

Br. suerty 11 may be compelled to finde Sureties both for the good Behaviour, and for the Peace: and yet it seemeth that the good Behaviour, includeth the peace, and that he that is bound to the good Behaviour, is therein also bound to the peace. See the vsuall formes of both Recognifances.

2.H.7.2.b.

But if the Recognifance taken for the good Behaviour, be only *quod bene se geret, &c.* *Quare* how farre those words will extend. See *2.H.7.2.b.*

Suertie for the good Behaviour.

P. Iust. 18.



His suerty for the good Behaviour, or good abearing, is granted by the lust. of Peace, as wel by authority of the Commission of the P. the first *Assign.* as also by force of the stat. of *34.E.3.ca.1.*

Lambert. 119.
P.R. 18.

2.H.7.2.

And this suerty for the good Behaviour is of great affinitie with that of the peace; and is provided and ordained chiefly for the preservation of the peace (as that other is,) as you may obserue out of the vsuall formes of the Recognifances; yea, by some opinions it differeth in little or nothing from that of the P. but that there is more difficulty in the performance thereof, and the partie so bound, may sooner fall into the danger of it, and of his Recogn. For the peace, say they, is not broken without an affray committed, battery, assault, imprisoning, or extremity of menacing; whereas the good Abearing may be broken (and the parties Recogn. forfeited without any of these, as namely:

P.R. 23.

- 1 By the extraordinary numbr of people attending vpon the partie bound:
- 2 Or by his wearing of harnessse, or other weapons, more then vsually he hath done, or more then be meet for his degree:
- 3 Or by vsing wordes or threatnings, tending or inciting to the breach of the peace:
- 4 Or by doing any other thing which shal tend to the breach of the peace, or to put the people in dread or feare, although there bee no actuall breach of the peace.

Yet note, these foure last matters, as they are breaches of the good Abearing, so are they also causes to binde a man to the peace; yea, they are breaches of the peace, and a forfeiture of the Recogn. for the peace. *Vide ibi. Suertie for the peace.*

The booke *2.H.7.fol.2.* concludeth, that the Iustices were not all certainly aduised how those words, *de se bene gerēdo*, should be taken. *M. Bro.* abridging thereof *ibi. Suerty 12.* saith, That it was holden that he who is bound to the peace, ought to demean himselfe well in his

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port,

port, (*scz.* Behavior) and company, not doing any thing that may be the cause of the breach of the peace, or to put the people in feare or trouble; yet the Book seemes to meane this of the good behaiour.

But though this extraordinary number of attendants, and wearing of Harnesse &c. are breaches as well of the peace, as of the good behaiour, yet it may seem that this for the good Behaiour, doth include the peace, and besides importeth some greater or other matters of misbehaiour, and for which the surety of the peace is not to be granted, (although they also are against the peace, and quiet or good gouernment of the land,) and you shall find *hic pag.* 160. that this surety of the good Behaiour is grantable in diuers other cases, in which the surety of the peace is not grantable.

This surety of the good Behaiour is to be granted at the suite of diuers, and those being men of credit, and to prouide for the safetie of many; whereas the surety of the peace is vsually granted at the request of one, and for the preferuation of the peace chiefly towards one.

Also this surety of good Abearing, is most commonly granted either in open Sessions of the peace; or out of the Sessions by two or three Iustices of Peace; whereas that of the peace is vsually granted by one Iust. of Peace, and out of Sessions.

And yet by the words of the Commission, as also by the common opinion of the learned, any one Iustice of peace alone, and out of the Sessions, may grant this surety of the good Abearing; and that either by their owne discretion, or vpon the complaint of others (as they may that of the peace.)

But this is not vsuall, vnlesse it be to preuent some great and sudden danger; (especially against a man that is of any good estate, carriage, or report.)

Also this surety may be granted at the suit of some one person.

But the more difficult and dangerous this surety is to the partie bound, the more regard there ought to be taken in the granting of it: and therefore it shall be good discretion in the Iu. of P. that they do not command, or graunt it, but either vpon sufficient cause seene to themselves; or vpon the suite and complaint of diuers others (as aforesaid) and the same very honest and credible persons.

Supplicauit. Also this surety of good Abearing, is often taken by the Iustice of Peace, by vertue of a speciall Writ in the nature of a *Supplicauit*, directed out of the Chauncery, or Kings Bench; and then the Iust. of Peace vpon such a Writ, is to proceed as a Minister, (as in case for the Peace, *mutatis mutandis.*) *Vide antea tit. Suretie for the peace and Supplicauit.*

Once receiued out of the Chancery, such a Writ directed *Custodibus pacis in com' Cantabr. ac vicecomiti eiusdem com' : Et eorum cuilibet* (and

(and grounded vpon the stat. 34. Ed. 3.) commanding vs and euery of vs, to take foure sureties (besides the party) whereof euery one should haue lands of such a yearely value, or goods of such a value, and to bind the sureties euery one in such a summe, and the party in such a summe, *Quod ipse boni gestus de cetero erit, erga nos Et cunctum populum nostrum, Et quod nihil in contrarium statuti predicti attemptabit &c.* and therein I proceeded as a Minister only.

The party against whom such a *Supplicauit* for the good Behaiour shall be granted out, before hee be attached thereupon, may goe or send vp, and giue Suretie aboue in the Chauncery &c. as here before (*pag.* 154.) for the Peace: And thereupon he shall haue a *Superfedeas* out of that Court, directed to the Iustices of Peace, and Sheriffe, and to euery of them, commaunding them to surcease to arrest the said partie, or to doe any other execution of the sayde Writ of *Supplicauit*; And that if (before the comming of the sayd *Superfedeas*) they haue taken any such securitie for the good Behaiour of the partie, that then they presently release the party of such Suretie found by him, the former Writ of *Supplicauit* notwithstanding.

