and them: And that no Duke, Earle, Baron, or Baronet (albeit they were Iuſtices of the peace, and did hold their Seſſions with other eight Iuſtices) ſhould take any wages for their Office in this behalfe.

And hereof alſo M. Mar. collecteth, that howſoeuer many Commiſſioners of the peace there ſhall bee aſſembled at theſe ſeſſions, yet onely eight of them ſhall receiue the wages: becauſe (ſaith hee) that at ſuch time theſe wages were firſt appointed, the law did take knowledge and make allowance onely of eight Iuſtices and no more. And he alſo maketh it doubtfull, whether it bee not in the power of the Barons of the Eſchequer, to appoint which eight (when moe bee aſſembled at the ſeſſions) ſhall haue the Wages payd vnto them.

For

For the first point, it would be somwhat hard (indeed) to straine that statute so far, as to giue wages thereby to so many Iustices as be now at these dayes in euery shire, & would be present at the Sessions. Yet the statute of Labozers, 5. El. ca. 4. that willeth the Iustices of peace in euery shire to diuide themselues, and to keepe two special sittings yerely for the execution of the law, alloweth to as many of them as shall giue their attendance fiue shillinges a day for three dayes together. But concerning the latter point, it seemeth by the latter statute it selfe, that the shirife shall first pay the wages, & then the Barons shall make the allowance according to the Indenture: So that I see no libertie of such nomination left vnto the Barons.

I confesse, that it might breed both offence against the shirife, and a iealousie among the Iustices themselues, to haue one of them preferred before another in this payment: and therefore I thinke it wisely done (as it is somewhere vsed) to bestow the whole allowance vpon the defraying of their common diet.

If the Fines and Amercements of the same Sessions (saith M. Marrow) will not fully amount to the summe of the wages then due to the Iustices, yet shall the wages be ratably paid out of them, so farre as they will extend.

Furthermore those two Iustices of the peace, that doe in their sessions call before them, any person

perſon ſuſpected to offend the ſtatute of Deere-hayes, Buckſtals, and Stalking, and doe examine him thereupon, and find him faultie therin, ſhall haue the tenth part of the forfaiture growing thereby, 19. H. 7. ca. 11. Buckſtals.

Hitherto of Reward, henceforth of Puniſhment. It ſeemeth, by the opinion of ſome Iuſtices (2. R. 3. 10.) that if a Iuſtice of the Peace doe any thing of Recorde ignorantly, and for want of knowledge, that he ſhal not be puniſhed for it. And this opinion of theirs is not newe in this Realme, although it bee otherwiſe truely ſaid *Imperitia quoque culpæ adnumeratur*: for you may read in the old lawes, of King Edgar (*ca.* 3.) and of King Canute (*cap.* 14.) that if a Iudge had erred in his office, he might then haue excuſed himſelfe by oath, That he did it not of an euill mind, and that he knew not how to do better: which I ſpeake not, to comfort men in careleſſe ignorance, but to ſhewe you that men may erre, and (erring by infirmity) they are not altogether vnworthy of pardon: and withall to let the Iuſtices of Peace ſee, that it may be a fault to erre by ignorance, and that therefore they ought to ſtay (where they meete with *non liquet*) as their own Commiſſion doth direct them. Puniſhment at the common Lawe.

Now, on the other ſide, if a Iuſtice of the peace will craftily embeſill an Enditement, or wilfully raze any part thereof, or maliciouſly enroll (or file) that for an Enditement, which was neuer found

found by the Iurie: Then (by the reſolution of all the Iuſtices aſſembled before the King in the Starre Chamber. 2. R. 3.) a Commiſſion may goe out to enquire (by the othes of 12. men) of ſuch his miſdemeanour, and if hee be conuicted thereof, hee deſerueth to looſe his Office, and to make fine to the Queene according to the quantitie of his miſpriſion and offence, *ibid. Fol.* 10. And euen ſo may he be puniſhed (as this Booke leadeth me to thinke) if he alter an Enditement of Treſpaſſe, into an Enditement of Felonie, howſoeuer the opinion (27. lib. Aſſ. Pl. 18.) bee found againſt it.

A Iuſtice of the Peace may alſo be endited, of the vnlawfull taking of money for doing his office, or of ſuch other falſity, Fitz. Nat. Bre. 243. And if he cauſe a man to be endited at the Seſſions, by former conſpiracie, or indirect practiſe, hee is puniſhable for it, as a priuate man. 21. Ed. 4. 67.

But if (in the handling of a cauſe at the open ſeſſions) it happen him to ſpeake againſt an offendor, ſomewhat exceſſiuely, yet he ſhall not be puniſhed for it: *Iuris enim executio, non habet iniuriam:* Neuertheleſſe, Iudges ought not to abuſe their tongues by intemperance, but they muſt rather take great heed (as Cic. pro Font. ſaide) *Quibus verbis vtantur, ne quid minùs moderatè poſitum, ne quid ab aliqua cupiditate prolapſum, verbum eſſe videatur.*

Thus

Thus farre of puniſhments by the common Law, now to thoſe by ſtatutes.

Puniſhments by ſtatutes.

If the Iuſtices of Peace, hauing taken a Recognuſance for an Alehouſe, doe not certifie it at the next quarter ſeſſions of the Peace, they ſhall looſe fiue marks, 5. E. 6 ca. 25.

Alehouſe.

Fiue marks.

That next Iuſtice of the peace which doth not certifie at the next generall ſeſſions of the peace, ſuch preſentments as the ouerſeers of the highwaies haue before preſented vnto him, ſhall looſe fiue pound for euery default, 2. & 3. Ph. & Mar. ca. 8. & 5. El. cap. 13.

Highwaies.

Fiue pounds.

If any Iuſtice of the Peace (not being ſicke, nor hauing other lawfull excuſe, to bee teſtified vnder the Oath of one aſſeſſed in the Subſidie Booke at fiue pounds, &c) doe not aſſemble at the Eaſter Seſſions, to rate the wages of ſeruants, &c. he ſhall looſe ten pound to the Queen 5. El. ca. 4.

Seruants wages.

Ten pounds.

The Iuſtice of the peace which faileth to record (at the next quarter ſeſſions) the name of any perſon (authorized to ſhoot in a Gun) that hath preſented his name vnto him, ſhall looſe 11. s. 2. E. 6. ca. 4. If that ſtatute doe ſo farre extend, whereof the words giue cauſe of doubt.

Guns.

Twentie ſhillings.

And if the Proclamation (annexed to the ſtatute, 4. H. 7) ought now to be read, then if it bee not read at each quarter ſeſſions, euery Iuſtice of the Peace there preſent, ſhall looſe twentie ſhillings, 4. H. 7. ca. 12.

Proclamation read.

Twentie ſhillings.

If

Pope.

If the Iuſtices of the Peace, before whom any preſentment ſhall be made, at their Quarter ſeſſions, againſt any perſon for extolling the authoritie of the See of Rome, doe not certifie the ſame into the Kings Bench within 40. daies after, if the Tearme be then open, and if not, then at the firſt day of the next full Tearme, they ſhal euery of them looſe C. pound for euery default, 5. El. cap. 1.

An hundreth pound.

Examinations.

Thoſe Iuſtices of the Peace, which doe not certifie into the Eſchequer, their examinations taken concerning the entring of plaints by the ſhirifes, ſhall looſe fortie ſhillinges, 11. Hen. 7. cap. 15.

Fortie ſhillings

And the Iuſtices of Aſſiſe may enquire of, heare, and determin, the offences of any Iuſtices of Peace, in not doing their duties for execution of the ſtatute made againſt the deceitful ſtretching of Northren clothes, 39. El. ca. 20.

Northren clothes.

The Epilogue.

The Epilogue.

THus haue I (by the fauor of God) brought this Treatiſe to an ende: wherein if many things haue eſcaped me vnſeen, I do not greatly maruaile, when I looke backe and beholde the varietie and multitude of the matter that I haue paſſed through: and it ſhall not bee hard for him that meeteth with ſuch Eſtraies, to take and lodge them in their right *Titles* here.

Againe,

Againe, if I ſhall be thought to haue heaped vp too many conceites (borrowed out of *M. Marrowes* reading) I make anſwere, that I haue omitted many, and haue made the beſt choiſe that I could.

If furthermore I ſhall ſeeme to thoſe that be maſters in *Art & Method*, not to haue throghly obſerued their rules, and ſpecially that καθ' αὑτὸ becauſe I do many times mingle *aliena*, things not preciſely pertaining to my matter in hand: To them, I ſay, that it is the receiued maner of teaching in our Law, *To ſhewe things by their contraries and differents:* and ſeeing that great light commeth to the matter thereby, I may neither altogether condemne it as vnapt, nor reiect it as vnſeruiceable.

Moreouer, if I haue beene deceiued in laying downe ouerboldly mine owne opinion, I will no leſſe gladly be admoniſhed of it, than readily reforme my miſtakings.

Finally, whatſoeuer other thing is done amiſſe, I proteſt that it hath eſcaped of vnskill, and not proceeded of wilfulneſſe: and therefore, I deſire that I may be allowed the benefite of that *Pardon*, which (as I told you euen now) is in like caſe grauntable to a *Iuſtice* of the Peace.

FINIS.

A Table containing (verie neere) all the Imprinted Statutes, both generall and particular, wherewith Iuſtices of the Peace haue in anyſorte to deale.

King.	Yeare.	Chap.	Content.
Hē.the 3.	9	25	Of meaſures and weights
	51		The aſsiſe of bread and ale. The iudgement of the pillorie. The Ordinance for meaſuring Of weights and meaſures.
Ed.the 1.	3	9	Of freſh ſuite after felons.
		10	Of Coroners.
		15	Of Bailement of felons.
		25	Againſt maintenance.
		26	That Sherifs and other miniſters ſhall take no rewards.
		27	Of fees for deliuering chapiters.
		28	Of maintenance of quarrels.
	13	34	Of raniſhing women.
		47	Of taking Salmons.
		49	Againſt maintenance.
			The ſtatute of Wincheſter.
	28	11	Againſt maintenance.
	34		For meaſuring of land.
			Definition of Champartors.
Ed.the 2.	1		For breaking priſons.
	18		For Purueyours.
			For Eſtreates of the Exchequer.
Ed.the 3.	1	14	For maintenance of quarrels.

For

King.	Yeare.	Chap.	Content.
		16	For keeping of the Peace.
		17	Enditements before Sherifes to be taken by Indenture.
	2	3	For comming before the Kinges Iuſtices with force and armes.
		6	A confirmation of the Statute of Wint.
	4	2	Of Wardens of the Peace.
		4	That Purueiors pay in hand, and haue a warant vnder the great or ſmall ſeale.
		10	Againſt Sherifs and Gaolers that will not receiue theeues, and ſuch other into their Gaoles.
	5	2	Againſt the kings Purueiours.
		10	Iurours that take money ſhall no more paſſe vpon Iuries.
		11	That Iuſtices that are aſsigned to determin felonies haue power to write to forreine Counties.
		14	Againſt Robertſmen, and drawlatches.
	14	10	Gaoles of the Counties to be annexed to the Sherifes.
	18.St.2.	2	Iuſtices of Peace made.
	20	4.&5.	For mainteining of quarrels.
	23	6	For victuallers.
	25	1	For Purueyours.
	25.St.4.	3	For foreſtalling of wines.
	25.St.5.	9	Auncell weight taken away.
		10	For weight and meaſuring.
		15	For takers of ſheepe.
	27.St.2.	4	None going to the Staple, be diſturbed by the kings takers.
		10	For weights of the Staple.

King.	Yeare.	Chap.	Content.
	28	11	For safegard of Marchants aliens comming within this Realme.
	34	1	For Iustices of Peace.
		2	For Purueyours.
		5. & 6.	Iustices of Peace to enquire of measures.
		22	For Hawkes found.
	36	2. 3. 4. 5. 6.	Against Purueyours.
		12	For the Sessions of the Peace.
	37	19	For finding of Hawkes.
	42	9	For leuying of the greene waxe.
Ric. the 2.	1	3	All Statutes of Purueyours confirmed.
		4	For maintenance of quarrels.
		7	For giuing of Liueries.
	2	2	For forestalling of Wines.
	5	7	For entring into lands.
	7	8	For Purueyours.
		13	For riding in Harnesse.
	12	3	A confirmation of all Statuts for victuallers.
		6	For bearing weapons.
		10	Iustices of Peace to punishe Vagabonds, and for holding their Sessions.
	13	4	Clarke of the Market.
		7	Iustices of Peace bee made anew.
		8	For price of vitailes.
		9	For weights.
		13	For hunters.
		19	For safegard of fish.
	14	11	For assigning of Iustices of Peace
	15	2	For forcible entries.

For

King.	Yeare.	Chap.	Content.
		4	For measuring Corne.
	16	3	The Clarke of the Market to haue ready his weights according to the Standard.
		4	For Liueries of companies.
	17	8	For Riots and vnlawfull assemblies
		9	That Iustices of the Peace shall be conseruators of the Statuts made for riuers.
		10	Two men of Law to be assigned in the commission of the peace to deliuer Gaoles.
		1	For riding armed in the realme.
		2	For wearing of Liueries.
Hē. the 4.	1	7	For giuing of Liueries.
		11	For extortion by Sherifes.
	2	14	For Purueyours
		21	For giuing of Liueries.
	4	25	For Hostelers and Vitailers.
	5	3	For watch vpon the sea coasts.
		4	Multiplication made felonie.
		5	For cutting tongues, and putting out of eyes.
		10	Iustices of peace to *impriſō* men in the common Gaole.
	7	3	Of the manner of making out Estreates.
		7	For Arrowheads.
		14	For giuing of Liueries.
	13	7	Of Riots and Routs.
Hē. the 5.	1	10	For weightes and measures of Corne.

King.	Yeare.	Chap.	Content.
	2	4	Of the Seſsions of the Peace.
		8	For reformation of riots & routs.
			Proceſſe againſt riotours that flee into woods
	Stat.2.	1	Of Iuſtices of Peace.
	8.	3	For gilting and ſilueriug.
	9.St.2.	8	Of falſe weights.
Hē.the6.	2.	11	For the meaſure of wines.
		14	For goldſmiths ſelling worke of ſiluer.
	8	4	For giuing of Liueries.
		5	For weights.
		9	For forcible entries.
		10	For proceſſe in Enditements and Appeales.
		14	For felons & murderers, that void themſelues into woods.
	11	6	For Commiſsion of Peace.
		8	For weights and meaſures.
		12	For waxechandlors.
	14	4	For Seſsions in Middleſex.
	18	11	A Iuſtice of Peace to haue twentie pound land.
		19	For ſouldiors departing without licence.
	20	8	For reſiſtance of Purueyours.
	23	1. & 2.	Againſt Purueyours.
		10	For extortion of Sherifes.
		11	For leuying Knights wages for the parliament.
		13	Proclaming the Statutes for Victuallers.
	31	3	Of Attachments in the courts of the Marches.

King.	Yeare.	Chap.	Content.
	33	2	A repeale of an Acte for Outlagaries in Lancaſter.
		7	For atturnies in Norff. and Suff.
Ed. the 4.	1	2	For Inditements & preſentments in Sherifes Turnes and Leetes
	8	2	For Liueries of companies.
	12	2	For Bowſtaues.
		9	For Eſcheatours.
	17	4	For making of Tile.
Ric. the 3.	1	3	For enquiry of eſcapes: for ſetting of ſuſpects of felonie to baile.
		11	For Bowſtaues.
		12	For the meaſure of wine and oile
He. the 7.	1	7	Againſt hunters.
	3	1	Giuing of liueries, and certifying of Recognuſance coroners.
		2	Taking maidens, widdowes, or wiues againſt their wils, made felonie.
	7	4	For weights and meaſures.
	11	4	One weight & meaſure to be vſed thorow the realme.
		9	For the inhabitants of north and ſouth Tindale.
		15	Againſt vntrue demening of ſhirifes and their officers in holding their Coũties.
		17	Againſt deſtroying of Pheſantes & Partriges with vnlawfull engines, and for hawkes.
	12	5	For weights and meaſures.
	19	6	For pewterers and braſiers.

King.	Yeare.	Chap.	Content.
		11	For keeping of Deere-hayes and Buckestalles.
		13	For punishment of Riots.
Hen. the 8.	1	7	Concerning the Office of Coroners.
	3	12	For reformation of Impanels for the King.
	4	7	For Pewterers, and true weights and beames.
	6	6	For remitting prisoners vnto the place wher the crime was committed.
	14. 15.	6	For highwaies in the Wealde of Kent.
		10	For hunting the Hart.
	21	5	Fees for Testaments, & letters of Administration.
		7	Against seruants imbeseling their masters goods.
	22	5	For repairing of Bridges in highwaies.
		10	Concerning Egyptians.
		11	For Powdike in Marshland.
		14	Howe persons committing petie treason shall abiure.
	23	2	Where, and after what manner the Gaoles within Englande shall be made.
		4	That no brewers make vessels, & the contents of barrels.
		16	That no horses be conueyed into Scotland without licence.
	24	7	Against killing of Calues.
		9	Against killing of Weinlings.

For

King.	Yeare.	Chap.	Content.
		10	For crow nettes.
		13	For exceſſe in apparell.
	25	6	For puniſhment of Buggerie.
		11	To auoid deſtruct. of wildfowle.
		13	What ſheepe a man may keepe.
	26	5	For not conueying any perſons goods or Cattels ouer the water of Seuerne, after Sunne ſet, vntill Sunne riſing.
		6	For Wales.
		7	For amending Highwaies in Suſſex.
	27	5	Iuſtices of Peace in Cheſter.
		16	For inrolment of deedes.
		20	An order for Tithes.
		24	For recontinuing of certaine liberties taken from the Crown.
	32	3	Of Abiuration.
		7	For true payment of Tithes and Offerings.
		9	Againſt maintenance, &c. vnlawfull buying of Titles.
		13	For breede of Horſes of higher Stature.
		41	For baking of horſebread.
		43	Seſſions in Cheſter.
	33	1	Concerning counterfait letters or tokens.
		5	For keeping of great Horſes.
		6	For Croſſebows and Handguns.
		9	For maintenance of Artillerie, and debarring of vnlawfull games.
		10	For the execution of certain Statutes.

King.	Yeare.	Chap.	Content.
		17	For confirmation and continuance of certaine Actes.
			For Wales.
	34.35.	14	For certificate of conuicts to bee made into the kings bench.
	35	11	For payment of knights and burgesses wages of the Parliament in Wales.
		17	For preseruation of woods.
	37	1	Of the Custos Rotulorum, and Clarks of the Peace.
		7	For abrogation of six weeks Sess.
		8	That Enditements lacking vi & armis shall be good enough.
		9	Against vsurie.
Ed. the 6.	1	1	Against such as speak against the sacrament of the body & blood of Iesus Christ, and for the receipt thereof in both kinds.
		5	That no horses be conueyed out of England without licence.
		7	For continuance of Proces, notwithstanding new commission of the Peace.
		12	Of poysoning.
	2.3.	2	For true seruice in captaines and souldiers.
		14	Against shooting of hail-shot.
		15	For vittailers & handy craftsmen.
		24	For triall of murders in seuerall Counties.
	34.	1	Of the Custos Rotulorum.
		2	For the true making of woollen clothes.

Of

King.	Yeare.	Chap.	Content.
	5.6.	21	Of retailing butter and cheese.
		4	Against fighting and quarrelling in Churches.
		6	For true making of wollen cloth
		14	Against regrators, forestallers, & engrossers.
		15	Against regrators of tanned leather.
		24	For making of hats at Norwich and in Norffolke,
		25	That Alehouſekeepers be bound by Recognuſance.
	7	5	To auoid great prices of wines.
		7	For the aſſiſe of fuell.
Marie.	1	8	That Sherifs ſhal not be Iuſtices of peace during their office.
		9	For the incorporation of Phyſitions in London.
		12	Againſt vnlawfull aſſemblies.
Ph. & M.	1.2.	2	For reformation of exceſſe in apparrell.
		4	For puniſhment of Egyptians.
		5	For reſtraint of corne, &c. ouer the ſea.
		13	An order for bailement of priſoners.
	2.3.	3	For keeping of milch kine and rearing of calues.
		6	Againſt exceſſiue taking of Purueyours.
		7	For buying of ſtollen horſe.
		8	For amending of High waies.
		10	For examination of priſoners ſuſpected

King.	Yeare.	Chap.	Content.
			ſpected of manſlaughter or felonie.
		13	For wools in Halifax.
		15	That Purueyours ſhall not take Victuall within fiue miles of Cambridge or Oxford.
		16	For watermen vpon Thames.
		18	For Commiſſions of Peace, and Gaole deliuerie in townes corporate not being Counties.
		19	For Powdike in Marſhland.
	4.5.	2	For hauing Horſe, Armour, and Weapon.
		3	For taking of Muſters.
Elizab.	1	1	The reſtoring to the Crowne the auncient Iuriſdiction.
		2	For vniformitie of praier, and adminiſtration of the Sacraments.
		7	For cõueying horſes into Scotlãd
		12	Againſt deceitfull vſing of linnen cloth.
		16	Againſt rebellious aſſemblies.
		17	For preſeruation of ſpawne and frie of fiſh.
		18	For continuance of certaine Stat.
	5	1	For the aſſurance of the Queenes power ouer all eſtates.
		4	Orders for artificers, ſeruants, & labourers.
		5	For maintenance of the Nauie.
		8	For Shoemakers, &c. vſing currying of leather.
		6	For puniſhment of periurie.
		01	For ſeruants embeſelling their maſters goods.