For what cause this Suretie for the good Behaviour, shall be granted.

IT is chiefly to be granted (by the Iust. of Peace out of their Sessions) in these fve Cases following; *viz.* First, against common Barretters, common Quarrellers, & common breakers or perturbors of the peace. See what Barretters be, *tit. Barretters antea.*

2 Also it is grantable against Ryotters. See hereof before, *tit. Ryotts.*

R. Iust. 18. 3 Also against such as shall lie in wait to rob, or shall be suspected to lye in wait to rob, or shall assault, or attempt to rob another, or shall put passengers by the way, in feare or perill.

4 Also against such as be generally feared (or suspected) to be robbers by the high-way.

Crép. 135. b 5 Also against such as are like to commit murder, homicide, or other grieuances to any of the Kings subiects in their bodies.

Also against such as shall practise to poyson another.

I lately granted the good Behaiour against one, for that he had bought Rarsbane, and mingled the same with corne, & then wilfully and maliciously did cast the same amongst his next neighbours fowles, whereby most of his fowles died; and it was holden to be a good cause to binde the offender ouer, by the whole Bench.

P. Iust. 18. 34. E. 3. c. 1. It is also grantable against such as be of euill name and fame generally, but more specially against al such as are defamed or detected in any of these particulars following:

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1. First,

1 First, against those that are greatly defamed for resorting to houses suspected to maintaine Adulterie, or Incontinencie. 13.H.7.10.

2 Also against the maintainers of houses commonly suspected to be houses of common Bawdrie.

One that had such lewd women found in his house was bound to his good Behaviour, (by *Wray, Anderson, and Marwood.*) 28.Eliz. Crom. 140.

3 Also against common Whoremongers, & common Whores; for (by good opinion) Auowtry or Bawdry is an offence temporall, as well as spirituall, and is against the peace of the land. 1.H.7.7. 27.H.8.14.

Vpon information given to a Constable, that a man & a woman be in adulterie, or fornication together, (or that a man & a woman of euill report, are gone to a suspected house together, in the night) the officer may take companie with him, and if he finde them so, hee may carrie them to prison; or he may carrie them before a Iust. of peace, to find suerties for the good Behaviour. 13.H.7.10. Br. Trauerse 43.

4 Also against night-walkers, that be suspected to be pilferers, or otherwise like to disturbe the peace, or that be persons of euill behauior, or of euill fame or report generally, or that shall keepe companie with any such, or with any other suspicious persons in the night, 13.H.7.10.

Against such as by night shall eueldrop mens houses.

Against night-walkers that shall cast mens Gates or Carts, &c. into ponds, &c. or shall commit other misdemeanors or outrages in the night time.

5 Against suspected persons, who liue idly and yet fare well, or are well apparelled, hauing nothing whereon to liue; (except vpon examination, they shall giue a good accompt of such their liuing.)

6 Against common haunTERS of Alehouses, or Tauernes; but more specially if they haue not whereon to liue.

7 Against common Drunkards: but now by the Stat. *4.Tac. 5.* such offenders must be thereof twice lawfully convicted: *scz.* by presentment of the offence at the Assises, Quarter Sessions of the Peace, or in the Court Leet, and thereupon proceeding to due conviction, by the Verdict of another Iurie, or by the confession of the Offendor in Court: So that this Statute closeth vp the handes of the Iustices of Peace, and taketh away that Authoritie, which (in this behalfe) the Iustices seemed to haue before.

8 Against such as shall vse to goe in the message of Theeues. See *Stat. 18.E.2. P. Leete. 1.*

For all these former offenders, and the like, are euill members in the Common-wealth, and such their demeanor and liuing is greatly to be suspected (& besides doe seeme to be more properly said against the peace of the land, the *Auowtry*, in the case before, 1.H.7.7.) and

and therefore it seemeth reasonable, iust, and expedient that the Iustices of Peace (vpon their discretion) should conuent such persons before them, and examine them and their courses of life; and if they cannot yeeld a good reason and accompt of such their courses, then to binde them to their good Behaviour.

Also the good Behaviour seemeth grauntable, against such as shall make false outcries, or shall raise Hue and Cryes without cause; for these are disturbances of the peace. *Cromp. 179.*

If one man doth leuie Hue and Crie vpon another without cause, either of them may be attached (and bound ouer) as disturbers of the Peace. *PR. 156.*

Also it seemeth grauntable against Cheaters and Cosiners.

Libellers (it seemeth) also may be bound to their good Behaviour, as disturbers of the peace, whether they be the contriuers, the procurers, or the publishers of the Libell: for such libelling and defamation tendeth to the raising of quarrels, and effusion of blood, and are speciall meanes and occasions, tending and inciting greatly to the breach of the peace. See Co. 5. 125. PR. 1.2.

Also this suertie of the good behauior, is vsed to be granted against the *Pucative* father of a bastard childe, *vide antea tit. Bastardie.*

It seemeth also grauntable against vnlawfull Hunters in Parks, after their examination taken, *vide antea tit. Hunting.*

Also it shall be graunted against him that shall abuse a Iust. of P. (Constable, or other officer of the peace) in executing their office.

A Iustice of peace seeth a man breake the peace (*scz.* to make an Assault, or Affray vpon A.) and he chargeth him to keepe the peace, and the other answereth that he will not, the Iustice of P. may binde him to the good Behaviour. 9.E.4.3.