For

King.	Yeare.	Chap.	Content.
		12	For Badgers of corne, and Droouers of cattell to be licenced.
		13	For amending of highwaies.
		15	Againſt fond & fantaſticall propheſies.
		16	Againſt Coniurations.
		17	For puniſhment of Buggerie.
		19	For repeale of a Stat. for conueying horſe out of the realme.
		20	For puniſhment of Vagabondes faining themſelues Egyptians.
		21	For puniſhment of vnlawfull taking of fiſh.
		24	For repairing of Gaoles.
	8	3	Againſt carrying of ſheepe ouer the ſea aliue.
		8	For repeale of a branch of a Statute for the ſtatute of horſes in the Ile of Ely.
		9	For repeale of a branch of a Statute for the prices of barrels & kilderkins.
		10	For Bowiers, and the price of Bowes.
	13	2	For bringing in, and putting in execution Bulles from Rome.
		8	Againſt vſurie.
		9	For commiſſion for Sewers.
		11	For maintenance of Nauigation.
		14	For bringing Bowſtaues into the Realme.
		21	That Purueyors may take corne and vittaile within fiue miles of Cambridge and Oxford, in certaine caſes.

For

King.	Yeare.	Chap.	Content.
		23	For pauing a ſtreete without Algate.
		25	For continuance of certaine Statutes.
	14	1	For ſuch as rebelliouſly detaine any of the Queenes Caſtels.
		2	Againſt ſuch as practiſe the enlargement of any priſoner cõmitted for high treaſon.
		5	For puniſhment of vagabonds & reliefe of the poore.
		11	For continuation, explanation, &c. of diuers Statutes.
	18	3	For ſetting the poore people on worke.
		5	To redreſſe diſorders in common informers vpon penall lawes.
		7	For taking away Cleargie from the offendors in Rape & Burglarie, and an order for deliuering Clearks conuict without purgation.
		9	For mending highwaies.
		18	For repayring Chepſtow bridge.
		20	For repairing bridges and highwaies neere Oxford.
	23	1	For due obedience vnto the Queene.
		2	Againſt ſeditious wordes, or rumours.
		9	Againſt logwood, or blockwood.
		10	For Pheſants and Partriches.
		11	For Cardiffe bridge.
		12	For pauing without Algate.
	27	2	Againſt Ieſuites, and Seminarie Prieſts,

King.	Yeare.	Chap.	Content.
			Priests, &c.
		7	For leuying issues lost by Iurors
		10	Touching Informers.
		11	Against eating of flesh vpon days forbidden.
		12	For giuing the oath to Vndersheriffes, &c.
		13	For the following of Huy & Cry.
		14	For the true making of Malt.
		22	Touching the Hauen of Chichester.
		24	For the Sea bankes in Norfolke.
		27	For the high way to the Ile of Shepey.
	31	4	Against embeseling the habiliments of warre.
		7	Touching Cotages and inmates.
		11	Touching restitution of possession.
		12	Touching the sale of horses in open market.
	35	1.2.	Of seditious Sectaries, and Popish Recusants
		4	For relieue of disabled soldiers.
	39	2	Of Husbandry and Tillage.
		3	Of the impotent and able poore.
		4	Of Rogues and vagarant persons.
		11	Touching Logwood.
		16	For restraint of Malting.
		19	Of High waies in the Wealde.
		20	Against deceit in Northren cloathes.
		21	For relieue of Soldiers.

A Table of all the principall matters and wordes conteined in this Booke of the office of Iuſtices of Peace, obſeruing the Alphabeticall order.

A.

¶ *Abiuration.*
¶ *Acceſſaries.*
To felonie 226
By the common lawe 228
How many ſorts of them 278.279
By Statutes 279
Before the offence 281.413
After the offence 285.413
Acceſſarie to an acceſſarie 287
One perſon principall and Acceſſarie. 288
By receiuing of felons 289
¶ *Action of treſpaſſe* 128
For hawking in anothers ground 144
¶ *Action.*
Brought before the Iuſtice of Peace. 494
¶ *Addition.*
Of Iurors muſt be returned 416
In Inditements 469.470.471
In Informations 490
¶ *Aduantage of the Queene* 521
¶ *Affray.*
Peace not broken without an affray 119
Difference betweene Affray and an aſſault 128
The deriuation thereof 128
The duetie of lookers on 133.134
The duetie of an officer that ſeeth or heareth it 135
Made vpon a Iuſtice 137
Made vpon an officer 137
Where the affraier muſt bee impriſoned 136
The officer may commaund aſſiſtance, &c. 137
¶ *Agnus Dei* and other Romiſh ſuperſtitions 198.358
¶ *Alehouſes* 339.343.510.519.552
587. See forfaiture 396
¶ *Ambition* augmenteth the number of Iuſtices of Peace 34
¶ *Amerciaments.*
Notwithſtanding offer of trauerſe 162
Of the Shirife for returning the writ of Reſtitution 160
In Countie courts 349
One Iuſtice may not amerce his companion 371
¶ *Apparance.*
Who ought to appeare at the ſeſſions 371
¶ *Apparel* 458.463.563
¶ *Apprentiſes, ſeruants and labourers* 195.
See more in Labourers.
¶ *Approuements* 531
¶ *Archerie* 460.461.462.467
¶ *Arreſt*
Without requeſt 92
No arreſt without warrant 93
The Iuſtice refuſeth to bind him after arreſt 93
What arreſt is 94
What perſons may be arreſted 95
What eccleſiaſticall perſons may bee arreſted 95
The end thereof 95
How it may be diſcharged 96
Made by the ſeruants of the Iuſtices, 185
See Gaole.
¶ *Ariſtotles* counſell in making lawes 58
Arraignement
Of a priſoner after diſmiſſion 520
The diuerſitie betweene arraignement and trauerſe 527

Whereof

Whereof it commeth. 528
¶ *Armie*, and how many men make an armie. 188
¶ *Armour* 464.463.518.564.587.
¶ *Artificers*. See Labourers.
¶ *Assault*, What it is 129. See more in Batterie.
¶ *Assise of bread and ale*. 441
¶ *Assise of Fewel* 201
¶ *Assise of Fishes* 436
¶ *Assistance*.
Two Iustices to resist riots 306
¶ This word (*At*) taken for after. 580
¶ *Attachment* against a Iustice, and why. 102
¶ *Auerment* may not bee taken against a recorde, and why. 65. See more in Trauerse.
¶ *Authoritie* naturall and ciuil. 130

B

¶ *Bakers, Drouers, &c.* 588
¶ *Bailement*.
Difference betweene baylement, mainepriſes and repleuin. 329
Whereof they be deriued. 330
What felons are baileable 334
What perſons are baileable. 334. 335
and what not 197.198
Manſlaughter baileable 336
Of him that is acquite within the yeare. 336
A rule concerning bailements 337
What Iuſt may baile priſoners 337
Offences and offenders not baileable. 338
339.340.341.
Baile granted contrary to law 359
The forme of bailements 341
¶ *Bailifes* muſt attend ỹ ſeſsions 381
¶ *Bailifes of liberties* 416
¶ *Bakers* 441
¶ *Barretor* defined 424
¶ *Bargaine and ſale* 855
¶ *Baſtardie* 339.
How it might bee preuented or puniſhed 322
¶ *Batterie*.
Without breach of the Peace 130
By a Conſtable 131
In defence of himſelfe or another. 132
By the ſeruant of his maſter or dame. 455
¶ *Bath and Buckſtone*. See licence.
¶ *Beere* 437
¶ *Bearewards*. See licence.
¶ *Beggers childe* 591
See more in Rogues
¶ *Bizarre* 533
¶ *Bill of exception* 521
¶ *Borowhead, Borſholder, and Tythingman* 14
¶ *Bowſtaues* 564
¶ *Bowyers* 563
¶ *Bracton* reduced the Lawe into Latine. 4
¶ *Braſſe and Pewter* 595
¶ *Breach of the Peace* 127 and yet no breach of the band 132
Wherein it conſiſteth 118
Not without an affray 118
Without a multitude 128
By rape, manſlaughter, burglarie 130
With a multitude. See Riots &c.
¶ *Brewers* 433.434
¶ *Bridges* 558.438
¶ *Buckſtalles, Deerehayes, and ſtalking* 603
¶ *Buggerie* 223.404
¶ *Bulls from Rome*. See treaſon and Premunire.
¶ *Burgeſſes*, what it is looke burglar.
¶ *Burglarie* 254.427
What it is, and whereof it commeth 254
Difference betweene it and robberie 261
The time 255. the place 256. the manner 257. the ende 260. Puniſhment thereon 255
¶ *Burning of houſes* 262.427
¶ *Butchers* 435
¶ *Buts to ſhoote at* 463
¶ *Butter and Cheeſe* 437.438

C.

¶ *Calues and Kine* 435
¶ *Caps* muſt be worne 457
¶ *Captaines* 465
¶ *Cattell* 434.435.438
¶ *Certificate*
Of an Enditement of felonie 498

Of selling Corne. 203
To the Queene and Councell. 324
For him that shall be bound apprentice. 351
Of plaints into the Exchequer 358
Of a Riot. 357
Of a Recognusance 353
How it must be made 498
By whom it must be sent. 499
Triall by certificat 518
To the Iustices of Peace 572
¶ *Challenge* of the Iurors. 535
¶ *Champerties.* See Conuenticles.
¶ *Champertor* defined 424
¶ *Chance-medley.* See homicide.
¶ *Charge at the Sessions.*
The ancient order thereof. 390
The points thereof diuided 391
The maner thereof 392
Of Ecclesiasticall causes 396.
Of lay causes 404.&c.
¶ *Chastisement.*
For whom it is lawfull 130. See Master, Schoolemaster, Gaoler.
¶ *Cinuage, or Chiefage* 378
¶ *Church and Churchyard.*
Those that repayre not to the Church. 402
Churchrobbers 404. See felonie.
Fighting in Churches or Churchyardes. 403
Fayres and Marketes in Churchyardes. 404
¶ *Cicero* his aduice to Iudges 60
¶ *Clergie.*
If the Ordinarie be present 532
Grantable but once 544
Taken from Witches and Conjurers. 544
What offences more are not capable of clergie 545.546.&c.
A consideration touching Clergie 547
¶ *Clearke of the Peace.*
His duetie and office 379
His fees 420
His nomination 380
¶ *Clearke of the Iustice* 420
¶ *Clearke of the Market.* 420
¶ *Cloth.* 348.355.449.450
Quersers of Cloth 327.355
¶ *Cods* or Ling in caske 439
¶ *Cohertion* defined, and why it is vsed. 61
¶ *Colledge.*
Of Iesuites, &c. 327
Of Physitians 359
¶ *Commission of the Peace.*
For diuers shires. 21
Forme thereof 35
When it was first deuised 7
Diuided into three parts 45
How it may be suspended or determined 68
It shall not be shewed 373
Who shall keepe it 373
¶ *Condition.*
For the good abearing 125
Of the recognusance of the Peace, whereon it standeth 117
Of a recognisance to endite a felon committed 211
Of a Recognusaunce for Alehouse keeping. 344
¶ *Confederacie.*
See Conuenticles.
¶ *Confession.*
Free 511
Forced 512
¶ *Congruence.*
Recognusaunce taken by Congruende. 190
Processe awarded 500
Heare and determine 522
¶ *Conuiration.* 399
See felony.
¶ *Conspiracie.*
Punishment thereof. 63
Iudgement therein. 63
Against a Iustice of Peace 604
Vpon Information 490
¶ *Conseruators of the Peace.*
Who they are at the common law. 11
By other Offices. 11
The Queene the chiefe 12
Coroners in their Countries 13
Ordinarie, by prescription, election, or tenure

tenure 15
Extraordinarie 15
By the kings commiſſion 22
They had no iuriſdiction, but cohertion onely 60.61
¶ *Conſtables.*
His authoritie by the common law 15
What felons he may baile 15
He muſt obey the Iuſt. warrant 67
Whom he may arreſt 121.122
His fine for a voluntarie eſcape 137
¶ *Conuenticles* of what ſort they be 177
What is contained vnder the word *Conuenticles.* 178
¶ *Corne* 203
Tranſported 437.589
¶ *Coroners.*
Their offices at Seſſions 380
Refuſing to doe his office 418
¶ *Corporall puniſhment* 62
¶ *Countie courts.*
When they be holden. 506
Plaints in them 203
¶ *Crosbowes & handguns.* 291.358.461
¶ *Curriers.* 444
¶ *Cuſtos Rotulorum.*
Nominated by the L. Chancellor 29
His attendance vpon the Iuſt. 373
His office and authoritie 373
The gift of his office 377
¶ *Cutpurſe* 266.405.
¶ *Cutting out of tongues* 404
See Felonie.
¶ *Cutting of a pond head* 429
D.
¶ *Deere and deere hayes* 516.552
¶ *Death*
Of him which procured an arreſt 96
Of the Prince. 116
Of the Recognuſor. 116
Of him at whoſe ſute the recognuſaunce was taken 116
Of the Sureties 116
Of the Iuſtice before reſtitution 161
¶ *Demurrer.* 520
¶ *Deniall of an offence* 513
¶ *Deputie.*
A Iudge of Record may not make a deputie 65
¶ *Diers.* See Cloth.
¶ *Diſcontinuance of Proceſſe.*
By new Commiſſion 71
¶ *Diſturbing.* See Preachers.
¶ *Diſcretion.*
Defined, and how it muſt be vſed. 12 13.123.513
¶ *Draw latches* 190
E.
¶ *Eccleſiaſticall cauſes* 396
Which are Treaſons, Miſprisions of treaſons, and felonies 396,&c.
See more in Felonie and Treaſon.
¶ *Egges of wildfoule* 435
¶ *Egyptians* 200.224.357.412
See Felonies and Rogues.
¶ *Enditements.*
Before one warden of the Peace onelye. 21
Of Burglarie 254
Of petit Larcenie 267.272
What an Enditement is, and whereof it commeth. 467
Difference betweene it and a Preſentment 467.468
When they muſt be commenced. 469
Fiue things requiſite in them 469
Name and ſurname in Enditementes. 470
Additions of eſtate, degree, &c. in them. 470
Place whereof the partie is or was. 471
Alias dictus 472
Day, yeare, and place of the offence committed 473
Computation of the yeare of our Lorde God 474
Place and Countie wherein the offence was done 475
Name of the perſon to whom the offence was done 476
Of the goods of the Church 477
Goods of the Parſon 477
Goods of a Corporation 477
Goods of Executors 478
Enditementes *quod A. furatus eſt iumentum*

nicam hominis ignor. 478
Coate armour in a Church 478
Graue ſtone 478
Of goods taken from a treſpaſſor 478
Goods bayled. 478
Name and value of the thinge taken. 478
Of thinges lyuing or deade, diuerſitie. 478
Tratij, & non ad valentiam, &c. contra. 479
Coyne and money. 479
The maner of the fact &c. 480
Nature of the offence 482
For ſpeaking words againſt the Queene. 480
Of extortion againſt an ordinarie 481
Againſt an Acceſſarie 482
Of Treaſon 482
Of Burglarie 483
Of Murder 482
Of Felonie 483
For taking of trees 483
Of Mayheme 484
Of a Rape 483
Of treſpaſſe or felonie 484
Of forcible entrie 484
Contra formam ſtatuti 485
To bee receiued or reiected by Iuſtic. 486
In the Sheriffes turne 486.502
In Leetes or Lawdayes 487
For killing of a Hart 487
The dutie of Iuſtices about them 487
Diſcontinuance of proceſſe of the Indite-ments 502
¶ Enquirie.
Vpon forcible entries 155
Enquire and not determine 495
Enquiry of Riots 315
¶ Epilogue 606
¶ Eſcape 225
Of him that maketh an affray 137
Of a perſon arreſted 423
See Felonie
¶ Fſcheator
See treſpaſſe 414
¶ Eſtoppel by confeſsion 512
¶ Eſtreates.
How they muſt be leuied 559.562
For the wages of the Iuſtices 562
¶ Example
Euill examples oftentimes doe followe of good lawes 34. 514
¶ Examination.
Of felons, when it began 207
Vpon oath. 208
The trial thereby 515
¶ Execution.
For the Queene 553
For the Informer 563
¶ Extortion of fees 414. &c.
See Treſpaſſe.

F.

¶ Falſe Impriſonment
See arreſt.
¶ Falſe tokens 516
¶ Faires for horſes. 452
Felons
Reſerued till the Gaole deliuerie 348
¶ Felonie.
Diſcourſed 216
Diuided. See the Table 220
The right vſe of the word *Felonie* 217
So called *a felleo animo* 218
Publike 222
Againſt the Queene 222
Againſt the common wealth 223
Coniuration and witchcraft. 223
Buggerie 223.252
Receiuing of Ieſuites 223.399
Rebellious aſſemblies. 223
Practiſing the arte of Multiplication of gold or ſiluer 223
Maions congregating in Chapters. 223
Souldiours departing from their Cap-taine. 223
Conueying horſes into Scotland 224
Conueying ſheepe beyond Seas 224
Egyptians. 224.412
Rogues. 224.412
Breach of priſon. 224
In the Gaoler. 227
Blanke moneys 227

Embe-

Embezelling of Records. 227
In the Purueyours. 227
Priuate felonies diuided. 228
In Phyſition or Surgeon vnskilfull. 236
Cutting out of tongues, or putting out eyes. 252
Taking violently away maide, widdowe, or wife. 252
Vnlawfull abuſe of a woman child. 252
Rauiſhing of women 252
Burglarie. 254
Robbing in a houſe, booth, or Tent. 260
205
Burning of houſes. 262
Cutpurſe. 266
Stealing moueable goods. 269
Taking domeſticall pullin. 269
Taking pigeons or yong hawkes. 270
Taking of fiſh kept in Trunk,&c. 270
Taking of a tame Deere. 271
Clipping Sheepe and taking the skinnes. 271
Cutting downe a tree one day,and carrying it away another day. 272
Stealing his owne goods 272
Taking fruite, trees, or Corne not growing. 272
Taking plate out of a Tauerne 273
Seruants ſpoyling the goods of their deceaſſed maſter. 276
To ſet foorth how long the Queene ſhall liue. 400
Robbing Church or Chappel 404
Enlarging one endited of Treaſon. 407
Felonies omitted in the charge. 412
Felonies not tryable beefore Iuſtices of peace. 529.&c.
¶ *Fencers.* See Licence.
Fines.
For the Queene. 553
The Sheriffe is accountable for all fines. 555
Impriſonment for the fine. 555
Whereof it commeth. 555
Difference betweene a fine and Amerciament. 555
By whom it muſt be aſſeſſed. 557
At the Kings will and pleaſure. 557
They ought to be reaſonable. 558
They muſt be aſſeſſed openly. 558
¶ *Fiſh and Fiſhermen.* 349
Fiſh tranſported. 437
Bought of a ſtranger 438
Setting price on Sea fiſh. 439
¶ *Fiſh dayes* 440
¶ *Fleſh.*
Forbidden in Lent, fiſhdayes, &c. 440.
Licence to eate it. 419.440
¶ *Forcible entrie.*
The Statutes thereof. 140.141.142.
Forcible retaining 148.149
Two ſorts of force. 143
What one Iuſtice may do in it 143
By diſtrayning 147
What it is 145.146
Committed by one perſon alone. 147
Of a Common,or Rent 149
To an vſe,and agreement thereto 147
Holding out with force after three yeares poſſeſſion. 163
The fine thereof, and by whome it ſhall be aſſeſſed. 162
Vppon the Statute of Northhampton. 171.
Force of weapons. 145
Precept for it. See *venire facias.*
¶ *Forfaiture.*
By the Iuſtice of peace for not giuing notice to the Lord Chauncellor of their inſufficiencie of lands 32
Onely pardonable by the Queene. 114
Of a recognuſance for the peace 130
See breach of the peace.
Of a Recognuſaunce by an Alehouſekeeper. 505
The Mitigation thereof. 558
By Iuſtices of peace vpon ſtatutes. 605
357.358
At the common lawe. 603.604
¶ *Foreſtalling and Foreſtallers.* 339
What a Foreſtaller is 430
¶ *Foreſters* killing offenders within their charge 231.232
¶ *Foure Cardinall vertues* 392

¶ *Freſh ſuite.*
To Arreſt an Affrayor. 137
After a Robberie 190
¶ *Frie of fiſh* 194.436.557
¶ *Furtum.*
Defined by Bracton 267

G.

¶ *Gaole and Gaoler.*
Who may make a Gaole of his owne houſe 136
Whether the partie arreſted ſhall bee ſent 92
Difference betweene a Gaoler and a Conſtable 136
A Gaoler may chaſtice his vnruly priſoners 130
A Gaoler handling ſtraightly his priſoner 404
Denying to receiue Felons 418
¶ *Goldſmiths and Gilding* 447
¶ *Good abearing.*
Wherein it conſiſteth 119.120.&c.
Granted by one Iuſtice alone 123
For haunting ſuſpected houſes 121
Difference betweene it and ſuertie of peace 119
Of whom it may be taken 120.121
The fourme of the Precept 124
The fourme of the Recognisance 125
See more in Suertie
¶ *Gunner.* See Crosbowes.
¶ *Gunners* 223.411

H.