For if (as one saith) contempt, or contumely, vsed to the person of a mans better, neyther Policie for example, nor Religion for peace, may tolerate, much lesse to vse contempt towards, or to abuse such as are in authoritie, especially when they are in executing their office. See Exord. 22.28.

Nay, it seemeth that he which shall vse words of eontempt, or *contra bonos mores*, against a Iustice of peace, though it be not at such time as he is executing his office, yet he shall be bound to his good Behaviour.

If a Citizen or Freeman of a Citie or Towne corporate, shall vse words of contempt, or *contra bonos mores*, against the chiefe officer of the Citie or Towne, or his brethren, they are good causes to commit him to prison vntill he shall finde suerties for his good Behaviour: for obedience and reuerence ought to be yeelded to the Magistrate, for that they deriue their authoritie from the king; and *obediencia, est legis essentia.* Co. 11.98.

Also he that shall abuse a Iustice of peace his Warrant, may be bound to his good Behaviour. *Vide postea tit. Warrants.*

A man complaineth of a Ryot, or Forcible Entry, so that the Iustices of peace are assembled to enquire thereof, and then the partie that complained will not prosecute the matter, it seemeth the said Iustices of peace may binde him to his good Behaviour, for his deluding them.

And so of such as shall charge another with Felonie before a Iust. of P. and yet will not giue evidence &c. *vide antea tit. Felonie.*

A. is bound to keepe the peace against B. onely, and getteth a *Superfedas*, and after B. releaseth him; after A. is arrested for suertie for the peace at another mans suit, and sheweth this first *Superfedas*, it seemeth he shall be bound to his good Behavior for this deceit. Crom. 134.

By Statute. Also by the expresse words of the Statutes, the offenders hereunder named shall be bound to their good Behaviour.

- 1 Disturbers of Preachers, 1. M. 3. P. 1.
- 2 Destroyers of Fish-ponds, &c. or stealers of Fish, (after lawfull conviction, &c.) 5. Eliz. 21. P. Fish. 7.
- 3 Takers of Hawks, or Hawks eggs out of other mens grounds, 5. Eliz. 21. after lawfull conviction, &c. P. Hawkes 1.
- 4 Vnlawfull stealers, hunters, or killers of any Deere or Conies in the night or day time, in any Parke or Warren, after lawfull conviction &c. See the stat. 5. Eliz. cap. 21. 3. Jac. 13. 2
7. Jac. 13. 5

But all these former offenders, must be bound at the sessions.

5 Popish Recufants, absenting themselves from Church twelue moneths; these shall be bound in the Kings Bench, 23. Eliz. 1. P. Recufants 1.

6 He that hath a Pardon for any felonie, shall finde suerties for his good Behaviour; but he shall be bound before the sheriffe and Coroners, who shall retorne the same into the Chauncerie. 10. E. 3. 3.
P. Pardon. 5

Also he that is acquitted of felonie, if he be of euill fame, or of euill Behavior, it seemeth the Iustices of peace vpon their discretion, may binde him to his good Behavior.

7 Such persons as shall disturb the execution of the stat. 39. El. 4. concerning the punishing, or conueying of Rogues; any two Iustices of peace may binde them to their good Behavior. *Vide antea tit. Rogues.* 39. Eliz. 4.

8 So of such as shall disturbe the execution of the stat. for the reliefe, setting on worke, or setting of the poore, *vide antea tit. Poore.*

9 The mother of a Bastard childe (which may be chargeable to the Parish) for her second offence shall be committed to the house of correction, there to remaine vntill she can put in suerties for her good Behavior &c. *Vide antea tit. Bastardie.* 7. Jac. 4.

10 Such as haue their houses, or be themselves infected with the plague,

plague, and being commaunded to keepe their houses, shall disobey &c. they shall be bound to their good Behavior, for one whole yeare *vide antea tit. Plague.*

What Act shall be a forfeiture of the Recogn. taken for the good Behavior, See hereof a litle before. *Forf. of the Recognifance*

Lamb. 121. Also it seemeth, that the party bound to his good Behavior for offending against any the statutes here before mentioned, if he shall afterwards offend against anie the said statutes, he shall thereby forfeit such his Recognifance.

The forme of a Warrant for the good Behaviour. *Vide postea tit. Warrants.*

The forme of the Recognif. for the good Behavior. *Vide postea tit. Recognifances.*

Lamb. 126. Whether the suertie of the good Behaviour (taken vpon complaint) may be released by any speciall person; some doe doubt it, because it seemeth more popular then the suertie of the peace, yet others doe hold that it may be released, either by the Iustice of peace himselfe that took it in discretion, or by the partie vpon whose complaint it was graunted, euen as that for the peace may. *Release.*

P.R. 22. It seemeth also a *Superfedas* of the good behaviour may be granted by the Iustices of peace (as well as for the peace, *mutatis mutandis*) vpon good suerties taken by the said Iustices of the partie to be of good behaviour. *Superfedas.*

Crom. 137. If a man be bound to the good behaviour (before Iustices of P.) and to appeare at the next Assises or Sessions, yet the partie bound may by a *Certiorari* remoue the Recognif. (into the Chauncerie, or Kings bench) before the day, and then he shall not need to appeare at the Assises, or Sessions; for they shall haue no Record, whereupon he may be called there. *Certiorari.*

Forcible Entrie, and Forcible Deteyner.

Lamb. 138.
Cromp. 67.