¶ *Habeas corpus* 507
¶ *Harneſſe.*
Who is bound to keepe harneſſe 463
¶ *Hares traced* 430
¶ *Harueſt time* 455
¶ *Hawkes embeſelled* 407
¶ *Hawkes egges* 429
¶ *Hawking in Corne* 431
¶ *Hay and Otes* 453
¶ *Hearing.* See Triall.
¶ *Herring.* See fiſh.
¶ *Highwaies* 590
Superuiſors of them muſt preſent, &c. 296
In Kent, Suſſex, Surrey 296.350
Changing of a high way 327
Money giuen for repairing them 352
No buſhes within 200. foote of the. 423
Who muſt appoint Ouerſeers of them. 459
Inquirable in the Seſſions 423.590
¶ *Homicide* 228
Commanded by law 230
Allowed by law 230.231.232
By Chance-medley 243. Why ſo called. 244
In his owne defence 243.248
By miſaduenture 250
¶ *Horſes and Mares.*
Conueyed into Scotland 224.409
Put away by Souldiers 197.465
Vnder 14 handfuls hie 465.517.587
Conueyed beyond Sea 465
Vntolled for after buying 452
¶ *Horſebread.* 453
¶ *Hoſpitall* 356
¶ *Hunting by night.* 196.408.587
See Felonie
¶ *Husband.*
May haue ſuertie of peace againſt his wife 81
¶ *Huy and Crie* 204.423
¶ *Ieſuites and Seminarie Prieſts* 399
See Felonie.
Their ſubmiſſion 327
¶ *Ina* King. 188
¶ *Inditement.* See Enditements
¶ *In Feſto.*
The expoſition thereof 473
¶ *Information.*
By priuate men 490
Free and Voluntarie 491
Information forced 492
Proceſſe thereupon 491
¶ *Informer and Promoter* 422.588
¶ *Ingroſſer.*
What is the ſignification thereof 431
¶ *Inholder*
Muſt ſell no litter 453
Muſt bake no horſebread 453
Muſt ſell victuals reaſonably 436
¶ *Inrollements* 208
¶ *Inter pares non eſt poteſtas.* 371
¶ *Iron*

¶*Iron worke* 297.475
¶*Iſſues.*
Loſt by Iurors 63
¶*Iudgement.*
What things are required therein 549
Arbitrarie 550
Preſcribed 550
Of Conſpiracie 63
Of ſuch as vſe falſe tokens 550
Of ſeruants making aſſault vpon their Maſters,&c. 550
Of treaſon. 551
Againſt Murder, and other Felonies. 551
For conueying ſheepe beyond ſeas 552
For taking Deere,&c. 552
For keeping an Alehouſe contrary to the ſtatute 552
¶*Iuglers*, See Licence.
¶*Iurors and Iuries.*
Which bee not *Probi & legales homines.* 382
Per quos rei veritas, &c. 382
Shall haue action againſt the Sherife. 383
Generall and particular. 384
De Circumſtantibus 384
Not ſworne 384
The number of them 386
Their Concealements 386
Taking reward 424
Challenge of them 535
¶*Iuſtices of the Peace and Quorum.*
Who they be,and why ſo called 3
Why they were ordeined 7.10.20
When they tooke that name 22.74
Chiefe Iuſtice termed *Capitalis Iuſtitia*, and why 3.4
Why Iuſtices of the *Quorum* were choſen 49
Diuerſitie betweene Iuſtices by Commiſſion and Patent 26.27
By whoſe authoritie they bee appointed. 7.24
They are Conſeruators of riuers 194
The nomination of them 27
Their oath 54
What lands they ought to haue 31.32
What manner of men they ought to bee. 30
How many muſt be in euery county 33
When their power ceaſeth 73
They be ouerladen with Statutes 35
Their power comprehended in three clauſes of the Commiſſion 45
Their power limited and abſolute 58
Their iuriſdiction and cohertion 60
They be Iudges of Record 64.66
Iuſtice of the Peace and afterwards made Duke,Earle,&c. 72
The power of one Iuſtice alone 74 194.290
How many may holde a Seſſions of the Peace 369
VVhen they be but Miniſters, and when Iudges 77
VVhether a Iuſtice may make a precept returnable before himſelfe 91
Their Rewards and puniſhments.See Reward
His authoritie at an affray 134
VVhat Enditements he may receiue, and what not 486
How they ſhall take knowledge of cauſes at the Seſſions 366
Their authoritie in Seſſ.equall 371
The power of two Iuſtices of P. 303
¶*Iuſtices in Eyre* 73

K.

¶*King.*
Ed.the third depriued his father 19
He firſt created wardens of the P. 8
King *Ina* his lawes againſt theeues 188

L.

¶*Labourers and ſeruants.*
Put away or departing before the ende of his terme 195.454
Their teſtimoniall of departure 454
Refuſing to ſerue 339.453
Not retainable for leſſe than one yeare. 453
Vndertaking worke, and not finiſhing it. 454
Their wages 454
Aſſaulting Maſter or Dame 455

See Apprentices.
¶ *Larcenie* 406
Whereof it is so called 267
What it is 268
In what maner it is committed 273
¶ *Lay causes.*
What Lay causes are Treasons, petite treasons, and Felonies in Lay causes. 404.405.&c.
¶ *Leather.*
Engrossed, to sell againe 434
How it must be tanned 443
Searchers and Sealers thereof 447
¶ *Leetes* 543
¶ *Licence.*
To begge for fees 326
For Rogues 326
For sicke persons to trauell to Bathe or Bucklstone 326
To transport victuall. 339
For Pedlers, Minstrels, &c. 346
To eate flesh 419.440
For Badgers, Drouers. 588
¶ *Liueries* 338.425
¶ *Logwood.* 589
M.
Maisons. See Felonie.
¶ *Mainprise.* See Bailement.
¶ *Mayheme* 413
¶ *Malt* 590.204.233
¶ *Manslaughter.*
Containeth all felonious homicide. 217
No breach of the peace 132
Vpon premeditate malice, murder. 233
See *Homicide.*
¶ *Masse* 397
¶ *Master.*
May chastise his seruant 130
¶ *Meane acte.*
Betweene the making of the Commission and notice thereof. 71
¶ *Metonymia* 3
¶ *Minstrels.* See licence.
¶ *Misprison of treason.* See Ecclesiasticall and Lay causes.
¶ *Mittigation* 558. See Forfeitures.
¶ *Mittimus.*
To send the prisoner to ỹ gaole. 216.292
What it must containe. 292
To send Riotters to the Gaole. 315
¶ *Mortuarie.* 419
¶ *Multiplication of Golde and siluer.* 223.408. See Felonie.
¶ *Murder.*
What it is 233. Difference betweene it and manslaughter 234. To kil a knitwen officer 236. A harlot killing her yong child 236. Gaoler ouer hard keeping his prisoner 236. The sonne caryng his father into ỹ cold 236. Officer beheading him that is adiudged to be hanged 236 A theefe killing him who he neuer saw 237 A man commanding his seruant to beate another 237. killing the owner of an Orcharde. 237. Riotters killing of them that ayde the Sherife 237. Shooting at one, and killing another 238. Killing a seruaunt fighting in his Masters defence 238. Wilfull poysoning 238. Abetting a murder 239. In Hunters 239. Difference betweene it and petite treason. 241. A man killing himselfe. 243.
¶ *Musters* 339.465.564
N.
¶ *Names of dignitie* 470
¶ *Newes* 199.409.425
¶ *Next Iustices.*
The exposition thereof. 321.322
¶ *Noble.* Who be so accounted. 520
¶ *Notice.*
Giuen to the Lorde Chauncellour by the Iustice of P. of his insufficiencie. 32
The olde Commissioners must haue notice, &c. 70.71
O.
¶ *Obligation.*
Touching the King and the forme thereof. 105
¶ *Office of the Iustices* 51
¶ *Officers and their misdemeanors* See Trespasse.
¶ *Ordinarie.*
His duetie at the Sessions. 381
Is not Iudge, but Minister 381. See trespasse.

¶ *Originall*

¶ *Originall writs*
The forme of them by *Glanuill, Bracton*, and at this day 4
¶ *Oth*
Of the Supremacie 56
Of the Queene at her coronation 7
Of a Iuſt. of P. See Iuſtice of peace
In what caſes it may be required 208
The commoditie of it 200
Of Vnderſherifes 346.417
When Iuſtices of Peace were firſt ſworne 53
Taken by *Dedimus poteſtatem* 54
By whom it was firſt made 56
Of him that demandeth ſurety of P. 85
Of the ſureties for their habilities 103
Of the Iudge to excuſe a fault 603
All betweene fifteene and three ſcore yeres olde, muſt bee ſworne to the peace 395

P

¶ *Pardon*, Generall 540
Speciall 542
Of all felonies diſchargeth not murder 542
¶ *Parſon, Vicar, &c.* See Treſpaſſe.
¶ *Partriches and Feſants* 202.431
¶ *Parkers*; See Forreſters
¶ *Peace*
The ſignification thereof 5.6.7
Inward and outward, &c 5
Taken for protection or defence 6
Statutes for maintaining thereof 9
The Conſeruation thereof, and wherein it ſtandeth 76
¶ *Pedlers*, See Licence
¶ *Peeres*, See Triall
¶ *Penal lawes* 191
¶ *Periurie* 401.566.588
¶ *Petite larcenie*
Of what things it may be 269
What perſons are chargeable in it 277
¶ *Petite treaſon*
Why ſo called 240
If a Clarke kill his Prelate 241
A wife killing her husband, or ſeruant his maſter 241
Difference betweene it and murder 242
¶ *Phiſitians* 359
¶ *Playes and Players* 196.344
Plaints in Countie Courts 203
¶ *Popes power* muſt not bee extolde 396-586
¶ *Populus* containeth all the Laitie 8
¶ *Poure people* 589
Regiſter booke of them 195.290
Citie or towne ſurcharged with them 326
They muſt be ſet to worke 456 605
Refuſall to giue to the poore 347
How the money giuen to the poore is beſtowed 352
¶ *Powdike* 413
¶ *Power of the Countie.*
What it is 309
How long it muſt attend 309
¶ *Poſſeſſion*, actual, and in law only 156
¶ *Poyſoning* 238
See murder
¶ *Preachers*
Diſturbers of them ſhall be arreſted 327
Impriſoned 327
¶ *Precept*, For the peace 87
See warrant
¶ *Premunire*
Extolling forraine power 396
Promiſe obedience to the See of Rome 396
Refuſing the oathe of her Maieſties Supremacie 396
Bringing from Rome *Agnus Dei, &c.* 398
¶ *Preſentment.*
What it is, and whereof it commeth 467
It differeth from an Enditement 467
Made by a Iuſtice 490
By a Conſtable 490
By ſearchers for making Tile 490
See Trauerſe
¶ *Prieſts*, See Ieſuites
¶ *Priuie ſeſſions*, and inconuenience thereof 192
Priuiledge of the ſeſſions 388
¶ *Priſoners.*
Collection in Churches for their reliefe 455
Taxation for their reliefe 454.590
¶ *Priſon-*

¶ *Priſonment* defined. 224
¶ *Priſon* broken. 407
¶ *Proclamation.*
To remoue a force. 172
To ſtay an affray. 135
To diſperſe a Riot. 135.
Read at euery Seſſions of the Peace. 492
592.605
¶ *Proceſſe.*
Vpon Information. 490.492.509
Whereof it is named. 501
Authoritie to make out Proceſſe. 501
In whoſe name it muſt be. 501
Vpon an Enditement of Treſpas. 504
Vpon the ſtatute of highwaies, liueries, maintenance, archerie, and vnlawfull games. 504
Vpon Recognuſance. 505
Vpon the ſtatutes of Labourers. 505
Into other ſhires. 505.509
Into ſeuerall ſhires. 506
Vpon Treaſons and Felonies. 509
In a Leete. 523
Proceſſe ſtaied. See Superſedeas.
¶ *Proheme of the Author.* 1.361
¶ *Promoters.* See Informers.
¶ *Propheſying.* 400
To the intent to ſtir vp rebellion. 399
How long her Maieſtie ſhall liue. 400
¶ *Puniſhments.*
Eight ſorts of them vſed by the Romanes. 62
Why they are ordained. 61
Three ſorts at this day. 62
Of Iuſtices at the Common Law. 603
By ignorance of the Iuſtices. 603
For embeſelling, razing or altering of Records. 603
For taking money to doe his office. 604
For procuring one to be indited. 604
Puniſhment by Statutes, and See Forfeitures. 420.436.590
¶ *Purueyours.* 406
See Felonie and Treſpaſſe.
¶ *Putting out eyes.* 404 See Felonie.

Q

¶ *Queene.*
Is the fountaine of Iuſtice. 116

R

¶ *Rape.* 252.403
¶ *Rauiſhment.*
Whence it is deriued. 253
¶ *Recognuſance.*
Taken by preſcription for the Peace. 12. 102
By Iuſtices of Aſſiſe. 13.
By the Shirife. 13
By the Iuſtices of Gaole deliuerie. 13
By the Steward of the Marſhalſey. 13
Who may take it. 66.67
Not pardonable before it be forf. 114
Circumſtances requiſit in taking of it. 102
What matter it muſt comprehend. 105 106
Forme thereof for the Peace. 108.109
For good abearing. 125
Certified at the Seſſions. 116
It cannot bee cancelled after a releaſe. 114
Of an Informer againſt a ſuſpected perſon. 211
¶ *Record.*
What it is. 64
The force of it. 66.67
It lieth *in ſcrinio pectoris.* 66
Superſedeas is a Record. 67
Of a Riot. 311
Recording of a Riot. 314
Of the Peace. 357
Of Gaole deliuerie. 357
Day to bring it in. 319
¶ *Regrator* defined. 432
Releaſe.
Of the partie to him that is arreſted for the Peace. 96
Of the Iuſtice. 113.115.
Of the partie. 113.115
Of the Queene. 114
Of an other Iuſtice. 115
Of the ſuretie of good abearing. 126
¶ *Repleuin.* See Bailement.
¶ *Requeſt.*
Before arreſt. 92
Reſtitution of poſſeſſion.
The right (or title) is not materiall. 151
How it may be ſtayed. 156

To

To a Termor or Copyholder 159
To none but him which had actuall poſſeſſion. 159
Of a Common or Rent, 149
Without Complaint. 150
Death of the Iuſtice before Reſtitution. 161
Double or croſſe reſtitution. 157
To one ioinetenant alone. 158
To whom it may be made. 159
To a Leſſee for yeares. 158
Vpon the writ of reſtitution. 160
The warrant to make reſtitution. 170
¶ *Reſcuſſ.* 225
¶ *Returne.*
Of a *Supplicauit.* 110
Of a *Certiorari.* 111
Of the writ of Proclamation. 173
¶ *Reward and puniſhment of Iuſtices of Peace.* 354.355.&c.600.
See Puniſhments.
¶ *Riot.*
Defined, and whereof it commeth. 181
A very ſeede of Rebellion. 179
Things common and conſiderable in Riots. 181
The power of one Iuſtice therein. 185
The degrees thereof. 187
Repreſſion thereof by two Iuſtices. 304
Seuerall ſorts of them. 179
When the Iuſtices muſt recorde Riots. 311
Made vpon the Iuſtices. 313
Inquirie and certifiyng of Riots. 318
The maner how to record it. 314
The inquirie and forme thereof. 315
¶ *Riuers.* 194
¶ *Rogues and Vagabonds.*
Aboue fourteene yeares of age ſhall bee brought before the Iuſtices. 195
Set to worke. 352
After they be marked, fall to roguiſh life. 411
Pretending skill in Palmeſtrie, telling of deſtinies, &c. 426
Giuing reliefe or harboring them. 426
¶ *Robberie.* 254.267.404
Defined. 263
¶ *Robertſmen.*
Are mightie theeues, 190
¶ *Rout* defined, 180

S.

Sacrament of the Lords Supper. 352. 401
¶ *Salmons.* 435
Sanctuarie. 204
To whom it may be allowed. See Clergie.
Scauage or Sheuage. 421
Schoolemaſter.
Which commeth not to Church 403
May chaſtice his ſcholar. 130
¶ *Scholers* begging without licence vnder their Vniuerſitie ſeale. 426
Seale weights. 421
¶ *Seiſin.* 165
¶ *Seminaries.* See Ieſuits.
¶ *Seneca.*
His reaſon why puniſhment is vſed. 61
Sermon. 388
¶ *Seruants.* See Labourers and Apprentices.
¶ *Seſſions of the Peace.*
The deſcription thereof. 363
The ſtile thereof. 524
Whereof they be grounded. 365
Who ſhall appoint them. 366
Precept to ſummon them. 367
Holden by one Iuſtice. 369
Where they ſhall be holden. 370
What perſons ought to appeare at them. 372
No Seſſions without Iuſtices. 367
Generall, principall, open or Quarter Seſſions. 573
How many there be. 574
When they ought to be holden. 576.&c.
How long they ſhall continue. 586
What matters are referred to the Quarter Seſſions. 586.587,588.&c.
Speciall Seſſions. 596. and the vſe of them, 598. Precept to ſummon them. 599
¶ *Sewers.*
Commiſſions of Sewers. 353
¶ *Sheepe.*
Tranſport beyond the ſeas. 224.209.438.
¶ *Shirife*

¶ *Sheriffe*
Muſt attend the Iuſtices 381
See Treſpaſſe.
¶ *Shoemakers* 446
¶ *Silke* See apparel.
¶ *Sope* See Veſſels.
¶ *Souldiers* 590
Departing from their Captaines 41
¶ *Starre Chamber*
The beſt guide and direction for Iuſtices of Peace 179
¶ *Statutes*
Made *pro bono pacis, & quieto regimine populi* 41
Belonging to Iuſtices of Peace, looke the Table in the ende of the ſecond booke.
Sub pœna
Granted by the L. Chauncellor againſt a Lord 83
¶ *Subſidie* 328
¶ *Suggeſtion* See Information.
¶ *Supplicauit*
How the Iuſt. of P. ſhall returne it 110
Execution thereof 104
Called in old time *breue de minis* 77
¶ *Superſedeas*
Is a Record 67
To diſcharge a Precept 98.102
The fourme thereof by a Iuſtice 100
Out of a higher Court 102
To diſcharge Arreſt 98
To diſcharge the Summons of the Seſſions 369
After a *Certiorari* 497
To ſtay Proceſſe of Vtlawrie 507
To diſcharge good abearing 126
To ſtay reſtitution 161
It diſchargeth apparance 106
¶ *Suretie of Peace*
Who may take it 12.13.14
What it is 77
Without requeſt 80
New ſurety after breach of the P. 85.117
By procurement of a Iuſtice 77
Vpon a *Supplicauit* 77
For whom and againſt whom 81.82.85
Why it may be required 84
Againſt a Lord 83
Granted by 1. Iuſt. againſt another 82
Againſt an impotent man 86
Taken before Arreſt 92
At anothers requeſt 80
Precept for it 87
The manner of it in the Kings Bench and Chancerie 98
What men ſureties muſt be 103
By gage or pledge 104
By obligation 104
Taken a new after Recog. forfait 116
How it may be diſcharged. See Releaſe & *Superſedeas*
¶ *Suſpition*
How it is conceiued by *Bracton* 122
And ſee the Table 212
¶ *Swearing* See Othe

T

¶ *Tanners.* See Leather.
¶ *Tauerne keepers* 591
¶ *Teſtimoniall* 454
For Seruingmen. 325. See Licence
¶ *Thirdborowes*
Who they be, and why ſo called 14
¶ *Tillage*
They that haue the Demeſnes of Religious houſes, muſt keepe tillage 451
¶ *Tile making* 448
¶ *Tinkers.* See Licence
¶ *Tithes* 347
¶ *Tolle* 442
¶ *Trauerſe*
Of an Enditement with force 163
Of the Record of a Iuſtice 186
What it is, and whence deriued 521
Of a preſentment 523
Record thereof 525
Triall thereby 520
¶ *Treaſon*
To extoll forraine power 222
To refuſe the oth of the Queenes ſupremacie 396
To diſſwade her ſubiects from obedience, 222.397
To counterfeit the Queenes money 227
Enquireable by the Iuſtices 47
Puniſhable by one Iuſtice 48
See Eccleſiaſticall, and Lay Cauſes.

¶ *Treſ-*

The Table.

¶*Treſpaſſes and Miſdemeanours* inquirable by the Iuſtices of Peace at the Seſſions
For aſſault and beating. 413
Of the Eſcheator. 414
Of the Sherifes and their miniſters. 413. 414.415
Of vnderſhirife 417
Of the Gaoler. 418
Of the Coroner. 418
Of the Ordinarie. 419
Of the Parſon, Vicar, or Curate. 419
Of the Clarke of the Peace. 420
Of the Iuſtices Clarke 420
Of Purueyours. 421
Of Informers. 422
Of any Iurour. 424
For giuing liueries of Companies. 425
¶*Triall.*
By Confeſſion. 511
By diſcretion. 513
Vpon Examination. 515
By Certificate. 518
By Trauerſe. 519
By Peeres. 519
¶*Troupe of men*, how many. 188
¶*Truce* defined. 76
¶*Turne of the Sherife.*
When it muſt be holden. 486

V

¶*Vagabonds.* See Rogues.
¶*Venire facias.*
To enquire of forcible entrie. 168
Tot Matronas. 532
¶*Verdite.* Of the Iurors touching forcible entrie. 169
Veſſels.
For Ale and wine &c. 441.442
Of Sope. 442
¶*Victuals and Victuallers.* 486
¶*Vis* defined by *Tullie and Bracton.* 9
¶*Vnlawfull aſſemblie.*
What it is. 179
Of Iurors. 184
Of women or Infants. 184
Of a Corporation 185
Notice thereof within 24. houres. 188
¶*Vnlawfull games.* 196 339.460
¶*Vnderſherife.*
His authoritie ouerſhadowed by the preſence of the high ſhirife. 320
His othe. See othe, and Treſpaſſe.
¶*Vniuerſities* 422
¶*Vſurie* 438
¶*Vtlagarie*
Vpon Enditements. 503

VV

¶*VVages*
How Iuſtices wages are to bee leuied 562
Howe many Iuſtices ſhall haue wages. 600
For knights of the Parliament. 494
For ſeruants. 452.594.605
¶*VVainlings.* 435.587
¶*VVarrant.*
Muſt be obeyed. 67.94
The fourme thereof vppon a *Supplicauit*, 78
By word to find ſuertie 86
The forme thereof in Engliſh. 87
What matter it muſt comprehend 89
The date thereof. 90
To whom it may be directed. 90
Before what Iuſtice it is returnable. 91
To arreſt one in another Court. 94
To the ſhirife to make reſtitution. 170
To ſummon the Seſſions. 367
¶*VVarreners.* See Forreſters.
¶*VVatches.* 423.
Vpon the ſea coaſt. 466
¶*VVatermen.* 205
¶*VVaxe.* 200.449
¶*VVeapons* which be forcible. 145
¶*VVeares.* 194
¶*VVeights and meaſures.* 345.441
¶*Witchcraft.* 399
¶*VVines.* 439.440
¶*VVoad.* 439
¶*VVood.* 349
¶*VVoolles and woolfellers.* 413
¶*Wollen yarne.* 404
¶*Women* taken againſt their willes, 405

Y

¶*Yarne.* See Wollen.

An

An Appendix, containing ſundrie Precedents, concerning the Peace, and matters within the authoritie of the Iuſtices of the Peace.

And firſt you ſhall finde theſe Precedents, alreadie ſet forth in theſe bookes before, videlicet.

Page.

Peace. THE Writ of King *Edward* the 3. for Proclamation of the Peace. 8

Conſeruator of the Peace. The Writ of King *Edw.* 1. for the making of an ordinarie *Conſeruator* of the Peace by election. 16

The *Inquiſition* of an ordinarie *Conſeruator* of the Peace, by the *Tenure* of his land. 17

The writ of king *Hen.* the 3. for an *Extraordinarie Conſeruator* of the Peace. 18

Commiſſion of the Peace. The forme of the generall *Commiſſion* of the Peace, at this day. 36

Oaths of the Iu. of peace. The forme of the two *Oaths* of a *Iuſtice* of the Peace. 54. & 56

Suertie of the Peace. A Precept by a *Iuſtice* of Peace, made out of a *Supplicauit*, for *Suretie* of the Peace. 78

A Precept by a *Iuſtice* of Peace, made *Ex officio*, for ſuretie of the Peace. 87. & 89

A *Superſedeas* touching the Peace, made by a Iuſtice of the Peace. 100. & 101

The Recogniſance for the Peace to bee kept. 108. & 109

The

The *Returne* (made by a *Iustice* of Peace) of a *Supplicauit* for the Peace. 110
The *Returne* of a *Certiorari*, touching a *Recognusance* for the Peace. 111
A forme of a *Releaſe* of *Suertie* of the Peace, by the Partie. 115
The maner of the *Precept* by a *Iuſtice* of Peace for the *Good Abearing*. 124
The *Recog.* taken for the *Good Abearing*. 125
The *Recording* of a *Force*, by a Iuſtice of the Peace. 152
The *Mittimus* to the Gaole, of him againſt whom the *Force* is *Recorded*. 154
A Precept from a *Iuſtice* of Peace to the *Shirife*, for warning a *Iurie* to enquire vppon a *Force*. 168,
The *Inquiſition* (or preſentment) of ſuch a *Iurie* touching the *Force*. 169
The Warrant by a *Iuſt.* of P. for *Reſtitution* to be made of a poſſeſſion *Forcibly holden*. 170
The maner of the *Proclamations* to be made in execution of the Writ vppon the ſtatute of *Northampton*. 173
The *Returne* of the Writ vppon that Statute of *Northampton*. 174
The forme of the *Proclamation* againſt a *Rebellious* Aſſemblie. 188
The *Bond* and condition thereof, taken of him that giueth *Information*, before a Iuſtice of Peace againſt a *Felon*. 212.

Suertie of good Abearing.
Forcible entries and holdings.
Writ vpon the ſtatute of Northampton
Rebellious Aſſemblie.
Informer againſt a felon.

The

Felon. The *Mittimus* of a *Felon* (after his *Examination*) to the Gaole. 216

Shooting in a gunne. The maner of the *Recording* of the Shooting in a *Handgunne*, and of the *Mittimus* of the Shooter therein to the Gaole. 292.294

Riot. The order of *Recording* a *Riot* by the *Iustices* of Peace, and the *Shirife*, *&c.* 314

The *Precept* for ſummoning a *Iurie* to enquire of a *Riot*. 323

The forme of the *Inquiſition* (or Preſentment) of a *Riot*, by the Iurie. 324

Bailement. The forme of a Bailement of a Felon. 341

The manner of the Liberate, after the Baile taken 342

Alehouſe. The condition of a Recognuſance for good rule in an Alehouſe. 344

Quarter ſeſſions. The Precept of Summoning the Quarter Seſſions of the Peace. 367

Trauerſe. The whole *Record* of the Trauerſe of an Enditement before Iuſtices of the Peace. 524

Eſtreats. The title (or Stile) of the Eſtreates of the Seſſion of the Peace to bee ſent into the Eſchequer. 562

Spectall ſeſſions. The Precept for ſummoning a ſpeciall Seſſions of the Peace. 599

Hitherto of ſuch Precedentes as are to bee read in the bookes before.

Now

Now follow sundrie Enditements, Presentments and Processes.

The Stile of the Sessions.

GEneralis Sessio pacis, tenta apud Maidstone *in comitatu prædict. primo die Octobris, Anno regni serenissimæ dominæ nostræ* Elizabethæ, *Dei gratia Angliæ, Franciæ & Hyberniæ reginæ, fidei defensoris, &c. Coram* Thoma Wotton *armigero, & socijs suis* Custodibus *pacis dictæ dominæ reg. ac* Iusticiariis *suis ad diuersa felonias, trãsgressiones, & alia malefacta in dicto comitatu perpetrata audiendum & terminandum assignat.* *Kanc.*

Inditements concerning Ecclesiasticall causes.

For extolling the authoritie of the Pope.

IVratores præsentant pro domina regina, quod I. S. de C. in com. prædicto, Clericus, 20. die mensis April. an. reg. serenissimæ dom. nostræ Elizab. Dei gratia, Angliæ, Franciæ, & Hyberniæ reginæ, fidei defensoris, &c. tricesimo, apud D. in com. prædicto, scienter, consideratè, malitiosè & directè

palam in præsentia multorum dict. dominæ reginæ nostræ nunc subditorum, affirmauit, & defendit authoritatem papę Romani ecclesiasticam in hoc regno Anglię præantea vsurpatam, hijs expressis verbis Anglicanis sequentibus, viz. **I sweare by the blessed Masse, and will euow, that our holy father the Pope of Rome, is the supreme head of the Church of England,** in magnam derogationem regiæ authoritatis, & prerogatiuæ dictę dominę Reginæ nostrę, ac contra coronam & dignitatem suam, necnon contra formam diuersorum statutorū in huiusmodi casu editorum & prouisorum. Et quod A.B. de D. prędicta in comitatu præd. **Warechandoz,** sciens ipsum I. S. dicta verba loquutum esse, ac dictam dicti papę authoritatem modo & forma vt prefertur, defendisse, ipsum I.S. apud D. prędictum, postea scilicet, 22. die dicti męsis Aprilis anno supradicto, consolatus est & confortauit, ex industria & ex propesito, & ad eam intentionē vt idem A.B. promoueret & efferret prefatam dicti Papę authoritatem vsurpatā, in perniciosissimum aliorum expemplum, ac cōtra coronam & dignitatem dictę dominę Reginę nostrę nunc, ac etiam contra formam diuersorum statutorum in eiusmodi casu prouisorum & editorum.

For absoluing from the Queenes obedience.

INquiratur pro domina Regina, si A. B. de C. in dicto comitatu Clericus, sexto die mensis Maij, anno regni dominę nostrę Elizabethę Dei gratia Anglię, Franciæ & Hibernię reginę fidei defensoris, &c. Tricesimo, apud C. prefatam in comitatu prędicto, voluntariè & proditoriè conatus est, & practicauit absoluere, persuadere, & seducere quandam Iohannā W. de C. prędicta in comitatu prędicto viduam, a naturali obedientia, & subiectione sua, quam eadem Ioanna erga dictā dominam nostram

noſtram reginam gerere debet, ad obediendũ prętenſæ authoritati ſedis Romanæ, tunc & ibidem proditoriè prę ſe ferens & aſſerens ſe habere poteſtatem & facultatem id faciendi, & tunc & ibidem proditoriè dicens eidem Ioannę hijs Anglicis verbis ſequentibus, **Mother Ioane, you will haue a blacke ſoule, I tell you, if you do not the ſooner forſake the Queene** (innuendo prędictam dominam noſtram reginam nunc) **and her hereſies, and yeeld your ſelfe to the obedience of our mother Church the holy See of Rome:** contra pacem dictę dominę noſtrę Reginę, coronam & regalem dignitatem ſuam, & contra formam ſtatuti in Parliamento dictę dom. noſtrę reginæ tento apud Weſtmonaſterium in comitatu Middleſexiæ, anno dicti regni ſui viceſimo tertio in huiuſmodi caſu prouiſi & editi.

For a Ieſuite and his Receiuers.

INquiratur pro domina Regina, Si E. C. ſuper de S. in comitatu prędicto clericus, natus apud S. prædictam in comitatu prędicto, atque infra annum iam proximè præteritum factus & profeſſus Ieſuita per authoritatem à ſede Romana deriuatam, proditoriè, apud S. præd. in comitatu prędicto, ſexto die Iulij, anno regni dictæ dom. noſtrę Elizabethæ, dei gratia Angliæ, Franciæ & Hyberniæ Reginę, fidei defenſoris, &c. tricesimo, à partibus tranſmarinis applicuit, & dicto ſexto die anno ſupradicto, & nonnullis alijs diebus tunc proximè ſequẽtibus apud S. prędictam in comitatu prędict. proditoriè moram fecit ac remanſit; contra formam cuiuſdam ſtatuti in parliamento dictæ dom. Reginę noſtrę nunc tento apud Weſtmonaſteriũ in comitatu Middleſexiæ anno regni ſui viceſimo ſeptimo in huiuſmodi caſu prouiſi & editi, ac contra pacem dictę dom. Reginę, coronã

& dignitatẽ ſuas. Et ſi W. B. de S. prædict. in dicto com. mercator, ſcienter, volũtariè & felonicè, poſtea, ſcilicet dicto ſexto die dicti menſis Iulij anno ſupradicto, prædictum E. C. apud S. prædictam in comitatu prædicto receptauit & comfortauit, dicto W. B. (ad tunc & ibidẽ ad largum, & extra priſonam exiſtentem, ac præfatũ E. C. huiuſmodi Ieſuitam eſſe, tunc & ibidẽ) ſciente & cognoſcente. Contra formam ſtatuti prædicti, ac contra Pacem, coronam & dignitatem dictæ dom. Reg. noſtræ.

For ſaying and hearing of Maſſe.

IVratores præſentant pro dom. Regina, quod Io. R. nuper de C. in comitatu prædicto clericus 8. die Aprilis, Anno regni dictæ dom. noſtræ Elizabethæ Dei gratia, Angliæ, Franciæ & Hyberniæ Reginæ, fidei defenſoris, &c. Triceſimo apud C. prædictã in comitatu prædicto, voluntariè dixit & celebrauit vnam miſſam, contra formam cuiuſdã ſtatuti in Parliamento dictæ dom. noſtræ Reginæ tento apud Weſtmonaſteriũ in comitatu Middleſexiæ, anno regni ſui viceſimo tertio in hoc caſu prouiſi & editi, & contra pacem dictæ dom. Reginæ, coronam & dignitatem ſuam: & quod Maria B. de C. prædicta in com. prædicto vidua, dicto 8. die Aprilis anno ſupradicto apud C. prædict. in com. prædicto, interfuit præſens tempore dictæ celebrationis miſſæ prædictæ, ac eandem miſſam (ſic vt præfertur dictam) ad tunc & ibidem voluntariè audiuit contra formam ſtatuti prædicti, ac contra pacem, coronam & dignitatem dictæ dom. Reg. noſtræ.

For being abſent from the Church.

IVratores pro domina Regina ſuper Sacramentum ſuum præſentant, quod A. B. nuper de C. in comitatu prædicto

prædicto Armiger, qui x. die Iulij anno regni dominæ nostræ Elizab. Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ, fidei defensoris, &c. Tricesimo, fuit ætatis 16. annorũ & vltra, non accessit (Anglicè **did not repaire**) ad ecclesiam suam parochialem de D. prædicta, nec ad aliquam aliam ecclesiam, capellam, aut vsualem locum cõmunis precationis, & ibidem moratus fuit tempore cõmunis precationis, ad aliquod tempus infra sex mẽses tunc proximè sequentes, sed abstinuit ab eisdẽ (anglicè **hath forborn the same**) per spacium prædictorum sex mensium, contra formam cuiusdam statuti apud Westm. in comitatu Middlesex anno regni dictæ dom. reginę nunc primo, pro vniformitate communis precationis editi & prouisi, ac contra formam statuti Anno regni dict. dom. reg. nunc vicesimo tertio, in huiusmodi casu editi & prouisi, ac in contemptũ dictæ dom. reginæ nunc, & contra coronam, & dignitatem suas, &c.

Against a Schoolmaster not licenced, nor resorting to the Church, and against his maintainers.

IVratores præsentant pro domina regina, Quod K. M. de I. in dicto comitatu Scholę magister, à secundo die Septembris, Anno regni dictæ dom. nostræ Elizabethæ Dei gratia, Angliæ, Franciæ, & Hyberniæ reginæ, fidei defensoris, &c. tricesimo, vsq; nunc in domo mãsionali cuiusdã E. A. de I. prædictã in comitatu prædicto vidue, ausus est & præsumpsit erudire, & docere pueros dictæ E. A. ibidem, cum idem K. M. durante dicto tempore non accessit nec resortauit ad ecclesiam parochialẽ de I. prædict. in comitatu prædicto, nec ad vllam aliam capellam, aut vsualem locum communium precationum sed se penitus per totum tempus prędictum abinde absentauit, nullam habens legitimã aut rationalem dictæ suæ absentiæ excusationem, & cum idem K. M. non est

per Epiſcopum diœceſis loci illius in quo ſita eſt predicta eccleſia parochialis de I. predicta, aut per eius loci ordinarium, licentiatus, aut allocatus ad erudiendum & docendum: In magnum dict. dom. noſtrę reg. contemptum, ac contra formam ſtatuti in parliamento dicte dom. reg. (tento apud Weſtm. in com. Middleſex, anno regni ſui viceſimo tertio) in huiuſmodi caſu prouiſi & editi. Et quod prędicta E. A. voluntariè in domo ſua præd. per totum tempus prędict. cuſtodiuit & manutenuit prędict. K. M. modo & forma prædict. erudientem & docentem, ſciens ipſum K. M. modo & forma prędictis ſe abſentaſſe, In contemptum dictę dom. reg. ac contra formam ſtatuti prędicti.

For Periurie in a Depoſition.

IVratores præſentant pro Dom. Regina, quod F. E. de G. in comitatu prędicto Taylor, 24. die Iulij, anno regni Dominę noſtræ Elizabethæ Dei gratia Angliæ, Franciæ, & Hybernię Reginę fidei defenſoris, &c. triceſimo apud M. in comitatu prædicto coram A. B. C. D. & E. F. Armigeris, Commiſſionarijs (virtute Breuis dict. Dom. reginæ de Commiſſione, prædictis A. B. C. D. & E. F. directi & extra curiam Wardorum & liberationum dictę Domin. reginæ apud Weſtminſter in comitatu Middleſexię, præantea emanantis) pro examinatione quorumcunque teſtium, tam ex parte cuiuſdam I. L. de M. prędicta in comitat. prædict. Querent querentis, quàm ex parte H. M. de N. in dicto comitatu peoman defendentis, in quadam cauſa (ſiue materia) inter ipſos I. L. & H. M. tunc in dicta Curia Wardorum & liberationum controuerſa, & ibidem dependente in variantia pro titulo vnius meſſuagij cum pertinentijs in M prędicta in dicto comitat. perſonaliter conſtitutus, Ac tunc & ibidem exiſtens teſtis productus per prędictum

I. L.

I.L. ad teſtificandum & deponendum in cauſa prędicta ex parte ipſius I.L. & iuratus per Commiſſionarios prędictos, ad veritatem dicendam ſuper articulis interrogatorijs ei per dictos Commiſſionarios ad tunc & ibidem miniſtrandis, ſeptimo die articulo interrogatorio ei ad tunc & ibidem per dictos commiſſionarios ex parte prędicti I.L, miniſtrato dixit, & ſuper ſacrament. ſuum prędict. affirmauit, & depoſuit, prout in hijs Anglicis verbis immediatè ſequitur viz. **To the 7. Interrogatorie hee ſaith by vertue of his ſaid oath, that the ſaid Meſſuage was neuer occupied by the ſaid H. M. the defendant,** prout per dictam depoſitionem prędicti E.F. inter alia per prędictos Commiſſionarios in dictam curiam Wardorum & liberationum certificatam & miſſam, ac ibidem de recordo adhuc remanentem, plenè apparet: vbi reuera & facto, dictum meſſuagium diu occupatum fuit per prędictum H.M. defendentem. Et ſic, idem E. F. dicto viceſimo quarto die Iunij, anno ſupradicto apud M. prędictam in dicto comitatu, coram prędictis A.B.C.D. & E.F. (commiſſionarijs dictę Dominę reginę ſic vt prędicitur exiſtentibus) voluntariè & corruptè, periurium commiſit voluntarium & corruptum, contra formam diuerſorum ſtatutorum in huiuſmodi caſu prouiſorum & editorum.

For killing a man by witchcraft.

IVratores prędictę ſentant prò Domina Regina, quod Sara B. de C. in comitatu prędicto vidua, viceſimo die Auguſti, anno regni dict. Dom. noſtrę Elizabethę, Dei gratia Anglię, Francię, & Hybernię Reg. fidei defenſoris, &c. 30 ac diuerſis alijs diebus poſt dict. 20 diem, quaſdam artes deteſtandas, Anglicè vocatas **Witchcraft and Sorcerie,** nequiter & felonicè practicauit, &

exercuit apud C. prædict. in comitatu prędicto, in, ſuper & contra quendam Iohannem N. de C. præd' in dicto comitatu Labourer, per quas quidem artes dict. I.N. à prædict. 20. die Auguſti, anno 30. ſupradict. vſque diem prædict. menſis Auguſti anno 30. ſupradicto, periculoſiſſimè ac mortaliter ægrotabat & languebat, Ac eodem 24. die Auguſti, anno ſupradicto idem I.N. per artes prædictas, apud C. prædict. in dicto comitatu obijt, & ſic Iuratores prædicti præſentant, quod eadem Sara ipſum Iohãnem N. apud C. prædictam, modo & forma ſupradictis, ex malitia ſua præcogitata, voluntarié, diabolicè, nequiter, & felonicè, per Artes prædictas occidit ac interfecit, contra pacem dictæ dominæ reginæ noſtræ, ac contra formam ſtatuti in parliamento dictæ dominæ reginæ noſtræ (tento apud Weſtmonaſt. in comitatu Middleſexiæ, anno regni ſui prædicti 5.) in huiuſmodi caſu prouiſi ac editi.

For bewitching a Horſe.

INquiratur pro domina regina, ſi Sara B. de C. in dicto comitatu vidua 20. die Auguſti, anno regni dictæ dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hibernię reginę fidei defenſoris, &c. triceſimo, quaſdam artes nequiſſimas (anglicè vocat. **Inchantments and Charmes**) apud C. prædict. in comitatu prædicto, malitioſè & diabolicè, in, ſuper, & contra quendam equum, coloris albi, pretij quatuor libr. de bonis & catallis cuiuſdam I.S. de C. prædicta, in dicto comitatu generoſi exiſtentem, exercuit, & practicauit. Per quod idem equus dicti I.S. 20. die prædict. apud C. prædict. omnino empeioratus eſt, & vaſtatus: contra pacem dictæ dom. reginæ, ac contra formam ſtatuti in eiuſmodi caſu prouiſi ac editi.

For

For fighting in the Churchyard.

INquiratur pro domina regina, ſi G. F. de L. in dicto comitatu generoſus, octauo die Septembr. anno regni dictæ dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ reginæ fidei defenſoris, &c. triceſimo in cæmiterio eccl. parochialis de L. prædicta, in dict. com. malitioſè extraxit pugionem ſuum in quendam I. S. de L. prædicta Yeoman, ea intentione ad percutiendum præd. I. S. cum dicto pugione, contra pacem dict. dominæ reginæ noſtræ nunc, ac contra formam ſtatuti in parliamento dom. Edwardi nuper regis Angliæ ſexti (tento apud Weſtmonaſt. in com. Middleſexię anno regni dicti nuper domini regis quinto) in huiuſmodi caſu prouiſi ac editi.

For a Burghlarie in a Church.

IVratores præſentant pro domina regina, quod A. B. de C. in comitatu prædicto Yeoman, primo die Septembris, anno regni dictæ dominæ noſtræ Elizabethæ Dei gratia Angliæ, Franciæ & Hyberniæ reginæ, fidei defenſoris, &c. triceſimo, vi & armis eccleſiam parochialem de C. prædicta in dicto comitatu, feloniceè & burghlariter fregit & intrauit noctanter, viz. inter horas decimam & vndecimam poſt meridiem eiuſdem diei, ac vnum calicem argenteum (Anglicè vocatum, a Communion Cup) ad valentiam 60 ſolidorum, de bonis & catallis parochianorum de C. prædicta ad tunc exiſtentem in eadem eccleſia, & tunc ibidem inuentum, feloniceè cepit, & aſportauit, contra pacem dictæ dominæ reginæ noſtræ nunc, coronam & dignitatem ſuam.

Endite-

Enditements and Preſentments, concerning Lay cauſes.

For petite treaſon in a ſeruant, and felonie in the procurer thereof.