The Common Law (being the preseruer of the common peace of the land) hath alwaies abhorred force as the capitall enemy thereto, Co. 3. 12. And yet, before the Reigne of king RICHARD the second, the Common Law seemed to permit any man to haue entred into lands & tenements with force & armes, and also to haue kept and deteyned them with force, where his entry was lawfull.

And at this day, if a man doth enter with force, (or multitude of people)

people) where his entrie is lawfull, he is not punishable by action, either at the Common Law, nor (by action) vpon any statute; for where the title of the plaintife is not good, there he hath no cause of action, although the defend. doth enter with force: but in such case her that entred with force must be indicted vpon the statute; or otherwise complaint may be made therof to the Iustices of peace, and aswell vpon such indictment, as vpon such complaint, the offendour shall be punished, yet the partie (*ousted*) shall not be restored without indictment, *vide antea tit. Forcible Entry.*

And for the better restrayning of such Force and Forcible Entries, and to inflict condigne punishment vpon the offenders therein, it was first provided by the statute 5. R. 2. that no man should enter into any lands or tenements, with force or multitude (though he had good right, or title to enter,) but onely in peaceable and lawfull manner.

But this statute provided no speedie remedie, nor extended to holding with force, nor gaue any speciall power therein to the Iustices of Peace; and therefore by another statute made 15. R. 2. it was further provided, that if anie man should deteine (or hold) with force, after such Forcible Entry made; vpon complaint thereof, he should be imprisoned by the Iustice &c.

Yet neither of the former Statutes extended to those that entred peaceably, and then held with force; and therefore by the stat. 8. H. 6. it was & is provided that no man shall enter with force, nor deteine (or hold) with force (generally.)

Now these two last Statutes of 15. R. 2. and 8. H. 6. doe enable any one Iust. of peace to giue present remedie, *viz.* to remove the force, and commit the offenders, in cases of Forcible Entry, or holding against the aforesaid Statutes.

Also the statute of 8. H. 6. extendeth further, reaching the offenders, if they were removed before the coming of the Iustices, giuing the Enquirie and Restitution; and also punishing the sheriffe that shall not obey the precepts of the Iust. in this behalfe.

So that these statutes doe now giue full remedie, and doe prohibe, and are made against these three degrees or sorts of force, *viz.* against

- 1 Such as enter peaceably, and then hold forcibly.
- 2 Such as enter with force, and then hold peaceably.
- 2 Such as doe both enter forcibly, and hold forcibly.

I haue (here before) already shewed in some measure how the Iustice of Peace shall demean himselfe in the execution of these statutes; now I will proceede to giue him some further light in this business, in these particulars following:

- 1 First, what is a Forcible Entry, and what is a forcible holding, within

15. H. 7. 15.
Dr. Force 11

5. R. 2. cap. 7
Regist. 189.

15. R. 2. cap. 2.

8. H. 6. c. 9.

Fitz. 248. c.
Lamb. 147.

within the meaning of these Statutes.

- 2 Who may commit a Forcible Entry, &c. And vpon whom.
- 3 Where a force, or forcible holding, is iustificable or lawfull.
- 4 What, and how manie seuerall remedies the partie hath, that is so put out, or kept out of his possessions.
- 5 The maner of proceeding of the Iust. of P. by Enquirie.
- 6 Of restitution to be made to the partie so put out; by whom, and to whom.
- 7 What causes there may be for staying the Iust. of peace from making Restitution.

What is a Forcible Entry, or holding within these Statutes.

OUR Law taketh knowledge of two maners of force; the one may bee termed a force in iudgement of Law, which accompteth enerie priuate trespassse to be a force; so as if I doe but passe ouer another mans ground without licence, hee may haue his action of trespassse against me, *Quare vi & armis, &c.*

The other maner of force is more apparant, and alwayes carrieth some fearefull shew, and matter of terror with it.

This last sort of force is that which is prohibited by these statutes: and therefore note that euery force, punishable by these statutes, must (haue one of these two badges, *scz.* it must) be eyther *Manusforti*, or *Multitudine*, *Lamb. 145.*

Manusforti, *scz.* either with apparant violence (in deed, or word) offered to the person of another; as threatening speeches, turbulent behauior, or actual violence; or else that they be furnished with offensive weapons (by them not vsually borne;) and this may be done by one person onely. *Vide postea sub hoc tit.*

Multitudine, *scz.* with companie more then vsually they haue attending on them, 10. H. 7. 12. The Law properly calleth it a multitude, when there be three or moe in one companie.

If therefore one, or moe persons shall come weaponed (especially with weapons not vsually borne) to a house or land, and shall violently enter therinto, this is a forcible entrie within the meaning of these Statutes.

Much more if (being so entred) he or they shall there offer violence, or feare of harme, to the person of any that is in possession thereof; most of all, if he or they shall forcibly and furiously expell and driue another out of such his possession.

So is it, if one shall enter peaceably (the doore being open, or onely latched,) and after he is in the house, he shall forcibly put another out of his possession.

So is it, if he or they that shall enter peaceably, shall after their entrie

Forcible Entry.
Lamb. 146.

try offer apparant violence, threatnings, or feare of harme, to the person of any that is in possession, to the intent to get him out, and to make him leaue the possession, though they doe not put him out of possession; much more if they get the possession thereby.

If he or they that haue entred peaceably, shall after vse words to any in possession to this effect, as to say they will hold, or keepe it, though they die for it, or in spight of the other, or such like, or other threatning words, this maketh it a forcible entry.

So it is, if diuers persons shall come with weapons (not vsually borne by them) to a house that is open, or to ground, and shall there enter peaceably, without any disturbance; yet this is a forcible entry, for it shall be intended that they would haue vsed force, if they had bene resisted. Lamb. 146. Cromp. 69.

So it is, when the Master entred into an house, or land, being attended with a greater number of seruants then vsually do wait on him. 10.H.7.12. Br. forc. 30.

Note, that though a man doe actually vse no force in his entry, yet if he doe come so appoynted, either with weapon, or company, that other men may bee reasonably afraid, that he mindeth to make his way by force, rather then hee will faile of his purpose, it seemeth to be a forcible entrie. Lamb. 146.

A Trespasse. Also it seemeth that euerie entry into another mans house, or ground which is made with force (*sc. manus forti, or cū multitud.* either with apparant violence offered to the person of any other, or furnished with weapons, or company, which may offer feare) though it bee but to cut, or to take away another mans corne, grasse, or other goods, or to fell or crop wood, or to doe any other like trespassse, though he doe not put the partie out of his possession, yet it seemeth to be a forcible entry, punishable by these statutes. See *Lamb. 145.*

But if the Entry were peaceable, and after such Entry made, they cut or take away any other mans Corne, Grasse, Wood, or other goods, without apparant violence, or force, though such actes are accounted a Disseisin with force, yet they seeme not to bee punishable by these statutes, *scz.* the Iustices of Peace are not to remoue, imprison, or fine such Offenders. Lamb. 145.

Also, if one or more shall enter into another mans house or land peaceably, and after his or their Entry, shall by force or violence, cut or take away any Corne, Grasse, or Wood, &c. or shall forcibly and wrongfully carry away any other goods there being; this seemeth to be a forcible entry, punishable by these statutes. Cromp. 70. 11.H.4.16.

So it is, if a man shall distraine with force, for a Rent (be it due, or not due) this doeth counteruaile an Entry with force. *Lamb. 147. Br. forc. 1.*

And in these cases of Trespasse onely, the Iustice of Peace, (upon complaint to him made) may, as it seemeth, remooue such force; and

and upon view thereof, may imprison and fine such Offenders.

If a disseisor hath entred peaceably, and beeing entred, shall presently threaten to kill the disseisee (if he reenter) this seemeth a forcible entrie in the disseisor. See more *postea sub hoc tit.* By words.

2.H.7.16. Br. forc. 25. But note, that a forcible entry, cannot be without an actual entry, for the words of the statutes be, Whofoeuer doth enter, &c.

Crom. 70. Note also, if one that hath right to enter upon land, shall go with diuers in his company, and with weapons ouer the land whereto he hath right, to the Church, Market, or some other place; this is no entry with force, except he shall expresse his intent, that hee doth enter there, claiming the land.

Note also, that if a man shall enter with force (into house or land) although he obtreinet not, nor getteth the actual possession thereby, yet shall he be imprisoned and fined for the onely entring with force (as it seemeth,) (see the Statute: but Restitution is not to be made, but onely where there is a putting out, and a holding out of another out of his possession.

If by faire meanes, a man (whose entry is lawfull) shall perswade or intice them which are within the house, to come out, and then (the doore being open, or shut by the larch only) he shall enter peaceably, without multitude, offensiue weapons, or other violence; this entrie seemeth to be iustificable. Lawfull.

So it is, if he shall enter peaceably, and then by gentle perswasions can send them out that are within the house, & after shut the doore, and keepeth them out; this seemeth iustificable, so that afterwards hee holdeth it not forcibly, nor vseth violence or threatning speeches.

Lamb. 149. So it is, if I shall take a man being out of his house, and then I doe put or send into the house, my seruant (or some other) in peaceable maner, and do hold away the other by imprisonment of his person; this is no forcible entry nor detainer within these statutes, but a false imprisonment, punishable by action only.

So it is, if he whose entry is lawfull, shall enter peaceably into his house (the doores being open, or shut by the larch onely) and being so entred, shall continue and abide there peaceably; this is iustificable: And if they which were before in possession, shall put or thrust him out forcibly; this is a forcible detainer of their parts. See more hereof *sub hoc tit. postea.*

Lamb. 149. Forcible Detainer, must be vnderstood of a forcible detaining of the possession of landes or tenements, and not of the person of a man, as before. Forcible Detainer.

Note also, though the Entrie were at the first peaceable, and lawfull, yet if there be after a holding by force, it is punishable by the statute,

statute, Except where there was at the first a lawfull and peaceable Entry, and thereupon a lawfull possession, peaceably continued by the space of three yeares together, without interruption; for there a man may holde and keepe such possession with force against all others (saying against the Kings Officers.)

If the Iustice of Peace shal come to the house or place, that is supposed to be holden with force, and there shall find the doores or gates shut, and he or they within shall deny him to enter, (or will not suffer him to enter) this is a forcible holding and detainer, though there be no weapons shewed or vsed, and though there be but one person in the house, or vpon the ground.

So it is, if when the Iust. of P. entred the house or ground, he shall find there any persons in harnes or otherwise armed, or having harnesse, armour, or other weapons (not vsually borne by them) lying ready by them, this is forcible Detainer.

So it is, if the Iust. of peace shall find in the house, any great number of people, other then the ordinary family, or company.

Also, if a man shall enter peaceably into a house, and after shall bring into the same more weapons then he and his ordinary family do vsually weare; or shall make any vse of such weapons as he doth find in the house, to defend his possession therewith; these are forcible detainers within these statutes.

If a man that hath peaceably entred into an house, will bestow men with force, (scz. with harnesse, gunnes, or other weapons) in some other house or place, not farre distant, to the intent that they may bee ready to assault such as shall enter vpon him; this is a Detainer with force.