IVratores pro Dom. regina preſentant, quod A. B. de C. in comitatu prędicto Glouer, nuper ſeruiens B.D. de C. prędicta, in dicto com. Glouer, decimo die Septembris, anno regni dictę Dom. noſtrę Elizabethę Dei gratia Anglię, Francię, & Hybernię Reginę, fidei defenſoris, &c. triceſimo, in domo manſionali prędicti B.D. apud C. prędict. in com. prędicto vi & armis, videlicet cum gladio & pugione diſtrictis ad valenciam x. ſolidorum (quos idem A.B. tunc & ibidem in manib. ſuis tenuit) in prędictum B. D. tunc magiſtrum ſuum tunc & ibidem in pace Dei & Dictę Dom. Reginę exiſtentem, voluntariè & ex malitia ſua prędcogitata inſultum fecit, & eundem B. D. tum magiſtrum ſuum, ad tunc ibidem cum dict. gladio felonice & proditorie ſuper caput ſuũ fortiter & valide percuſſit, ita quod dicto ictu, caput ipſius B.D. tunc magiſtri ſui tunc ibid. in duas partes fidit, dans ei plagam mortalem: vnde corpus dict. B.D. immediate ibidem ad terram cecidit, & dictus B. D. inſtanter ibidem de plaga prędict. mortuus eſt. Et ſic prędict. A.B. apud C. prędict. ex malitia ſua prędcogitata, eundem B.D. magiſtrum ſuum prędict. modo & forma prędictis, voluntarie, nequiter, felonice, & proditorie interfecit, contra pacem dict. Do. noſtrę reg. nunc coronam & dignitatem ſuas. Et quod quidam I.S. de C. prędicta in dicto com. Glouer, ante proditionem prędict. (per prędict. A. B. ſic vt prędertur voluntariè perpetratam & commiſſ.) viz. ſexto die Sept. anno ſupradicto, eundem A. B. apud C. prędict. in com. prędicto ad proditionem prędictam in forma prędict. perpetrandam & committendam,

tendam, felonicè conſuluit, excitauit, & procurauit, contra pacem dict. dom. noſtræ reg. nunc, ac contra coronam & dignitatem ſuam.

For murder of a baſtard childe againſt the mother and midwife (as principals) and againſt the reputed father, as acceſſary before, and againſt others as acceſſaries after.

IVratores pro dom. reg. preſentant, quod H.M. nuper de K. in com. pręd. vidua, grauida exiſtens cum quadam infante viua, 24. die Maij, anno regni dictę Dom. noſtrę Eliz. Dei gratia, Anglię, Francię, & Hybernię reginę, fidei defenſoris &c. ſecundo, apud K. prędict. in com. prędicto, Dei prouidentia parturijt, & peperit vnam prolem femellam viuam: poſteáq; quędam Iana S. nuper de W. in dicto com. vidua, apud K. prędictam in com. prędicto, vi & armis, ex malitia ſua pręcogitata (dicto 24. die Maij anno ſupradicto, circa horam 11. ante meridiem eiuſdem diei) per conſilium, mandatum, & procurationem prędictę H. M. ac in preſentia ipſius H. M. in prędict. prolem femellam viuam inſultum fecit, & cum quodam cultello (ad valenciam vnius denarij) quem eadem Iana tunc in manu ſua dextra tenuit, guttur ipſius prolis femellæ ad tunc & ibidem felonicè ſcidit, dans eidem proli femellę quandam plagam mortalem in gutture ſuo prędicto, de qua quidem plaga mortali proles femella pręd. apud C. pręd. in com. prędict. adtunc & ibidem inſtanter obijt. Et quod præd. H. M. adtunc & ibidem felonicè fuit præſens, comfortans, & auxilians ad pręd. prolem femellam in forma prædicta interficiendam. Et ſic prefatæ H. M. & Iana, prędict. prolem femellam ex malitia ſua pręcogitata, felonicè & voluntariè interfecerunt, & murdrauerunt, contra pacem

dictę

dictæ dom.reg. coronam & dignitatem ſuas. Et inſuper Iuratores prædicti præſentant pro dicta Dom. Regina, quod Georgius P. nuper de K.prædicta in dicto comitatu **Yeoman**, 19.die Maij, anno regni dictæ dom. reg. ſecundo, ac diuerſis alijs diebus & vicibus, ante feloniam & murdrum prædictum in forma prædicta perpetrat. apud K.prædictam, in comitatu prædict. malitiosè & felonicè conſuluit, mandauit, procurauit, & abettauit, prædictam H.M. ad prædictum murdrum voluntarium faciendum, ac ad interficiendum & murdrandum dict. prolem femellam, contra pacem dictæ dom.reg. Et vlteriùs, quod O.P. & A. B. de K. prædicta in comitatu prædicto **Spinsters**, poſt murdrum & feloniam prædictam in forma prædicta facta, ſcientes præfatas H.M. & Ianam S. feloniam & murdrum prædicta in forma prædicta feciſſe & perpetraſſe, ipſam tamen H.M. apud K.prædictam in comitatu prædicto (27.die dicti menſis Maij, anno ſupradicto) felonicè receptauerunt, & comfortauerunt, contra pacem dictę dominæ reginæ nunc, coronam, & dignitatem ſuam.

For wilfull poyſoning.

IVratores pro domina regina præſentant, quod T.H. de C. in comitatu prædicto **Yeoman**, ſecundo die Decembris, anno regni dict. dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ reginæ fidei defenſoris, &c. viceſimo quarto, apud C. prædictam in comitatu prædicto, in domo manſionali ibidem cuiuſdam W.B. nuper de C. prædicta, in dicto comitatu **Yeoman**, ex malitia ſua præpenſa & prȩcogitata, voluntariè & felonicè porrexit, ac dedit in catillo quodam eidem W.B. ad edendum quędam olera (Anglicè vocata **Potage**) ex cicuta veneniſiſſima, & alijs herbis virulentis, confecta & compoſita, quæ quidem olera prædictus W. B. tunc ibidem cum cocleari (quod in manu ſua dextra tenuit)

cenuit) comedit, vnde prædictus W.B. ſtatim poſtea ægrotabat, ac à prædicto ſecundo die, anno ſupradicto in dicta domo ſua apud C. prædictam languebat, vſque ſextum diem dicti menſis Decembris, anno ſupradicto, quo quidem 6. die, anno ſupradicto, prædictus W.B. ex dicto eſu olerum prædictorum, in dicta domo ſua apud C. prædictam in dicto comitatu interijt. Et ſic Iuratores prædict. præſentant, quod prædictus T.H. prænominatum W. B. apud C. prædictam in comitatu prædicto, modo & forma ſupradictis, ex malitia ſua præcogitata, voluntariè & felonicè veneno prædicto interfecit ac murdrauit, contra pacem dictæ dom. reg. nunc, ac contra formam ſtatuti in parliamento dom. Edwardi nuper regis Angliæ ſexti (tento apud Weſtm. in com. Middleſex, anno regni ſui primo) in huiuſmodi caſu prouiſi ac editi.

For a murder committed by two.

IVratores pro domina regina præſentant, quod A.B. nuper de C. in dicto comitatu **Blackſmith**, & D.E. de C. prædictam in comitatu prædicto **Butcher**, ſeptimo die Septembris, anno regni dictæ dominæ noſtræ Elizabethæ, Dei gratia, Angliæ, Franciæ & Hyberniæ Reginæ, fidei defenſoris, &c. triceſimo, vi & armis, ex malitia ſua præmeditata, in quendam F. G. nuper de B. in dicto comitatu **Yeoman**, apud B. prædictum in comitatu prædicto, in quodam loco ibidem (vulgariter nuncupato **the Bowling place**) ad tunc & ibidem in pace Dei & dictæ dominæ reginæ exiſtentem, inſultum fecerunt, & præfatus A.B. cum quodam gladio diſtricto, ad valentiam quinque ſolid. quem ipſe in manu ſua dextra ad tunc & ibidem tenuit, ipſum F. G. ſuper ſinciput ſuum voluntariè & felonicè tunc ibidem percuſſit, & eo ipſo ictu dedit eidem F. G. quandam plagam mortalem, in longitudine trium pollicium, & in profun-

profunditate quinque pollicium & dimid. de qua quidem mortali plaga, prędict. F. G. tunc ibidem instanter & immediatè obijt. Et vlteriùs, quòd prędictus D. E. cum quodam baculo ad valentiam vnius oboli (quem ipse in manibus suis ad tunc ibidem tenuit) ipsum F. G. ad tunc & ibidem voluntariè & felonicè percussit super caput suum, dans eidem F. G. vnam aliam plagam mortalem in dicto suo capite, in longitudine trium pollicium, & in profunditate duorum pollicium, vnde idem F. G. de plaga vltimè prędicta obijsset, si non obijsset de ictu illo priore prędicto, quem prędictus A. B. ei primò dederat. Et sic Iuratores prędicti dicunt, quod prænominati A. B. & D. E. dicto septimo die Septembris anno supradicto, apud B. prædictam in prædicto loco (vocato **the Bowling place**) prædictum F. G. modo & forma prædictis, ex malitia sua pręcogitata, voluntariè & felonicè interfecerunt & murdrauerunt, contra pacem dictæ dominę Reginę, ac contra coronam, & dignitatem suam.

For killing a man by Chance-medley.

IVratores pręsentant pro domina Regina, quod A. B. de C. in dicto comitatu **Sowgelder**, decimo sexto die Septembris, anno regni dictę dominę nostræ Elizabethæ, Dei gratia Anglię, Franciæ, & Hyberniæ Reginæ, fidei defensoris, &c. triceſimo, apud C. prædictam in com. prędicto, quendam E. F. nuper de C. prędicta in com. prędicto **Weauer**, (cui tunc ibidem fortuitò & casu obuiam venit) contumelioſis verbis lacessiuit, ac in eundem E. F. tunc & ibidem, in pace Dei ac dictę dominæ reginę existentem, vi & armis insultum fecit, & ventrem dicti E. F. tunc & ibidem cum baculo longo, cuspide pręacuta capitato (Anglicè vocato **a long sharpe piked staffe**) quem idem A. B. tunc ibidem in manibus

suis

ſuis tenuit, felonicè pupugit & perfodit, dans eidem E. F. vulnus mortale in dicto ventre ſuo, latitudinis vnius pollicis, & profunditatis ſeptem pollicium, de quo quidem mortali vulnere idem E. F. tunc ibidem inſtanter obijt ac interijt: contra pacem dictę dom. reg. nunc, & contra coronam & dignitatem ſuas.

For pulling out of a mans eyes.

IVratores pro domina Regina præſentant, quod A. B. de C. in dicto comitatu Tmker, nono die Septembris, anno regni dict. Dom. noſtrę Elizabethę, Dei gratia Anglię, Francię, & Hybernię Reginę, fidei defenſoris &c. triceſimo, in quodam loco apud C. prędictam in comitatu prædicto (vocato le Dene) vi & armis in quendam D. E. de C. prędicta in comit. prædicto Yeoman, in pace dictę dom. Reg. tunc ibidem exiſtentem, inſultum fecit, ac tunc & ibid. ex malitia ſua pręcogitata, digitis & vnguib. digitorum ipſius A. B. oculos ipſius D. E. felonicè effodit ac eruit, contra pacem dictę dom. Reginę noſtrę, coronam & dignitatē ſuam, ac contra formam cuiuſdam ſtatuti in parliamento domini regis Henrici olim regis Anglię quarti, tento apud Weſtm. in comitatu Middleſex, anno regni ſui quinto, in huiuſmodi caſu prouiſi & editi.

For the Rape of a woman childe, vnder ten yeares of age.

IVratores pro domina Regina præſentant, quod G. D. de B. in comitatu prædicto Waterman, tertio die Iulij anno regni dictę dominę noſtrę Elizabethę Dei gratia Anglię, Francię, & Hybernię Reginę fidei defenſoris, &c. triceſimo, apud B. prædictum in dicto comitatu

(in

(in domo manſionali ibidem cuiuſdam A. S. Hoſteler) vi & armis in quandam M. N. de B. prædicta in dicto comitatu puellam, infra ætatem decem annorum tunc exiſtentem, inſultum fecit, ac tunc & ibidem, eandem M.N. felonicè ac carnaliter cognouit, ac eandem M.N, nequiter abuſus eſt, contra pacem dictæ dom. reg. nunc. ac contra formam ſtatuti in parliamento dictæ dom. reg. nunc, tento apud Weſtm. in com. Middleſex, anno dicti regni ſui decimo octauo, in huiuſmodi caſu prouiſi ac editi.

For the rape of a maid, aboue ten yeeres olde.

IVratores præſentant pro domina regina, quod B. C. de E. in dicto comitatu Tauerner, quinto die Octobris, anno regni dictæ dom. noſtræ Elizabethæ Dei gratia Angliæ, Franciæ, & Hyberniæ reg. fidei defenſoris, &c. triceſimo, apud E. prædict. in dicto comitatu, in quodam ibidem loco (vocato le Bowre) vi & armis in quandam A. K. de E. prædicta in comitatu prædicto virginem, ætatis ſexdecim annorum, tunc ibidem in pace Dei & dicte Domine Reginæ exiſtentem, inſultum fecit, ac tunc & ibidem eandem A. contra voluntatem ipſius A. felonicè rapuit, & carnaliter cognouit, contra pacem dictæ dominæ reginæ nunc, ac contra formam cuiuſdam ſtatuti in parliamento dom. Edwardi olim regis Angliæ primi, tento apud Weſtmonaſt. in com. Midd. anno regni ſui 13. in huiuſmodi caſu prouiſi & editi.

For taking away a widow (againſt her will) that hath lands.

IVratores præſentant pro domina regina, quod A.B. de C. in dict. comitatu Singingman, ſecundo die Apri-

Aprilis,anno regni dictæ dom.noſtræ Eliza.Dei gratia Angliæ,Franciæ & Hyberniæ Reginæ,fidei defenſoris &c.triceſimo, vi & armis in domum manſionalem cuiuſdam H.B.de C. prædicta in com.præd.viduæ,infra parochiam de C.prædicta in com.præd.intrauit (quæ quidem H.B.tum ſeiſita fuit in dominico ſuo vt de feodo,de,& in diuerſis terris & tenementis in C.præd.in com.prædicto,clari annui valoris decem librarum vltra omnes reprisas exiſtentibus) ac immediatè poſtea, viz.dicto ſecundo die Aprilis anno ſupradicto,idem A B. præd. H. B. tunc ibidem in dicta domo ſua in pace Dei,ac dict.dom.reg. exiſtentem, ex dicta domo ſua manſionali contra voluntatem ipſius H.B.illegitimè ac felonicè extraxit, eripuit, & abduxit,ac eandem H. B. poſtea,ſcilicet 3.die dicti menſis Aprilis,anno ſupradicto,in eccleſia parochiali de C.præd.in com.prædicto cepit in vxorem ſuam,vbi idem A. B. dicto tempore extractionis & abductionis præd. non clamauit, nec clamare potuit,eandem H.B.tanquam Wardam ſuam aut tanquam natiuam ſuam : In magnam pacis dict. dom.reg.nunc perturbationem,ac contra formam cuiuſdam ſtatuti in parliamento dom. Hen. nuper regis Angliæ ſeptimi,tento an.regni ſui tertio,in huiuſmodi caſu prouiſi ac editi.

For Buggerie.

IVratores pro dom.Regina præſentant,quod A.B.nuper de C.in dicto com.clericus,& alienigena in ciuitate Rom.Italiæ natus, x. die Martij, vi & armis, apud C.prædict.in com. prædicto, anno regni dom. noſtræ Elizab. Dei gratia Angliæ, Franciæ & Hyberniæ Reginæ,fidei defenſoris,&c. triceſimo,in quendã I. S. de C.præd. in dicto com. puerum maſculum(ætatis non amplius quindecim annorum, ac tunc ibidem in quo-

dam loco vocato **le Tribe**, in pace dei & dictæ dominę reginæ existentem) insultum fecit, ac cum dicto I.S. puero prædicto scelleratissimè, felonicè, ac contra naturæ ordinem, tunc ibidem rem habuit veneream, dictúmque puerum carnaliter cognouit, ac sic cum eodem puero peccatum illud horribile, ac Zodomiticum, anglicè vocatum **Buggerie**, ad tunc ibidem felonicè commisit, ac perpetrauit, contra pacem dictæ dominæ reginæ nostræ, ac contra formam statuti in huiusmodi casu antehac prouisi ac editi.

For Burghlarie of a dwelling house.

IVratores pro domina regina præsentant, quod T.S. de W. in dicto comitatu **Tailor**, quarto die mensis Februarij, anno regni dictæ dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ fidei defensoris, &c. vicesimo nono, vi & armis domũ mansionalem cuiusdam N.G. de W. prędicta in dicto comitatu **Butcher**, noctanter, viz. (inter horas decimam & vndecimam post meridiem eiusdem diei) quadam Ioanna vxore ipsius N.G. tunc in eadẽ domo in pace Dei & dictæ dominæ reginæ existente, felonicè & burghlariter fregit & intrauit, & viginti libras legalis monetæ Angliæ de bonis prædict. N.G. in quodam abaco in dicta domo existentes inuentas, tunc & ibidem felonicè cepit & asportauit, contra pacem dictæ dominæ Reginæ nunc, coronam & dignitatem suam.

For burning of a house by day.

IVratores pro domina Regina præsentant, quod A.B. nuper de C. in comitatu prædicto **Victualler**, octauo die mensis Iulij, anno regni dictę dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ reginæ, fidei defensoris, &c. tricesimo, ad domum mansionalem E. F. de C. prædicta in comitatu predicto generosi,

roſi, in C. prædict. in dicto comitatu exiſtentem, vi & armis, inter horas ſextam & ſeptimam ante meridiem eiuſdem diei acceſsit, & cum vna libra pulueris tormẽtarij ad valentiam duodecim denariorum, & face quadã ignita, quæ dictus A.B. tunc ibidem in manibus ſuis tenuit, ignem in quodam faſticulo ſtraminis tunc in dicta domo exiſtentis ex malitia ſua præcogitata felonicè accendit, vnde eadẽ domus tunc ibidem totaliter cremata & combuſta fuit (eodem E. F. tunc in pace dictæ dominæ reginæ in dicta domo ſua exiſtente) & ſic prædictus A.B. dicto octauo die Iulij, anno ſupradicto, apud C. prædictam, domum manſionalem prædicti E.F. prædictam, modo & forma prædictis, voluntarie ex dicta malitia ſua præcogitata, & felonicè incendit & combuſſit: contra pacem dictæ dominæ Reginæ noſtræ, ac coronam & dignitatem ſuas.

For a robberie in the highway.

INquiratur pro domina Regina, ſi A. B. de C. in dicto comitatu Wartner, ſexto die menſis Octobris, anno regni dictæ dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ, fidei defenſoris, &c. tricefimo, vi & armis, viz. cum gladio & pugione (ad valentiam decem ſolidorũ) diſtrictis, inter horas ſeptimam & octauam ante meridiem eiuſdẽ diei in alta via regia iuxta quendam locum (vocatum Gads hill) infra parochiam de F. in comitatu prædicto, in, & ſuper quendam I.S. de B. in comitatu prædicto, Petite Chapman, tunc & ibidem in pace Dei, ac dictæ dominæ reginæ exiſtentem inſultum fecit, & ipſum I. S. tunc ibidẽ cum dicto gladio percuſsit & vulnerauit, & viginti ſolidos legalis monetæ Angliæ numeratæ in crumena ipſius I.S. exiſtentes, de bonis & catallis prædicti I.S. ad tunc & ibidẽ inuentos, à perſona ipſius I.S. tunc & ibidẽ violenter & felonicè cepit & aſportauit, in magnum præ-

dicti I.S. terrorem, ac contra pacem dictæ dom. Reginæ, coronam & dignitatem suas.

For the taking of a purse priuily from the person.

IVratores pro domina Regina præsentant quod I. S. nuper de A. in dicto com. **Taylor**, sexto die Iulij, an. regni dict. dom. nostræ Eliz. Dei gratia Angliæ, Franciæ & Hyberniæ, reg. fidei defensoris, &c. 30. apud A. præd. in com. prædicto, in quodam loco ibidem, vocato **the Elmes**, vi & armis in quendam R.M. de A. prædicta in com. præd. **Grocer** insultum fecit, & viginti solid. in pecunijs numeratis in crumena ipsius R.M. tunc ibidem existentes inuentas, de prædicta crumena ipsius R.M. tunc & ibidem à persona ipsius R.M. (eâm & insciente ipso R.M.) felonicè cepit & asportauit, cõtra pacem dictæ dom. reg. ac contra coronam & dignitatem suas.

Against the stealer of horse, and his after accessarie.

IVratores pro domina regina præsentant, quod A.B. nuper de C. in dicto com. **Gelder**, 29. die Augusti, anno regni dict. dom. nostræ Elizab. Dei gratia Angliæ, Franciæ, & Hyberniæ reg. fidei defensoris, &c. tricesimo, vi & armis, quoddam stabulum in domo mansionali cuiusdam I.S. infra parochiam de C. prædict. in com. prædicto existens fregit, ac intrauit, & vnum equum spadonem, Anglicè vocatum a **Gelding**, coloris albi, pretij sex librarum, & vnam equam coloris nigri, pretij 30. solid. de bonis & catallis ipsius I. S. tunc ibid. existentes inuentos, felonicè cepit & abduxit, cõtra pacem dict. dom. reg. coronam & dignitatem suas.

Et

Et quod K.H. nuper de C. prædicta in comit. prædicto Horsecourser, sciens præfatum A. B. feloniam prædictam apud C. prædict. modo & forma prædictis, fecisse & perpetrasse, eundem tamen A.B. apud C. prædict. in com. prædicto, tricesimo die dicti mensis Augusti, anno supradicto felonicè recepit, & hospitio excepit, post feloniam prædictam sic per ipsum A.B. vt præfertur factã & commissam: contra pacem dictæ dom. nostræ reginæ nunc, & contra coronam, ac regiam dignitatem suas.