So is it, if the disseisor of a house or land, shall forestall the way of the disseisee, with force and armes, so that the disseisee dareth not enter, or come neere thereto for feare of death, &c.

So is it, if a man shall keepe his cattell in another mans ground by force, claiming Common there, where he hath no Common; And in this case, the Iustice of peace vpon complaint to him made, may remoue this force; And vpon view thereof may record it, and may commit such offenders to prison, and may fine them therefore, as it seemeth, but cannot award Restitution.

By words. Also there may be a forcible detaining of possession by word only, without any forcible act.

As if *A.* hath wrongfully (though peaceably) entred into the house, or vpon the land of *B.* and hath put out *B.* and shall presently threaten, or say to *B.* that if he doe come thither againe to enter, hee will kill him, This seemeth a forcible entry by *A.* And if *B.* shall afterwards come againe to make his entry, and then *A.* shall threaten to kill him if he entred there; this is a forcible Detainer in *A.*

And

And it seemeth, that to threaten to maim, beat, or to do other bodily hurt to *B.* in the case aforesaid, amounteth to a forcible Entry or Detainer; for that death may insue vpon such beating or hurt. See 39 *H. 6. 50. 7. E. 4. 21.*

But to threaten to burne the house, or to spoile his goods therein, (if *B.* shall come thither, to enter again) this seemeth not to amount to any such matter, for that *B.* may afterwards haue his action for the burning of his house, or spoiling of his goods, & shall thereby recover damages, to the value thereof &c.

Also when *B.* shall come to make his Entry as aforesaid, if *A.* shall say to him, that he will not open the doore, this is no forcible detainer.

So it is if *A.* be in possession of a house, or hath a lease thereof at the will of *B.* and after *B.* entred into the house, and commaundeth *A.* to go out, and to leaue him the possession, and *A.* will not go out, this is no force; for refusing, or denying only to go out, is no force, vnlesse there bee withall some forcible act or threatning speeches: *vbi factum nullum, ibi fortia nulla*, where there is no fact, there is no force. *Co. 4. 43.*

A. morgageth his house to *B.* vpon condition, that if *A.* shall pay to *B.* such a day 40. li. then the said morgage (and feoffment to bee void) and by agreement of them both, *A.* the morgager continueth the possession vntill the day of redemption, at which day *A.* payeth not the 40. li. and after *B.* commeth to recenter, & *A.* keepeth the possess. by force, this is a detainer by force in *A.* This was *M. Rich. God-freyes* opinion between *Willowes* and *Thurger*.

The disseisor maketh a gift in taile to *B.* who keepeth the land with force at the time when the disseisee maketh his claim, which claim is made within the view, so neere as he dareth, for feare of death, battery, or other bodily hurt, if *B.* after such claim, shall continue the possession with force, he may be thereof indited, &c. for this amounteth to a new Entry, and a Detainer with force by *B.*

And note, that wheresoever mine entry is lawfull, if the possess. be detined or holden from me by force, I may pray the ayd of the Iustices of P. to remoue such force, as it seemeth.

If a man hath a Rent or common of pasture out of another mans land, and comming to distraine for his rent, or to vse his common, he is so forcibly resisted by the tenant of the land, that he cannot, or dareth not, either distraine for his rent, or take the benefit of his common: This is a holding with force in the tenant, and punishable by these statutes.

So it is, if the tenant of the land shall forestall the way with force and armes, or shall threaten him (that hath the Rent or Common)

R so

so that he dareth not to come, to distraine for his rent, nor to take his common.

So it is, if a man shall distraine for his rent, and the tenant of the land shall make rescous with force and armes.

And in these cases (of a rent or common) the Lu. of P. (vpon complaint to him made) may remoue such force, and vpon view of such force, may record it, and may therefore imprison and fine such offenders, but cannot award restitution, (for cannot restore the party to his rent or common, which are to be taken, & vsed in another mans land) for restitution is not to be made, but only of house or land, as you may see hereafter.

The persons. One person alone, may commit or make a forcible entry, or detainer, if so be he do it with offensive weapons, or do vse turbulent behaviour, &c. to the affray of others. Lamb. 147.

An infant of the age of eightene yeares, by his owne act, may commit a forcible entry or detainer: and so he may though he be vnder eightene: yet it shall be good discretion in the Iustices of P. to forbear the imprisonment of such infants. See *Br Imprif.* 43. 45. 75. 101. Cromp. 69.

But if an infant commandeth another to enter or hold, with force to his vse, which is done accordingly, yet the infant shall not be punished for such offence, for his commandment therein was void.

Also a *Feme couers*, (by her owne act) may commit a forcible entry or detainer; And vpon the Iustices view of the force, she shall be imprisoned therefore, (and it seemeth also she may be fined in such case) But such fine set vpon the wife, shall not be leuied vpon the husband; For the husband shall neuer be charged for the act or default of his wife, but when he is made a party to the action, and iudgement giuen against him and his wife, *Co. 9. 72. & Co. 11. 61.* Cromp. 69. 16. aft. 7. See in the title Ryot. Br. Imprif. 45. 53. See more after in the title Ryot.

Diuers do enter with force to the vse of *A.* who is not then present with him, but doth after agree thereto, this agreement after maketh *A.* to be a disseisor, but not to be punished for the force; *quare*, if *A.* had counselled, consented, or agreed thereto before the entrie: It seemeth that a commaundement, consent, or agreement before or after, though it may make one a disseisor, yet it is not to be punished by the I. of P. vpon these statutes, for that a forcible entry cannot be adiudged against a man, without an actuall entrie bee also made by him, or he at least present. 2. H. 7. 16. Br. Force. 25

Consent.

But if *A.* that shall command or counsell others thereto, shall also be present at the time of the entrie, although he doth then nothing, yet he is now become a principall, & punishable by these statutes.

If diuers doe come in one company, to enter into landes &c. where

where their entrie is not lawful, and all of them (sauing one) did enter, and demean themselves in peaceable maner, and one only doth enter with force, or (after entrie made) doth vse force and violence, This shall be adiudged a forcible entrie in them all, (although the force were against their wils;) For wherediuers do come in one company to any place, to the intent to do any vnlawfull thing, be it robbery, homicide, ryot, affray, or any trespasse, here the act of one of them shall be adiudged the act of all of that part that are present, and euery one of them shall be adiudged, a principall doer, although they stand but by and do nothing; So it seemeth, though some of them came without any intent of euill, if they came together in company with the other offenders, or if they came after, yet if they be either aiding or countenancing to the offenders, they shall be also adiudged principall doers, as well as the other.

Co. 9. 67. 111. & 115. See hereof after in the title Murder.

An indictment vpon the stat. of 8. H. 6. for the K. is not good; for the K. cannot be disseised, nor put out of his freehold; neither can th K. bring any action vpon the stat. of 8. H. 6. nor any other action which might proue him out of poss. of the land. *P. R. 39. b.* *The persons put out.*

And if the K. termor be put out by force, he cannot prefer a bill of indictment (vpon the stat. of 8. H. 6.) that he was put out, and the King disseised: But he must haue an Information of Intrusion into the Eschequer. *The kings tenant.*

Yet it seemeth, that vpon complaint made to a Lu. of P. by the K. termor of any such force, the Lu. of P. may, nay ought to remoue the force, and vpon his view thereof, to record it, and to commit the offenders to prison, and may fine them, and after such force remoued, the Kings termor may presently reenter (if he can) in peaceable maner.

If a forcible entrie, or detainer shall bee made vpon any lessee for yeres, tenant at wil, or vpon a copiholder, whether it be by an estranger, or by the lessor, or by the Lord, the Lu. of P. vpon their view thereof, are to remoue such force; & may commit to the prison, the parties which made such entrie, or which shall hold it with force, & may fine them: But whether the Lu. of P. may make restitution & set them (for the lessee for yeres, tenant at will, or copiholder) into their possessions againe, is much questioned. *Lessee for yeres. Copiholder.*

Some hold opinion that the Iust. of P. may put them in possession againe, & of this opinion was *M. Marrow*, and *M. Lamb.* & to maintaine this opinion, these reasons may be giuen;

First, for that the words of the statutes seemeth to warrant it: For the stat. 15. R. 2. in the preamble thereof, as also the stat. 8. H. 6. in the body thereof, hath this word (possessions) which word most properly doth extend to a lease for yeres, &c.

Againe, that clause of the statute 8. H. 6. which provideth the restitu-

restitution is thus; If it be found that any doth contrary to this statute, then the said Iust. &c. shall put the party so put out, in full possession, &c.

Now it cannot be denied, but that hee which by force expulseth lessee for yeares, tenant at wil, or a copiholder, doth contrary to this stat. also they be the parties put out.

Againe the same mischief and inconuenience, which these lawes do labour to remoue, is to lessee for yeares, tenant at will, and to the copiholder.

And we may find it vsuall, that where statutes are made for to remedy any common mischief, there (to helpe things in the same degree) one action, thing, place, and person, hath in construction bene taken for another: And a good expounder (saith sir Edw. Co. 1. 34.) maketh euery sentence to haue his operation to suppress all the mischiefs before the said act, and principally those that are specified in the act.

And againe, saith he, it is the office of the Iudges alwaies to make such construction of statutes as may expresse the mischief, and aduance the remedy, and to suppress all euasions which may continue the mischief, and to adde force and life to the cure, and remedy, according to the true intent of the makers of the stat. Co. 11. 73. b. & Co. 3. 7.

Others hold the contrary, sc. that Lessee for yeares, nor a Copiholder, or Tenant at will, cannot haue restitution by the hands of the Justice of P. and this seemeth to bee the common opinion; their reason is:

For that the words in the stat. of 8. H. 6. (in that clause which specially prouideth the restitution) are thus; The said Iustices &c. shall release the said lands or tenements, and thereof shall put the party so put out, in full possession &c. which words, (lands or tenements) are only to be vnderstood of them that haue inheritance or a freehold at the least: But to this it may be answered, that the said stat. of 8. H. 6. in the body thereof hath these words; Where any do make any Forcible Entry into lands, tenements, or other possessions, or them hold forcibly &c. which words, possessions, extendeth to a lease for yeares, &c. And then the words (possessions) being in the same stat. we shall find that a stat. is to be expounded vpon all the parts thereof together, and not vpon one part alone by it selfe: to which purpose, see *Lincolne Colledge Case*, and *Doctor Bonhams Case*, in sir Edw. Cokes Reports.

But it seemeth to those which holde this last opinion, that if a Lessee for yeares, Tenaunt at will, or a Copyholder, be forcibly put out, or held out by an estranger, if they will haue restitution, their indictment must be made and preferred in the lessor, or lords name and

Co. 11. 33.
34.
Plow. 178.

Co. 3. 7. &
12. 71.

Rast. 174.

Co. 3. 59. b.
& 8. 117.