Against a seruant that stealeth his masters goods, committed to his keeping.

IVratores præsentant pro domina regina, quod cùm A.B. de C. in dicto comitatu Mercer, vicesimo Die Septembris, an. regni dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ reginæ, fidei defensoris, &c. tricesimo, in domo mansionali ipsius A.B. apud C. prædict. in com. prædicto deliberasset cuidam E.F. de C. præd. in dict. com. Mercer, tunc seruienti ipsius A. B. pro vno anno integro retento, ac ætatis 19. annorum existenti, decem libras in pecunijs numeratis de bonis ipsius A.B. ea intentione, vt idem E F. easdem saluò custodiret, ad vsum prædicti A.B. tunc magistri sui: idem E.F. dicto vicesimo die Septembris anno supradict. (apprentitius dicti A.B. tunc non existens) apud C. præd. in comitatu prædicto, a dicto magistro suo, vnà cum prædict. decem libris dicti A.B. tunc magistri sui, malitiosè & felonicè discessit, abijt, & aufugit, ea intentione, ad furandum dictas decem libras, contra fiduciam in eo per præfatum A.B. tunc magistrum suum repositam & collocatam, & ad inde dictum A.B. magistrum suum prædictum defraudandum: contra pacem dictæ dom. reginæ, ac contra formam diuersorum statutorum huius regni Angliæ in huiusmodi casu, prouisorum & editorum.

Againſt the ſtealer of a Cowe, and his Acceſſorie before.

IVratores pro domina Regina præſentant, quod A. B. de C. in dicto comitatu **Shoomaker**, primo die Iulij, anno regni dictæ dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ, fidei defenſoris, &c. triceſimo, in quodam loco infra parochiam de C. prædicta, in comitatu prædicto, vocato **the Cowe paſture**, vi & armis, clauſum cuiuſdam I.S. de D. in comitatu prædicto **Yeoman**, fregit & intrauit, & quandam vaccam, coloris nigri, pretij 40. ſolidorum, de bonis & catallis prædicti I.S. tunc ibidem exiſtentem inuentam, felonicè cepit, furatus eſt, & abduxit, cõtra pacem dictæ dominæ Reginæ nunc, coronam & dignitatẽ ſuas. Et quod quidam G. H. de C. prædicta in dicto comitatu **Butcher**, ante feloniam prædictam, ſcilicet eodem primo die Iulij anno triceſimo ſupradicto, eundem A.B apud C. prædictam in comitatu prædicto, ad feloniam prædictam faciendam & perpetrandam, malitioſè & felonicè excitauit, perſuaſit, & procurauit, cõtra pacem dictæ dominæ Reginæ coronam & dignitatem ſuam.

For hunting by night in a Parke, and for concealing the ſame.

IVratores pro domina regina præſentant, quod ſecundo die Auguſti, anno regni dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ & Hyberniæ Reginæ, fidei defenſoris, &c. triceſimo, inter horas decimam & vndecimam in nocte eiuſdem diei A.B. de C. in dicto comitatu generoſus, D.E & G.H. de F. in comitatu **Huſbandmen**, aggregatis ſibi nonnullis alijs malefactoribus ignotis, ad numerum ſex perſonarum, vi & armis,

armis, videlicet, prelongis baculis, arcubalistis, & sagittis, clausum & parcum dictæ dominæ Reginę nostræ apud O. in dicto comitatu fregerunt, & intrauerunt, & vnum par damarum dictæ dominæ Reginæ, Anglicè vocat. a brace of Buckes, in dicto parco ad tunc & ibidem depascent. & inuent. illegitimè venati sunt, ac cum duabus sagittis ex dictis arcubalistis emissis, & sagittatis, adtunc & ibidem occiderunt, & asportauerunt, contra pacem dictæ dominæ reginæ: ac quod postea die sequenti, videlic. tertio die dicti mensis Augusti anno supradicto, T. S. tunc parcarius dictæ dominæ reginæ dicti sui parci de O. prædicta in comitatu prædicto, informauit apud C. prædictam T. W. vnum Iusticiariorum pacis dictæ dominæ reginæ in comitatu prædicto, de illicita venatione prædicta modo & forma prædictis facta, qui quidem Iusticiarius superinde warrantum suum in scriptis, postea, videlicet, dicto tertio die Augusti, anno supradicto direxit cuidam K. M. vni constabulariorum hundredi de S. in comitatu prædicto (in quo quidem hundredo sitæ sunt prædictæ villæ de C. & F.) eo tenore, vt idem constabularius arrestaret prenominatos A. B. D. E. & G. H. ac eosdem coram eodem Iusticiario duceret & haberet ad eos de dicta illicita venatione examinandum. Et quod dicti A. B. D. E. & G. H. postea, scilicet dicto tertio die Augusti anno supradicto, coram dicto Iusticiario apud C. prædictam in comitatu prædicto per Constabularium prædictum virtute dicti warranti adducti, ac per eundem Iusticiarium per suum discretionem de dicta illicita venatione, & de factoribus in ea parte examinati existentes, prędictam tamen venationem voluntariè & felonicè concelauerunt, & eorū quilibet voluntariè & felonicè concelauit, contra pacem dictæ Do. reg. coronam & dignitatem suas, necnon contra formā cuiusdam stat. in parliam. Do. H. nuper reg. Angliæ 7. ten-

to, anno regni ſui primo, in huiuſmodi caſu prouiſi ac editi.

For writing of ſlanderous matter againſt the Queene.

IVratores pro dom. reg. præſentant, quod A. B. de C. in comit. prædicto Clericus, viceſimo quinto die Iunij, anno regni dictæ Dom. noſtræ Eliz. Dei gratia, Angliæ Franciæ, & Hyberniæ reginæ, fidei defenſoris, &c. triceſimo, apud G. in comitatu prædict. conſultè, & deliberatè, cum malitioſa intentione, & felonicè, quoddam ſcriptum Anglicè edidit & publicauit, continens (inter alia) hanc falſam, ſeditioſam & ſcandaloſam materiam ad defamationem maieſtatis dictæ dom. reginæ noſtræ nunc, viz. (**reciting the ſeditious words thereof**) contra pacem dictæ dom. reg. noſtræ, & regalem maieſtatem ſuam, cui ne in cogitatione quidem detrahere licet, ac contra formam cuiuſdam ſtatuti in parliamento dictæ dom. reg. noſtræ nunc tento apud Weſtmin. in com. Middleſex, anno regni ſui viceſimo tertio, in huiuſmodi caſu prouiſi ac editi.

For a wilfull Reſcuſſe of one impriſoned in the ſtockes for felonie.

IVratores pro domina regina præſentant, quod viceſimo die Iunij, anno regni dictæ dom. noſtræ Elizab. Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ fidei defenſoris, &c. triceſimo, quidam A. B. nuper de C. in dicto comitatu **Glouer**, apud C. prædictam in comitatu prædicto, captus eſt & arreſtatus per E. F. de C. prædicta in comitatu prædicto **Yeoman**, pro ſuſpicione cuiuſdam feloniæ, viz. vnius vaccæ ipſius E. F. per præfat. A. B. felonicè, vt idem E. F. tunc aſſerebat, captę

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& abductæ,& quod idem A.B. immediatè poſtea traditus eſt per prætat. E.F. cuidam H.M. tunc conſtabulario hundredi de N. in quo ſita eſt villa de C. prædict. qui quidem conſtab. apud C. præd. in com. prædicto, poſtea, viz. dicto 20. die Iun. anno triceſimo ſupradicto, eundem A.B. in priſona in cippis ibidem poſuit, ad eum ſaluò ibidem cuſtodiendum, donec idem conſtabularius parare poſſet auxilium ad ducendum eundem A.B. coram aliquo Iuſticiariorum pacis dictæ dom. reg. in comitatu præd. examinandum: ac quod poſtea, ſcilicet dicto 20. die anno ſupradicto, quidam G.L. de C. præd. in com. prædicto **Glouer**, apud C. prædictam in dicto comitatu, vi & armis cippos prædictos effregit: ac eundem A.B. tunc ibidem exiſtentem, ex eiſdem cuſtodia, priſona, & cippis felonicè cepit, eripuit & reſcuſſit, ac ad largum ire & euadere permiſit, contra pacem dictæ dominæ reginæ, coronam & dignitatem ſuas.

For the breaking of Priſon.

INquiratur pro domina regina, ſi W. H. de C. in com. prædicto **Yeoman**, vnus conſtabulariorum dictæ dominæ reginæ hundredi ſui de T. in comitatu prædicto, in quo quidem hundredo ſita eſt villa de C. prædicta, quendam R. B. nuper de C. prædicta in com. prædicto **Tailor**, 20. die Septembris, anno regni dict. Dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ & Hyberniæ reginæ, fidei defenſoris, &c. triceſimo, apud C. prædictam in dicto com. pro ſuſpicione cuiuſdam felo-niæ, viz. pro morte cuiuſdam M. N. apud H. in comit. prædicto felonicè interfecti, cepit & arreſtauit: Et ea de cauſa idem R.B. ſub cuſtodia dicti W. H. conſtabularij, in priſona dictæ dominæ reg. apud C. prædict. in com. præd. poſtea ſcilicet dicto 20. die Sep. anno ſuprad. fortiter, & duriter detentus fuerit, ac idem R. B. tunc ibid.

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ſic detentus, poſtea, viz. dictis die & anno, apud C. prēd. in com. præd. vi & armis præd. priſonam ibidem felonicè fregit, ac extra cuſtodiam dicti conſtabularij tunc ibidem contra eius voluntatem felonicè euaſit, contra pacem dict. dom. reg. noſtrę nunc, coronam & dignitatem ſuas necnon contra formam ſtat. in huiuſm. caſu prouiſi ac editi.

For a voluntarie eſcape of a Felon, out of the Gaole.

Kanc. IVratores pro Dom. regina præſentant, quod vbi quidam A. B. nuper de C. in dicto comitatu **Shoomaker**, ſexto die Maij, anno regni dom. noſtrę Elizab. Dei gratia Anglię, Francię, & Hybernię Reginę, fidei defenſoris, &c. triceſimo, apud C. prædict. in com. præd. pro ſuſpicione cuiuſdam feloniæ, viz. vnius equi, coloris albi, pretij 40. ſolid. felonicè per eundem A. B. vt dicebatur, capti & abducti, arreſtatus eſt & captus, & coram T. F. vno Iuſticiarior. dictę dom. reg. ad pacem in dict. com. conſeruandum aſſignatorum ductus, & ſuperinde poſtea, viz. dictis die, anno, & loco, cuidam B. D. in comitatu præd. **Yeoman**, cuſtodi Gaolę dictę dom. Reg. apud M. in dicto com. exiſtenti (ſub cuſtodia I. F. armigeri, adtunc vicecomitis comitatus prædicti, & cuſtodis Gaolę prædict.) per quoddam præceptum de Mittimus dicti T. F. Iuſticiarij traditus eſt, & comiſſus, ad ſaluò & ſecurè cuſtodiendum in Gaola præd. donec idem A. B. inde foret legitimo modo deliberatus, prefatus tamē I. F. (tunc vicecomes) poſtea, viz. 7. die dicti menſis Maij an. ſupradicto, apud M. præd. in com. præd. præfat. A. B. adtunc & ibidem in dictis gaola & cuſtodia exiſtentem, à prædictis cuſtodia & Gaola, ad tunc & ibidem eundere & ad largum ire voluntarie & felonice permiſit, contra pacem dictę dom. reg. coronam & dignitatem ſuam.

And

And for a negligent escape, the underlined words may bee changed thus, pro defectu bonę & diligentis custodię, euadere, & ad largum quò voluit ire, negligenter permisit, contra pacem, &c. As before.

For selling a horse to a Scottishman to bee conueyed into Scotland.

IVratores pro domina Regina præsentant, quod quarto die mensis Iulij, anno regni dict. Dom. nostrę Elizabethę, Dei gratia Anglię, Francię & Hybernię Reginę fidei defensoris, &c. tricesimo, A.B. de C. in dicto comitatu **Blacke Smith**, apud quendam locum vocatum **le Ferrie**, in C. prædicta in comitatu prædicto existentem, vnum equum castratum, Anglicè dictum a **Gelding**, coloris albi, & pretij quatuor librarum legalis monetę Anglię, cuidã A.D. generoso (natione homini Scoto) pro summa quatuor librarum in pecunijs numeratis prædicto A.B. per præfatum A.D. tunc ibidem solutis, voluntariè vendidit. Ac tunc ibidem eundem equum eidem A.D. ea intentione ad equum prædictum in regnum Scotię abducendum & conueyandum, absque aliqua speciali licentia dictę Dominę Reginę nostrę nunc, per literas suas patentes sub magno sigillo Angliæ ad idem sic faciendum inde priùs obtenta, voluntariè & felonicè tradidit ac deliberauit, contra pacem dictę dominę Reginę nostrę nunc, ac in eneruationem huius regni sui Angliæ, necnon contra formam diuersorum Statutorum in huiusmodi casu præantea prouisorum & editorum.

Vpon a rebellious assemblie.

IVratores pro domina Regina præsentant, quod primo die mensis Octobris, anno regni dominę nostrę Elizabe-

Elizabethæ dei gratia Angliæ,Franciæ,& Hyberniæ reginæ,fidei defensoris,&c.tricesimo,A.B.C.D.E.F. **And so reciting thirteene or fourteene persons in all, with their additions of occupations and dwellings** apud quendam locum infra parochiam de O. in comitatu prædicto, Anglicè vocatum **le old Court**, inter horas decimam & vndecimam ante meridiem eiusdem diei, vi & armis, tam intuasiuis, quam defensiuis, videlicet, gladijs, pugionibus, baculis, arcubus, sagittis, tunicis ferreis,& tormentis, seipsos congregauerunt & assemblauerunt : ac tunc ibidem intenderunt, conati sunt, & practicauerunt,vi & armis,illegitimè,& ex authoritate sua propria, secare, & prorsus euertere, prosternere ac destruere quoddam caput vnius aquæ ductus, Anglicè vocatum **a conduit head**, tunc ibidem in fundo cuiusdam R.S. de O.prædicta in com.prædicto generosi existen, & cursum aquæ in ipso habens, ea intentione, vt idem caput aquæ ductus prædict. ex tunc apertum & vacuum remaneret ac iaceret: Et vlterius, quod super querimonia inde facta coram T.W. vno Iusticiariorum pacis dict. dominæ reginæ in comitatu prædicto, omnes & singuli prædicti A.B.C.D.E.F.&c. tunc & ibidem per eundem Iusticiarium requisiti sunt ac iussi (per proclamationem in nomine dictæ dominæ Reginæ tunc ibidem per eum palàm factam) ad habitationes, loca & domos suas, vnde venerant, se inde in pacifico modo retrahere, retirare, discedere & reuerti: quæ quidem proclamatio tunc ibidem modo & forma sequentibus habita & facta est, viz. prædictus T. W. Iusticiarius tunc ibidem fecit alta voce vnâ **Oyes**, ac tunc ibidem immediatè hæc verba Anglicana sequentia palàm alta voce pronunciauit, dicens scilicet, *The Queene our soueraigne Lady chargeth and commaundeth all persons (beeing assembled) immediately*

mediately to diſperſe themſelues, and peaceably to depart to their habitations, or to their lawfull buſineſſe vpon the paines contained in the Acte lately made againſt vnlawfull and rebellious aſſemblies: And God ſaue the Queene.

Et vlteriùs, Iuratores prædicti dicunt, quod non obſtante dicta proclamatione modo & forma prædictis per præfatum Iuſticiarium tunc ibidem facta & habita, ijdem tamen omnes & ſinguli prædicti A. B. C. D. E. F. &c. in dicto loco vocato **le old Court** infra parochiam de O. prædicta in dicto comitatu per ſpacium duarum horarum, immediatè & continuè poſt dictam proclamationem, ſic vt præfertur factam & habitam, ſequentium, ſeditioſè & felonicè inſimul remanſerunt & continuauerũt, in magnum dict. dom. reg. contemptum, ac contra pacem, coronam & dignitatem ſuas, necnon contra formam diuerſorum ſtatutorum in huiuſmodi caſu prouiſorum & editorum.

For vnlawfull Purueyance.

IVratores pro domina Regina præſentant, quod primo die Iulij, anno regni dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ Reg. fidei defenſoris, &c. nicceſimo, quidam H. W. nuper de G. in dicto comitatu **Tippler**, apud C. in comitatu prædicto, præſe ferens, & aſſerens ſe eſſe vnum ex prouiſoribus & emptoribus hoſpitij dict. dom. Reg. dicto primo die, anno ſupra ad. (quo quidem tempore nullum oſtendit aut ſecum habuit warrantum ſub magno aut paruo ſigillo dict. dom. reg.) apud C. prædictam in comitat. prædicto tres oues caſtratas (Anglicè vocatas **Weathers**) precij 20. ſolid. de bonis & catallis I. S. de C. prædict. in dicto comitatu **Peoman**, tunc ibidẽ exiſtentes inuentas, ſub

colore

colore puruciancię prodicto hospitio, illegitimè ac felonicè cepit & abduxit, contra pacem dictę dominę Reg. ac contra formam diuersorum statutorum in huiusmodi casu prouisorum & editorum.

For slanderous speech against the Queenes Maiestie.

IVratores præsentant pro domina regina, quod infra tres menses iam vltimò elapsos, videlicet secundo die mensis Octobris, anno regni domin. nostrę Elizab. Dei gratia Anglię, Francię, & Hybernię reginę, fidei defensoris, &c. tricesimo, G.P. de A. in dicto comitatu **Laborer**, in domo mansionali cuiusdam R.S. infra parochiam de A. prædicta in comitatu prædicto, ac in præsentia multorum dictę dominę reginę subditorum fide dignorum tunc ibidem existentium, consultò, deliberatè, ac cum malitiosa intentione aduersus dictam dominam nostram nunc, ex imaginatione ipsius G.P. propria hæc falsa, seditiosa, scandalosa dicta, ad scandalum & defamationem dictę dominę nostrę reginę; tunc & ibidem loquutus est, vt in his anglicis verbis sequitur, videlicet, **Reciting the words themselues.** In magnum dictę dominę reginę nostrę nunc contemptum, ac contra pacem, coronam, & dignitatem suas, necnon contra formam statuti in parliamento dictę dominę nostrę nuper tento apud Westmonasterium in comitatu Middlesexię, anno regni sui vicesimo tertio, in huiusmodi casu prouisi, ac editi.

For a trespas of Batterie and Mayheme.

IVratores præsentant pro dom. regina, quod tertio die Septembris, anno regni dom. nostrę Elizab. Dei gratia Anglię, Francię, & Hybernię reginę, fidei defensoris, &c.

&c.tricesimo, A.B. de C.in comitatu præd. Tailor, vi & armis, quoddam clausum cuiusdam I.S.apud C.prædictam in comitatu prædicto fregit & intrauit, & in dictum I.S.tunc ibidem in pace Dei & dictę dom.reg.existentem, insultum & affrayam fecit, ac cum gladio districto, ad valentiam decem solidorum quem dictus A. B. tunc ibidem in leua manu sua tenuit, eundem I.S. crudeliter verberauit, ac dextrum pollicem dicti I. S. tunc ibidem vno ictu amputauit, ac sic eundem I.S. nequiter & felonice tunc ibidem mayhemauit, ad graue incommodum ipsius I.S. ac contra pacem dictę domin. reginostrę, coronam & dignitatem suam.

For a Champertie.

IVratores præsentant pro domina Regina, quod I. C. T.C. ac I.P. de O. in dicto comitatu Peomen, ac alij (de confœderatione & conina prædictorum I. C, T. C. & I.P. existentes) quoddam placitum assisæ nouæ disseisinæ, quod nuper summonitum fuit in curia dictæ dominę Reginę, coram dilectis & fidelibus dictę dominę reginę I. S. & I. K. & alijs nuper Iusticiarijs ipsius dominę Reginę, ad assisam illam capiendam assignatis, per Breue ipsius dominę Reginę inter W. S. querentem, & I. H. tenentem de libero quodam tenemento in N.& S. in comitatu prædict. videlicet, pro medietate inde sibi & hæredibus suis imperpetuum, videlicet, pro summa centum libr. sterlingor. in pecunia numerata in hac parte habenda, per conuentionem inde inter prædictum N.S. & præfatos I.C. T.C. & I.P. vicesimo die mensis Augusti, anno regni dicte Dominę nostrę Elizab Dei gratia, Anglię, Francię, & Hybernię Reginę, fidei defensoris, &c.tricesimo, apud O.prædict. in dicto comitatu factum, pro præd. W.S. contra præfatum I.H. dictis die, anno, & loco, assumpserunt manu-

tenen-

tenendum, & manutenuerunt: in magnam dictæ dom. Reg. contemptum, ac contra formam diuersorum statutorum, huius regni sui Angliæ, in huiusmodi casu prouisorum ac editorum.

For a tresspasse of depasturing corne and grasse.

INquiratur pro domina regina, Si A. B. de C. in dicto comitatu **Denmark**, vicesimo die mensis Augusti, anno regni dict. Dom. nostræ Elizabethæ, Dei gratia, Angliæ, Franciæ, & Hyber. reg. fidei defensoris, &c. tricesimo, quoddam clausum cuiusdam I. S. apud C. præd. in com. prædicto, vulgariter vocatum (**Cow leaſe**) vi & armis fregit ac intrauit, ac herbas, & blada triticea ipsius I. S. tunc ibidem crescentia, ad valentiã 20. solid. cum quibusdam bobus, & bidentibus ipsius A. B. tunc ibidem depastus est ac consumpsit, Necnon solum & fundum ipsius I. S. tunc ibidem cum quodam aratro subuertit, per quod prædict. I. S. omne commodum & proficuum dicti soli sui, per longum tempus postea amisit, ac alia damna & enormia prædicto I. S. tunc ibidem intulit, ad graue damnum ipsius I. S. ac contra pacem dictæ dom. nostræ reg. nunc, coronam & dignitatem suas.

For embracerie of Iurors.

IVratores præsentant pro Domina Regina, quod A. B. C. D. F. E. G. H. &c. complices I. K. **naming all the Iurors**, &c. Iurat. in quadam assisa nouæ disseisinæ (quæ nuper summonita fuit coram dilectis & fidelibus dictæ dominæ reginæ I. B. I. C. & N. C. nuper Iusticiarijs dictæ dominæ reginæ nunc ad assisam illam capiendam, per Breue ipsius dominæ reginæ inter W. S. & I. H. de tene-

tenementis in N. in comitatu prædicto, & postmodum (viz. die Lunæ, &c. anno, &c. coram præfatis I. B. I. C. &c. apud M. in com. prædicto per Breue ipsius dominæ reg. si non omnes capt. posit.) pro veredicto suo in hac parte dicendo, de præfato I. H. diuersas pecuniarū summas, viz. A. B. de prædicto I. H. 40. solid. & alia dona, scilicet panem, cárnes, & vinum ad valenciam xx. solidorum. Et prædictus I. K. (Imbraciator eiusdem assisæ ad eandem ducendam & procurandam) de prænominato W. S. summam decem marcarum, vicesimo die Augusti, anno regni dictæ dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ reginæ, fidei defensoris, &c. tricesimo, apud M. prædictam in com. prædicto, illegitimè ceperunt. In dict. dominæ reginæ nunc contemptum, ac contra formam cuiusdam statuti in parliamento domini Edwardi olim regis Angliæ tertij, anno regni sui tricesimo octauo tento, in huiusmodi casu prouisi ac editi.

Against a common Barrettour.

IVratores pro domina regina præsentant, quod A. B. de C. in dicto comitatu **Tailor**, secundo die Octobris, anno regni dictę Dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ reginæ, fidei defensoris, &c. tricesimo, apud C. prædictam in comitatu prædicto, fuit, & adhuc est communis Barectator, & pacis dictæ dominæ reginæ perturbator assiduus & publicus, necnon communis ac turbulentus calumniator, conuiciator, pugnator, & litium inter vicinos suos seminator, adeo vt diuersas lites, controuersias, necnon iurgia, & pugnas adtunc ibidem, & alibi in dicto comitatu, inter diuersos dictæ dominæ reginæ ligeos & subditos, mouit, procurauit, & excitauit: In magnam dictæ dominæ reginæ pacis pertubationem, ac contra for-

mam diuersorum ordinationum ac statutorum huius regni sui Angliæ, in huiusmodi casu ante hac prouisorum ac editorum.

For extortion in a Coroner.

INquiratur pro Domina Regina, Si A.C. de B. in dicto comitatu generosus, 6. die Iunij, anno regni dom. nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ reginæ, fidei defensoris, &c. tricesimo, vnus coronatorum dictæ dom. reg. in dicto comitatu ad tunc existens, apud B. prædictam in comitatu prædicto colore officij sui prædicti extorsiuè cepit pro feodo suo 20. sol. de quodam I.S. in dicto comitat. generoso, in, & pro functione & executione officij sui prædicti, super visum corporis R.N. nuper de B. prædicta in com. prædicto (qui quidem R. N. quinto die dicti mensis Iunij, anno supradicto, apud B. prædict. in com. prædict. casu, ab equo suo, per infortunium fuit occisus) in magnum dictæ dom. reginæ contemptum, ac contra formam statuti in parliamento Domini Henrici nuper regis Angliæ octaui tento, anno regni sui primo, in huiusmodi casu prouisi ac editi.

For Extortion in a Bishops Scribe or Register.

IVratores præsentant pro domina regina, quod A.B. de C. in dicto com. generosus, primo die mensis Augusti, anno regni dictæ dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ fidei defensoris, &c. tricesimo, ad tunc scriba, siue Registrarius, reuerendi in Christo patris, D. tunc permissione diuina Hagustaldensis episcopi existens, apud M. in comitatu prædicto, colore officij sui prædict extorsiuè ac iniuriosè cepit de quodam I. S. de M. prædicta in dicto com.

Husband-

Husbandman, duos ſolidos legalis monetæ Angliæ, pro feodo ipſius A. B. pro ſcriptione probationis vnius teſtamenti cuiuſdam R. N. (qui quidem R. N. apud M. prædictam infra diœceſin dicti D. Epiſcopi viceſimo quarto die Iulij, anno ſupradicto mortuus eſt) vbi reuera idem teſtamentum tunc ibidem allatum eſt ad dictum Scribam (ſiue Regiſt.) per dictum I. S. in pergameno ſcriptum: & vbi omnia bona, Iura, & credita dicti R. N. dicto tempore dictæ mortis ſuæ non excedebant ſummam 5. libr. & vbi etiam tota dicta ſcriptio probationis teſtamenti prædict. per præfat. ſcribam (ſiue Regiſtr.) ſic vt præfertur facta, non continebat in ſe 40. lineas, quarum quæque linea erat decem pollicium in longitudine. In magnum dictæ dom. reginæ contemptum, ac contra formam cuiuſdam ſtatuti in parliamento dom. Henrici nuper regis Anglæ octaui tento, anno regni ſui 21. in huiuſmodi caſu prouiſi ac editi.

For a riotous affray at the quarter Seſsions of the Peace.

IVratores pro Dom. Regina præſentant, quod octauo die Octobris, anno regni dictæ dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ fidei defenſoris, &c. triceſimo, apud M. in comitatu predicto tempore generalis Seſsionis pacis pro dicto comitatu tunc ibidem tentæ, & H. C. milite, & ſocijs ſuis Iuſticiarijs dictæ dominæ reginæ, ad pacem in dicto comitatu conſeruandam aſſignatis tunc ibidem exiſtentibus, & in plena curia ſedentibus, quidam A. B. C. D. E. F. G. H. & I. K. de S. in comitatu prædicto generoſi, aggregatis ſibi nonnullis alijs pacis dictæ dominæ

reginæ perturbatoribus ignotis, ad numerum 20. hominum, vi & armis, viz. gladijs & pugionib. armat. illicitè, routosè & riotosè seſe assemblauerunt ac inter se insultum & affrayam maximam tunc ibidem fecerunt, seſe inuicem verberantes & vulnerantes, in magnum terrorem tam dictorum iusticiariorum tunc ibidem in curia sedentium, quàm totius populi dictæ dominæ reginæ ad dictam sessionem pacis tunc ibidem conuenientium, ac contra pacem, coronam, & dignitatem dictæ dominæ reginæ nostræ.

For giuing of a Liuerie.

IVratores pro domina Regina præsentant, quòd T.B. de C. in dicto comitatu armiger, secundo die Septembris, anno regni dictæ dominæ nostræ Elizabethæ, Dei gratia Angliæ, Franciæ & Hyberniæ reginæ, fidei defensoris, &c. tricesimo, apud C. prædictam in comitatu prædicto, quasdam liberatas vesturæ, viz. cuidam A.B. de C. præd. in com. prædicto **Yeoman**, tres vlnas panni lanei, coloris veneti, prætij 20. solid. & C. D. de E. in dicto comit. **Yeoman**, alias tres vlnas similis panni lanei, eorundem coloris & pretij, ad duas separales tunicas pro præfatis A.B. & C.D. inde faciendas, dedit ac distribuit: vbi reuera præfati A.B. & C. D. aut eorum alter, nunquam fuerant; aut fuit domestici seruientes aut domesticus seruiens, officiarij, siue officiarius Balliui siue Balliuus dicti T.B. aut de consilio ipsius T. B. in vna lege siue altera eruditi vel eruditus: In magnum dictæ dominæ reg. contemptum, ac contra formam diuersorum statutorum in huiusmodi casu prouisorum & editorum.

For receiuing and vſing of a Liuerie.

IVratores pro dom. reg. præſentant, quod A. B. de C. in comit. prædicto **Yeoman**, vnam liberatam panni, videlicet tres vlnas panni lanei, coloris veneti, vocati Anglicè **Watchet**, ad valentiam 20. ſolid. ad tunicam inde ſibi faciendam de T. B. de C. prædicta in comitatu prædicto armigero, apud C. prædictam in dicto comitatu, ſecundo die Auguſti, anno regni dictæ dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ, fidei defenſoris, &c. triceſimo, recepit: & eadem tunica á dicto die ſecundo, anno ſupradicto vſque tertium diem menſis Septembris, anno ſupradicto, apud C. prædictam & alibi in diuerſis locis infra comitatum prædictum vſus eſt: vbi idem A. B. dicto tempore receptionis liberatæ prædict. aut vnquam poſtea non fuit familiaris, officiarius, aut de conſilio dicti T. B. in vna lege aut altera eruditus: in magnum dictæ dominæ reginæ contemptum, ac contra formam diuerſorum Statutorum in huiuſmodi caſu ante hac prouiſorum & editorum.

For Vſurie.

IVratores pro domina regina præſentant, quod vbi A. B. de C. in dicto comitatu **Mercer**, primo die Octobris, anno regni dictæ dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ, fidei defenſoris, &c. triceſimo, apud C. prædictam in dicto comitatu mutuò dediſſet, & accommodaſſet quidam D. E de C. prædicta in dicto comitatu **Shoomaker**, ſummam 20. libr. in pecunijs numeratis de pecunijs dicti A. B. in ea intentione, vt idem D. E. viginti libras eidem

A.B. redderet & reſolueret primo die Aprilis tunc proximè futuro: Idem A.B. adtunc & ibidem iniuſtè cepit & habuit præ manibus, de prænominato D. E. viginti ſex ſolidos in lucro, vſura, & proficuo pro differēdo & dando diem ſolutionis ſic vt præfertur eatundem 20. libr. â dicto primo die Octobris anno ſupradicto, vſque dict. primum diem Aprilis tum proximè ſequentem, qui quidem 26. ſolidi (modo & forma prædictis, præ manibus capti & habiti) multó excedunt, & ſuperant ratam & proportionem decem librarum pro centum libris pro vno anno integro accommodand. ad damnum non mediocre ipſius D.E. ac in contemptum dictæ dom. reginæ nunc, necnon contra formam diuerſorum ſtatutorum in huiuſmodi caſu prouiſorum & editorum.

Againſt Bakers conſpiring to make ſmall bread.

IVratores pro domina Regina præſentant, quod A.B. C.D. E.F. & G H. de M. in dicto comitatu piſtores ſecundo die menſis Octobris, anno regni dominæ noſtræ Elizabethæ, Dei gratia Angliæ, Franciæ, & Hyberniæ reginæ, fidei defenſoris, &c. triceſimo, apud M. prædict. in comitatu prædicto inſimul conuenerunt, conſpirauerunt, ac mutuò inter ſe promiſerunt, quod panis denarij de integro frumēto (per eos ſeu eorum aliquem, tum deinceps faciendus ac vendendus) non amplius quàm 2. libras & ſex vncias Troiæ ponderis habebit & ponderabit, quodcunque impoſterum foret vnius quarterij frumenti pretium: In dictæ dominæ noſtræ reginæ nunc contemptum, ac in extremum pauperum dictæ dominæ reginæ ſubditorum grauamen, necnon contra formam diuerſorum ſtatutorum in huiuſmodi caſu prouiſorum & editorum.

For a common Bridge that is is in dangerous decay.

IVratores pro dom. reg. præſentant, quod pons publicus & communis, ſitus in alta regia via ſuper flumen de Medway, infra parochiam de A. in comit. prædicto (vulgariter dictus Aldeſeford bridge) eſt, & per aliquot annos iam proximè lapſos fuit valdè ruinoſus, & in maximo decaſu ob defectum reparationis, adeo vt ſubditi dictæ dominæ reginæ, in, ſuper, trans, vel vltra dictum pontem, per ſe, vel cum eorum equis, bigis aut cariagijs, ire, redire, aut tranſire, ſine magno vitæ diſcrimine non audent aut poſſunt, ad commune nocumentum omnium vicinorum, & compatriatarum in dicto comitatu habitantium, quorum intereſt ratione negotiorum ſuorum illâc tranſire: Et vlteriùs quod prorſus neſcitur, quę perſonæ quæue terre, tenementa, aut corpora corporata, & politica, eundem pontem, aut aliquam inde parcellam, ex iure, aut ex antiqua conſuetudine, reficere & reparare debent, aut conſueuerunt. *Kanc.*

For a Rogue, or a Vagabond, and his releeuer.

IVratores pro domina reg. præſentant, quod A. B. nuper de C. in dicto comitatu Scauelman, ætatis ſeptem annorum & amplius, ac corpore ſano, valente, potente, atque ad laborandum habili exiſtens, nullam autem habens terram, aut vllum magiſtrum, nec aliqua vtens licita merchandiza, arte, vel myſterio vnde ſibi victum parare poſſet, x. die Decembris, anno regni dom. noſtræ Elizab. Dei gratia Angliæ, Franciæ, & Hyberniæ Reginæ, fidei defenſoris, &c. 41. apud E. infra hundredū

de W. in comitat. prædicto, & multis alijs in locis dicti comitatus, hâc illâc passim vagatus est mendicans, ac per W. P. de E. prædicta in dicto com. **Yeoman**, constabularium dicti hundredi de W. (in quo sita est villa de E. prædicta) postea, viz. vndecimo die dicti mensis Ianuarij, anno supradicto apud E. prædict. in com. prædicto inuentus est vagarans, & mendicans, ac per eundem constabularium tunc ibidem deprehensus est inordinatè se gerens, tanquam vagabundus, & mendicus validus: contra pacem dictæ dominæ Reginæ, ac contra formam diuersorum statutorum in diuersis parliamentis dictæ dominæ reginæ nunc inde prouisorum & editorum: Et vlteriùs, quod G. H. de E. prædicta in dicto comitatu **Yeoman**, sciens præfatum A. B. modo & forma prædictis vagantem & mendicantem, eundem tamen A. B. dicto decimo die anno supradicto in domo ipsius G. H. mansionali apud E. prædict. in com. prædicto hospitauit, & eidem A. B. tunc ibidem panem & potum voluntariè dedit, in contemptum dictæ dominæ reg. ac contra formam statutorum præd.

For keeping a Tipling house without licence.

K anc. IVratores pro domina Regina præsentant, quod A. B. de C. in dicto com. **Yeoman**, vicesimo die mensis Octobris, anno regni dominæ nostræ Elizabethæ dei gratia Angliæ, Franciæ & Hyberniæ Reginæ, fidei defensoris, &c. tricesimo, & continuè multis diebus postea, videlicet, vsque 1. diem dicti Octobris, anno supradicto apud C. prædict. in com. prædicto, obstinatè, atque ex autoritate propria ipsius A. B. & sine vlla Iusticiariorum pacis dictæ dominæ reginæ in comitatu prædicto admissione aut allocatione, assumpsit super se custodire, & custodiuit vnam communem Tabernam, Anglicè vocatam **a common Tipling house**, & ibidem dicto vicesimo

ſimo die, & dictis diebus tum poſtea, communiter & publicè vendidit ceruiſiam, panem, & potum, Anglicè dictum **Beere**, diuerſis dictę dom. reg. ligeis & ſubditis. In dictę dominę reginę contemptum, ac contra formam cuiuſdam ſtatuti in Parliamento Domini **Edwardi** nüper regis Anglię ſexti, tento apud Weſtm. Anno regni dict. Domini Edwardi quinto in huiuſmodi caſu prouiſi & editi.

For keeping vnlawfull play, and for playing thereat.

IVratores pro Domina Regina, præſentant, quod A.B. de C. in dicto comitatu **Tipler**, ſecundo die Septembris Anno regni Dominę noſtrę Elizabethę, Dei gratia Anglię, Francię, & Hybernię Reginę fidei defenſoris, &c. triceſimo, & continuè poſt dictum diem anno ſupradicto, vſq; primum diem menſis Octobris, anno ſupradicto apud C. prædictam in comitatu prædicto quendam communem locum iaciendi globos (vocatum Anglicè, **A common Bowling Alley**) pro lucro ipſius A.B proprio, & ad ludendum tunc ibidem cum globis (Anglicè vocatis **Bowles**) illicitè tenuit, cuſtodiuit, ac manutenuit, contra formam cuiuſdam ſtatuti in Parliamento dom. Hen. nuper Regis Anglię 8. tento anno regni ſui, 33. in huiuſmodi caſu prouiſi & editi: Et quod I.S. de C. prędicta in dicto com. **Labourer**, & tres alię perſonę ignotę, dicto ſecundo die Septembris anno ſupradicto, dictum communem locum viſitauerunt, ac tunc ibidem cum globis, Anglicè vocatis **Bowles**, inſimul & illicitè luſerunt, contra formā ſtatuti prædicti.

For hunting of Conies.

IVratores pro domina Regina præſentant, quod A B. de C. in dicto comitatu **Labourer** (homo laicus exiſtens)

ſtens)à feſto ſancti Bartholomæi Apoſtoli, Anno regni Dominę noſtrę Elizabethę, Dei gratia Anglię, Francię, & Hybernię Reginę fidei defenſoris, &c. triceſimo, continuè vſque in hunc præſentem diem, apud C. prædict. in comitatu prædicto, habuit & cuſtodiuit vnum canem græcum, anglicè vocatum a **greyhound**, ad venandum & chaceandum lepores & cuniculos: Et quod idē A.B. viceſimo ſeptimo die menſis Auguſti, anno ſupradicto, vnum cuniculū valoris quatuor denarior. in quodam clauſo I.S. de C. prædicta in dicto comitatu generoſi, vocato the **Contegarth**, infra parochiam de C. prędicta in dicto com. exiſtent. cum dicto cane venatus eſt, & occidit, vbi idem A.B. nunquam habuit terras aut tenementa, ad clarum annuum valorem quadraginta ſolidorum. In dictę dominę reginę contemptum, ac contra formam cuiuſdam ſtatuti in Parliamento domini Richardi, olim regis Anglię ſecundi, tento anno regni ſui tertio decimo, in hoc caſu prouiſi ac editi.

For vſing the Art of Mercerie, againſt the ſtatute.

IVratores pro domina Regina præſentant, quod A.B. de C. in dicto comitatu **Mercer**, viceſimo die menſis Maij, anno regni dictę dominę noſtrę Elizabethę Dei gratia Anglię, Francię & Hybernię Reginę, fidei defenſoris, &c. triceſimo, & multis alijs diebus continuè poſt dictum diem per ſpacium duorum menſium, videlicet, vſque triceſimum diem Iulij, anno ſupradicto, apud C. prædictam in comitatu prædicto, quandam artem, ſiue miſterium, Anglicè dictum **Mercerie**, illicitè pro lucro ſuo proprio vſitauit & exercuit: tunc ibidem vendendo diuerſas res ſiue merces, Anglicè vocatas **Mercerie wares**, diuerſis dictę dominę reginę ligeis & ſubditis, vbi reuera idem A.B. nunquam fuit in dicta arte ſiue miſterio

ſterio educatus tanquam apprenticius per ſpatium ſeptem annorum, nec idem A.B. eandē artem, ſiue myſterium prædictum, vnquam ante prædictum viceſimum diem, anno ſupradicto vſitauerit, aut exercuerit. In magnum dictę dominę reg. contemptum, ac contra formam cuiuſdam ſtatuti, in Parliamento dictę dominę Reginę noſtrę nunc, tento apud Weſtmonaſt. anno regni ſui quinto, in hoc caſu prouiſi ac editi.

For wearing ſilke.

IVratores pro domina Regina præſentant, quod A.B. de C. in dicto comitatu **Taylor**, natus intra hoc regnum Anglię, videlicet, apud C. prædictam, ſed filius aut hæres apparens alicuius militis, aut filius hominis altioris gradus non exiſtens, nec potens expendere per annum viginti libras, in terris, tenementis, feodis, officijs, aut alijs annuis reuentionibus, pro termino vitę ſuę: nec valens ducentas libras de bonis ſuis proprijs: nec vnquam Maior, Balliuus, Aldermanus, aut capitularis officiarius in aliqua ciuitate, burgo, aut villa corporata exiſtens, nec dictę dominę reg. ſeruiens in ordinario (vtens dictę dominę reginę liberata) exiſtens: viceſimo tamen die Octobris, anno regni dictę dominę noſtrę Elizabethę, Dei gratia Anglię, Franciç, & Hybernię Reginę, fidei defenſoris, &c. triceſimo, apud C. prædictam in comitatu prædicto, per totum dictum 2c. diem anno ſupradicto, in interiore parte cuiuſdam pilei ſui (anglicè vocati a **Cap**) quodam ſerico (anglicè dicto **Taffata**) ad valorem 2. ſolidorum, illicitè & palam vtus eſt: contra formam cuiuſdam ſtatuti, in Parliamento Phil. & M. nuper regis & reginę Anglię tento apud Weſtm. in com. Middleſex, annis regnorum ſuorum, primo & ſecundo, in huiuſmodi caſu prouiſi & editi.

For

For regrating of fish and butter.

IVratores pro domina Regina præſentant, quod A. B. de C. in dicto comitatu **Mercer**, 20. die Iulij, anno regni dictę dominę noſtrę Elizabethę, Dei gratia Anglię, Francię, & Hybernię reginę, fidei defenſoris, &c. triceſimo, apud C. prædictam in comit. prædict. in quodam mercatu tunc ibidem tento pro 40. ſolid. monetę emit, regratauit, obtinuit, & nactus eſt in poſſeſſionem & manus ſuas, decem paria piſcium (Anglicè dicta **ten couples of Lings**) & tria vaſa butyri ſalſi (anglicè vocata **three firkins of ſalt butter**) de quodam E.F. qui prædicta decem paria piſcium, ac dicta tria vaſa butyri ad eundem mercatum vt ea ad tunc ibidem venderet adduxiſſet: Et quod immediatè poſtea, ſcilicet dicto 20. die anno ſupradicto, idem A.B. in dicto eodem pleno mercatu tunc ibidem apud C. prædictam in dicto comitatu tento, eadem omnia dicta paria piſcium, ac butyri vaſa, cuidam H.R. pro ſexaginta ſolidis legalis monetæ dictæ Dominæ Reginæ huius regni ſui Anglię, illicitè vendidit, in magnum reipublicæ damnum, ac contra formam diuerſorum Statutorum huius regni Angliæ in huiuſmodi caſu prouiſorum & editorum.

For not working vpon the highwaies.

IVratores pro domina regina præſentant, quod vbi die Martis in ſeptimana Paſchę iam vltimò præteritę, ſcilicet ſeptimo die menſis Aprilis, anno regni dominę noſtrę Elizabethę, Dei gratia Anglię, Francię & Hybernię reginę, fidei defenſoris, &c. triceſimo, A. B. tunc conſtabularius villæ de C. in dicto com. & D.E. & F.G. tam guardiani eccleſię parochialis de C. præd. in com.

prædicto

prædicto exiſtentes, vocatis ad ſe multis alijs parochianis dictę parochię de C. tunc & ibidem elegerunt quoſdam I.S. & R.N. duas honeſtas eiuſdem parochię perſonas, in ſuperuiſores pro vno anno integro tunc proximè ſequenti, pro emendatione & reparatione altarum regiarum viarum infra dictam parochiam de C. ducentium à villis mercatorijs, ad villas mercatorias: ac etiam tunc ibidem nominauerunt & appunctuauerunt ſex dies, viz. 1. 2. 3. 4. 5. & 6. dies menſis Maij tunc proximè ſequentis, pro dicta emendatione dictarum viarum, & nominatim pro emendatione illius viæ regiæ ibidem quæ eſt inter, & c. atque de eiſdem ſex diebus (ſic per eos vt præfertur nominatis, & appunctuatis) dederunt palam poſtea, ſcilicet die dominico dictę Paſchę tunc proximè ſequenti, publicam notitiam in dicta eccleſia parochiali: quidam tamen T. W. tum & adhuc parochianus de C. prædicta in com. prædict. exiſtens, ac tum habens & occupans in dicta parochia de C. in comit. præd. vnam integram carucatam terræ arabilis (anglicè dictam a plough land) nullum dictis primo, ſecundo, & quarto diebus dicti menſis Maij anno ſupradicto prorſus inuenit, aut miſit currum inſtructum (anglicè dictum a waine, or cart furniſhed) equis, bobus, aut alijs animalibus, & neceſſarijs, ſecundum morem patriæ ibidē: nec vllos habiles homines, erga emendationem & reparationem dictarum viarum aut earum aliquam, ſiue aliquam inde parcellam: ſed inde tunc ibidem voluntariè fecit defaltam in dictę dominę reginę contemptum, ac contra formam diuerſorum ſtatut. in huiuſmodi caſu prouiſorum & editorum.

Againſt a Goldſmith

IVratores pro domina Regina præſentant, quod A. B. de C. in dicto comitatu Aurifaber, ſecundo die Iulij, anno

anno regni dictę dominę noſtrę Elizabethę, Dei gratia Anglię, Francię, & Hybernię reginę, fidei defenſoris, &c. triceſimo apud S. prædictam in comitatu prædicto, quoddam manubrium pugionis ferrei (Anglicè dictum **a dagger hylt of yron**) cuiuſdam E.D. de S. prædicta in comitatu **Yeoman**, valoris duorum ſolidorū anro puriſſimo ad valentiam quinque ſolidorum deaurauit, Anglicè **did gild with the fineſt gold**, in magnum reipublicę detrimentum, ac contra formam cuiuſdam ſtatuti in parliamento domini Henrici nuper regis Anglię quinti, tento anno regni ſui octauo, in huiuſmodi caſu prouiſi & editi.

For taking Pheſants and Partriches.

IVratores præſentant pro domina regina, quod W. G. de S. in dicto com. **Laboyer**, circiter horam decimam ante meridiem viceſimi diei Auguſti, anno regni dictę dominę noſtrę Elizabethę, Dei gratia Anglię, Francię, & Hybernię Reginę fidei defenſoris, &c. triceſimo, in quodam loco infrá parochiam de S. prædicta in comitatu prædicto (vocat. vulgariter, **the Wheate field**) qui quidem locus tunc fuit, & adhuc eſt liberum tenementum A. B. de S. prædicta in dicto comitatu generoſi (nec vnquam fuit in aut de Warrena ipſius W. G. propria) duos phaſianos & decem perdices cum quibuſdam reticulis, & alijs ingenijs (valoris duorum ſolidorum) tunc ibidem cepit, occidit, & aſportauit, ſine aliquibus aſſenſu, aggreamento, aut ſpeciali licentia dicti A. B. in hac parte habitis aut obtentis: In dictę dominę Reginę nunc contemptum, ac contra formam cuiuſdam ſtatuti in Parliamento Domini Henrici nuper regis Anglię ſept. tento anno regni ſui vndecimo, in huiuſmodi caſu prouiſi & editi.

For not keeping watch in a towne.

IVratores pro Dom. regina præſentant, quod à decimo die Iunij, anno regni dictę dominę noſtrę Elizabethę, Dei gratia Anglię, Francię, & Hybernię Reginę fidei defenſoris, &c. triceſimo, vſq; vltimum diem menſis Auguſti, anno ſupradicto, homines & inhabitantes villæ de C. in comitatu prædicto, nullas vigilias à ſolis occaſu vſque ad ſolis ortum, in dicta villa de C. in comitatu prædicto, per aliquot homines fecerunt, aut cuſtodierunt, prout de iure & antiqua conſuetudine facere debent & ſolebant. In dictę dominę Reginę nunc contemptum, ac contra formam cuiuſdam ſtatuti, in Parliamento domini Edwardi olim regis Anglię primi, apud Wynton, anno regni ſui tertio decimo tento, in huiuſmodi caſu prouiſi & editi.

For not keeping watch at the Sea ſide.

IVratores pro domina Regina præſentant, quod vbi homines & inhabitantes hundredi de F. in comitatu prędict. antiquitus (videlicet ante annum regni domini Henrici nuper regis Anglię quarti quintum) quaſdam maritimas & minutas vigilias, Anglicè vocatas **Sea-watch**, tempore belli per coſteram maris in quodam loco (vocato **Sandgate**) in dicto comitatu, per quatuor homines ſingulis noctibus, (à tempore in cuius contrarium memoria hominum tunc non exiſtebat) cuſtodire debebant & ſolebant: dicti tamen hundredi de F. homines & inhabitantes nunc, tempore nuper belli, videlicet, à viceſimo quarto die Iulij, anno regni dictę dom. noſtrę Elizabethę, Dei gratia Anglię, Francię & Hybernię Reginę fidei defenſoris, &c. triceſimo vſque triceſimum primum diem dicti menſis Iulij,

anno

anno ſupradicto, prædictas vigilias apud **Sandgate** prædictam, modo & forma prædictis, facere, & cuſtodirè voluntariè prætermiſerunt & neglexerunt, ac in eiſdem vigiliis tunc ibidem (ſic vt præfertur faciendis ac cuſtodiendis) voluntariam fecerunt defaltam: in dictæ dominę reginę contemptum, ac huius regni ſui Anglię diſcrimen non modicum, necnon contra formam ſtatuti in parliamento dicti domini Henrici nuper regis Anglię quarti, tento anno regni ſui quinto prædicto, in huiuſmodi caſu prouiſi ac editi.

For not keeping a Gelding fit for warres.

IVratores pro domina Regina præſentant, quod vbi A.B. de C. in dicto comitatu generoſus, à primo die Iunij, anno regni dictę dominę noſtrę Elizabethę Dei gratia Anglię, Francię, & Hybernię reginę, fidei defenſoris, &c. triceſimo, vſque in hunc præſentem diem, terras & tenementa in C. prædicta in dicto comitatu eidem A.B. & hæredibus ſuis in feodo ſimplici ad clarum annuum valorem centum marcarum & ampliùs vltra omnes repriſas habuerit, ac tenuerit: Idem tamen A.B. per totum tempus prædict. viz. à dicto primo die Iunij, anno ſupradicto vſque nunc, nullum habuit, cuſtodiuit, manutenuit, aut ſuſtinuit, equũ caſtratum (Anglicè dictum **a Gelding**) habilem & idoneum pro leuis armaturæ equite (Anglicè **able, and meete for a light horſeman**) in dictę dominę reginę contemptum, ac in magnam huius regni ſui Anglię eneruationem, necnõ contra formam cuiuſdam ſtatuti in Parliamento Phil. & Mar. nuper regis & reg. Anglię, tento apud Weſtm. annis regnorum ſuorum quarto & quinto, in huiuſmodi caſu prouiſi ac editi.

Proceſſe vpon Enditementes and preſentments taken out of the old *imprinted Booke of the Iu-* ſtices of Peace.

Note that the Proceſſe vppon an Enditement of Treaſon or Felonie, is vſually:

A *Capias.*
A *Capias alias.*
An *Exigi facias.*

And in euery ſuch Capias, there ought to bee three weekes ſpace betweene the Date and the Returne thereof.

The *Capias* is thus,

ELizabeth Dei gratia Angliæ, Franciæ, & Hyberniæ regina, fidei defenſor, &c. vicecomiti Kanc. ſalutem. Præcipimus tibi, quod non omittas propter aliquam libertatem in Balliua tua, quin eam ingrediaris, & capias A. B. de C. in dicto comitatu **Labourer**, & eum ſaluò cuſtodiri facias. Ita quod habeas corpus eius coram cuſtodibus pacis noſtræ, necnon Iuſticiarijs noſtris ad diuerſa felonias, tranſgreſſiones, & alia malefacta in dicto comitatu tuo perpetrata audiendum & terminandum aſsignatis, ad proximam generalem ſeſſionem pacis comitatus tui poſt clauſum Paſchæ proximè futuræ tenendam (vbicunque in eodem comitatu tenieri contigerit) ad reſpondendum nobis tunc ibidem de quadam felonia vnde indictatus exiſtit. Præcipimus etiam tibi, quod non omittas propter aliquam libertatem in balliua tua prædicta, quin diligenter inquiras quæ bona & catalla prædictus A. B. habet in balliua tua, & ea in manus noſtras ſeiſiri facias, vel vlteriùs inde fieri poſsit, prout de iure, & ſecundum legem & conſuetudinem

regni

regni noſtri Angliæ fuerit faciendum. Et habeas ibi tunc hoc præceptum. Teſte H. Co. milite, apud M. prædictam in comitatu prædicto 24. die Februarij, anno regni noſtri, triceſimo.

The *alias Capias.*

ELizabetha Dei gratia Angliæ, Franciæ, & Hyberniæ regina fidei defenſor, &c. vicecomiti Kanc. ſalutem. Præcipimus tibi (ſicut alias tibi præcepimus) quod non omittas propter aliquam libertatem in balliua tua, quin eam ingrediaris, & Capias A.B. de C. in comitatu tuo **Labourer, and ſo word for word as the** Capias **before, changing the dayes onely.**

The *Exigi facias.*

ELizabeth Dei gratia Angliæ, Franciæ, & Hyberniæ regina fidei defenſor, &c. vicecomiti Kanc. ſalutem. Præcipimus tibi, quod exigi facias, A.B. de C. in comitatu tuo **Labourer**, de comitatu in comitatum, quouſque ſecundum legem & conſuetudinẽ regni noſtri Angliæ vtlagetur ſi non comparuerit, & ſi comparuerit, tunc eum capias, & ſaluò eum cuſtodiri facias, ita quod habeas corpus eius coram cuſtodibus pacis noſtræ, necnon Iuſticiarijs noſtris ad diuerſa felonias, tranſgreſſiones, & alia malefacta in dicto comitatu perpetrata audiendum & terminandum aſſignatis, ad generalem ſeſſionem pacis comitatus tui proximè poſt feſtum ſancti Michaelis archangeli proximè futuri tenendam (vbicunque in eodem comitatu teneri contigerit) ad reſpondendum nobis de quadam felonia vnde indictatus exiſtit, & vnde tu ipſe mandaſti coram præfatis Iuſticiarijs noſtris (tali die &c.) quod præfatus A. B. non eſt inuentus in Balliua tua, & habeas tunc ibi hoc Breue. Teſte H. C. milite, apud M. in comit. prædicto ſexto die Septemb. anno regni noſtri triceſimo.

Ad quem diem I. F. armiger, vicecomes comitatus prædicti retornauit, quod ad comitatum ſuum tentum apud P. quarto die Maij, an. regni dom. reginæ nunc, &c. (and ſo, ſhewing the dates of his other foure counties) prædictus A.B. exactus fuit, & non comparuit, & propterea vtlagatus fuit.

The common Proceſſe vpon other Preſentments, **not being in** Felony, **nor ſpecially ſet foorth in** ſtatutes, **is in that olde booke declared to be, firſt**

A *Venire facias* thus,

ELizabeth Dei gratia Angliæ, Franciæ, & Hyberniæ regina fidei defenſor, &c. vicecomiti Kanc. ſalutem, Præcipimus tibi, quod non omittas propter aliquam libertatem in Balliua tua, quin venire facias A.B. de C. in dicto com. tuo **Yeoman**, coram cuſtodib. pacis noſtræ necnon Iuſticiar. noſtris ad diuerſa felonias, tranſgreſſiones, & alia malefacta in dicto com perpetrata audiendum & terminandum aſſignatis, ad generalem ſeſſionē pacis com. tui proximè poſt, &c. ad reſpondendum nobis ſuper quibuſdam articulis ſuper ipſum A.B. præſentatis, & habeas ibi tunc hoc præceptum. Teſte &c.

And if vppon this Venire facias **the partie bee returned** ſufficient, **then a** Diſtringas **muſt go out and ſo the ſame** Proceſſe **infinite, vntill he come in, which is thus:**

ELizabeth Dei gratia Angliæ, Franciæ, & Hyberniæ reg. fidei defenſor, &c. vicecomiti Kanc. ſalutem: præcipimus tibi, quod non omittas propter aliquam libertatem in Balliua tua, quin eam ingrediaris, & diſtringas A.B. de C. in comit. tuo **Yeoman**, per omnia terras & tenementa, &c. Et quod de exitibus eorum reſpondeas &c. Et quod habeas corpus eius coram præfatis Iuſticiarijs, &c. ad reſpondendum, &c. Teſte, &c.

But

But if Nihil habet be returned at the firſt againſt him, then a Capias,
an Alias Capias,
a Pluries Capias, which hath no change but the word Pluries for Alias: and laſtly, an Exigi facias, muſt be awarded againſt him.

This is the generall Proceſſe: the ſpeciall muſt be ſought for in the eight Chapter of the fourth Booke of the Eirenarcha before, and in thoſe Statutes which do namely appoint them.

A Superſedeas to ſtay the taking of one that is endited of ſome treſpaſſe or contempt.

ELizabetha Dei gratia Angliæ, Fráciæ & Hyber. Reg. fidei défenſor, &c. Vicecomiti Kanc. ſalutem: Quia A.B. de C. in dicto com. yeoman, venit in curia noſtra corã H.C. milite, & ſocijs ſuis, cuſtodibus pacis noſtræ, ac Iuſticiarijs noſtris ad diuerſa felonias, &c. aſſignatis, apud M. tali die, &c. Et inuenit ſufficientes manucaptores eſſendi coram præfatis Iuſticiarijs, ad proximã generalem ſeſſionem pacis in dicto comitatu tenéndam, ad reſpondendum nobis de quibuſdam tranſgreſſionib. ſuper ipſum præſentatis. Ideo tibi præcipimus, quod de capiendo præfatum A.B. ſeu ipſum impriſonando, vel eum ea de cauſa aliqualiter moleſtando, omnino ſuperſedeas. Et ſi eum ea de cauſa & nõ alia ceperis, tunc ipſum ſine dilatione deliberari facias. Teſte præfato H. C. milite apud T. prædictam, die & anno, &c.

A Superſedeas to ſtay the Exigi facias *vpon an Enditement of felonie.*

ELizabetha Dei gratia Angliæ, Franciæ, & Hyberniæ Regina fidei defenſor, &c. vicecomiti Kanc. ſalu-

tem. Quia A.B. de C. in dicto comit. tuo Yeoman, venit in curiam noſtram apud M. tali die &c. coram H. Co. milite, & ſocijs ſuis, cuſtodibus pacis noſtræ, necnon Iuſticiarijs, &c. ac ſe reddidit priſonæ noſtræ (occaſione quarundam feloniarum vnde corã eis indictatus eſt) vt in eadem moretur, ſicut nobis conſtat: Dicitur, Quia inuenit nobis ſufficientem manucaptionem eſſendi coram præfatis iuſticiarijs ad proximam generalem ſeſſionem pacis in dicto comitatu tenendam, ad reſpondendum nobis de quibuſdam felonijs, vnde coram eis indictatus exiſtit, ideo tibi præcipimus, quod de vlteriùs exigendo præfatum A.B. ad aliquem comitatum tuum, vel eum impriſonando, ſiue ipſum ea occaſione moleſtando, omnino ſuperſedeas. Et habeas ibi hoc Breue. Teſte, &c.

Some other formes of Superſedeas there be in that olde booke, proceeding from one Iuſtice of Peace, which I do pretermit, becauſe I ſee not how they be warranted at this day. Neuertheleſſe this precept **following, I will drawe from thence, that others may aduiſe vpon it.**

For the remouing of a petite Conſtable.

ELizabeth Dei gratia &c. vicecomiti Middleſexiæ necnon capitali conſtabulario villæ hundredi de W, & eorum cuilibet, ſalutem: quia W.P. & R.S. ſubconſtabularij villæ de C. & K. (certis de cauſis nos mouentibus) ab officio ſuo amoueri & exonerari fecimus: Ideo vobis & cuilibet veſtrum coniunctim & diuiſim præcipimus & mandamus, quod I.F. & R.M. ad omnia & ſingula eidem officio incumbentia bene & fideliter exercenda & exequenda (prout ipſi nobis inde reſpondere.

dere voluerint) iurare faciatis: dictiſque W. P. & R.S. ſimiliter iniungentes, quod ipſi de dicto officio vlteriùs exercendo & exequendo nullatenus ſe intromittant, quouſque aliud de nobis habuerint mandatum. Et quicquid inde feceritis, Iuſticiarijs noſtris ad pacem noſtrã in dicto comitatu conſeruandam aſſignatis, ad proximam generalem ſeſſionem pacis apud C. in dicto comitatu tenendam, certificetis, hoc præceptum noſtrum tunc & ibidem remittentes. Teſte T.M. vno Iuſticiariorum noſtrorum prædictorum, tali die, &c.

A Writ of reſtitution vpon the ſtatute 21. H. 8. ca. 11. *to the owner of goods ſtollen.*

ELizabeth Dei gratia &c. I.F. Balliuo de M. in comitatu noſtro Kanc. generoſo Salutem. Quia I.S. nuper de O. in dicto comitatu **Labourer**, nuper indictatus, reſtatus, & legitimo modo per patriam apud M. in comitatu prædicto coram H.Co. milite & ſocijs ſuis cuſtodibus pacis noſtræ, necnon Iuſticiarijs noſtris ad diuerſa felonias, tranſgreſſiones, & alia malefacta in dicto comitatu perpetrata audiendum & terminandum aſſignatis, ratione euidentiæ per E.H. de L. in comitatu prædicto contra eundẽ I.S. datæ inuentus fuit culpabilis, de eo quod idem I. S. ſecundo die Maij, anno regni noſtri triceſimo apud O. prædictam in comitatu prædicto, duas vaccas (coloris rubei, ad valentiam trium librarum) de bonis & catallis præfati G.H. adtunc ibidem inuentas felonicè cepit & abduxit. Ideo tibi præcipimus pariter & mandamus, quod ſi bona & catalla prædicta, vel aliqua inde parcella, ad manus tuas deuenerunt, tunc tu bona & catalla prędicta eidem G. H. deliberari facias indilatè. Teſtibus prędicto H.C. milite, & A.B. armigero vno Iuſticiariorum prędictorum apud M. prædictam, 24. die Sept. anno regni noſtri triceſimo.

The

The returne of a *Certiorari*, ſent to remoue an *Enditement*, may bee thus faſhioned.

Firſt, vpon the backeſide of the Writ of Certiorari, *endorſe theſe, or the like wordes.*

Executio iſtius Breuis patet, in quadam Scedula eidem Breui annexa.

And that Scedule *may be thus.*

EGo A.B. vnus cuſtodum pacis, ac Iuſticiariorum dominæ reginæ, ad pacem in dicto comitat. Kanc. conſeruandam, necnon ad diuerſa felonias, tranſgreſſiones, & alia malefacta in eodem comitatu perpetrata audiendum & terminandū aſſignatorum, virtute iſtius Breuis mihi deliberati, indictamentum illud (vnde in dicto Breui fit mentio) vnà cum omnibus idem indictamentum tangentibus, in Cancellariam dictæ dominæ Reginæ, diſtinctè & apertè ſub ſigillo meo certifico. In cuius rei fidem & teſtimonium, ego præfatus A. B. huic præſentibus ſigillum meum appoſui: Datum die menſis anno regni, &c.

Then take the Record of the Enditement: and cloſe it within the Scedule, and ſeale them both vp together.

FINIS.