Cromp. 161

and the Iury must find that the Lessor, or Lord of such Copihold, is disseised, and the Lessee or Copiholder, is put out with force: And hereupon the Lessor, or Lord, shall haue restitution; And so by their restitution, their Lessee or Copiholder is restored also; But such lessee, or copiholder, cannot (say they) preferre an indictment in their owne name, vpon the statute, 8. Hen. 6. for that they haue no freehold.

Cromp.
249. 21

And to that purpose I finde some Presidents of Indictments in this forme: viz. *In unum messuag. apud &c. ad tunc existent. liberum tenement. M. D. armig. vi & armis &c. Manusforti & illicite super possessionem cuiusdam I. L. tunc firmarij pred. M. D. messuag. pred. intraverunt, & ipsum I. L. vi & armis, ac manusforti & illicite tunc inde expulerunt & eiecerunt & pref. M. D. inde iniuste disseisuerunt &c. See postea tit. Presidents.*

Also by this opinion, if a Lessee for yeares, tenant at will, or a copiholder, be forcibly put out by their Lessor or Lord, such Lessee or Copiholder hath no remedy at all by indictment vpon this stat. for they haue no freehold, and therefore can haue no restitution vpon this statute.

Cromp. 71

Also by this opinion, if the Lessee for yerres be put out by his Lessor, And after the Lessee putteth out the Lessor againe forcibly, The Lessee shall not be indicted: Neither shall the Lessor haue Restitution vpon this statute; For that the Lessor is not ousted nor disseised of his freehold: for the possession of the lessee is such a seisin of the lessor, of his freehold, that he may haue an assise, if his lessee bee put out.

And so of a Copiholder, not hauing forfeited his estate, if his lord notwithstanding shall enter vpon him, & put him out, and the copiholder shall reenter vpon his lord with force, the copiholder shall not be indicted, nor yet the lord restored, *Causa qua supra.*

And so by this last opinion, the very mischief specified, & intended to be helped by these statutes, should seeme stil to remaine in all cases between such lessees, and copiholders, & their lessors, or lords, So as there can be no inquiry, nor restitution, in cases of forcible entry or detainer between them.

But howsoeuer the law be taken for the indictment, or restitution thereupon: yet in case that lessee for yerres, tenant at will, or a copyholder, be forcibly put out, or held out, either by a stranger, or by their lessor, or lord, the Iustices of P. or any one of them, by the stat. 15. R. 2. ca. 2. may safely remoue the force vpon view thereof, & may commit the offenders to prison; And then the lessee for yerres, or copiholder, may presently reenter, if peaceably they can so do, and so may haue his possession againe, without any restitution made him by the Iustices.

Cromp. 71

Weapons.

Now to shew some thing more, what the law accompteth to bee force, & what weapons be offensive in these, and the like cases.

Matter *Bracton* saith, *Omnes illos dicimus armatos, qui habent cum quo nocere possunt.*

And therefore to have harnies, guns, bowes, & arrowes, crossbows, halberts, iavelins, bills, clubs, pikes, pitchforks, or swords, not vsually borne, by the parties, shall be said to be, *vis armata.*

Againe *si quis venerit cum armis, & deiecerit, vis tamen armata dicitur, sufficit enim terror armorum.*

Si quis venerit sine armis, & in ipsa concertatione, ligna sumpserit, suffles, aut lapides, vis dicitur armata.

Lawful force

And so to use casting of stones, hot coales, scalding water, or lead, or any other thing wherewith one may hurt the person of another shall be said to be *vis armata.*

Next where a force, or forcible defence, is iustifiable, & where not. Force being opposed against the law, is vterly forbidden; but being vsed in the maintenance of the law, and with the warrant of law, it is allowed, for that it maintaineth the peace of the realme: And therefore force may lawfully be vsed by all the K. officers, ministers, and subiects therunto deputed, for the execution, or aduancement of iustice, or of the iudgements of the law. PR. 41.

And so first it is a lawful force, whereby all offenders in treason, felony, and other great crimes, be pursued, apprehended, caried to prison, and receive there condigne punishments.

It is a lawful force, wherby the sherife and his officers, do apprehend any person by vertue of the K. writ.

It is a lawful force, whereby Iustices of P. do remove vnlawful entries, or holdings of possessions, and repress ryottors, and do arrest and send to prison such offenders.

And in these, and the like cases, the K. officers (*sc.* the sherife, Iu. of P. constable) may take the help of others (what number they shall think meet) to assist them, when need shall require. See here of *postea in tit. Posse Comitatus.* 3. H. 7.
Br. Ryots 1.

Also it is a lawful force, which Iustices of P. sherifs, coroners, and constables, shall use in apprehending, or committing to prison such as within their feuerall iurisdicions, & in their presence, shall in any sort breake, or attempt to disturbe or breake the P. & they may therein take the assistance of others as aforesaid.

Also in these cases following, it is lawful for the K. officers, by force PR. 41. to breake open a mans house, to arrest offenders being therein, if the doores be all shut, so as the officer cannot otherwise enter the house, *viz.*

1 For the apprehending of any person for treason, felony, or suspicion of felony. 13. E. 4. 9. Br. Coron. 159. Co. 5. 92.

2 Where

2 Where one hath dangerously wounded another, and then flyeth into an house, the constable or other officer, vpon fresh suit may breake open the doore, and apprehend the offender.

So may any other person besides the officer, as it seemeth. 7. Ed. 3. 19. *Cromp.* 171.

3 Where there shall be an affray made in a house, and the doores shut, the Constable &c. may breake into the house to see the peace kept.

4 So vpon a forcible entry, or detainer found by inquisition, before Iustices of peace, or viewed by the Iustices themselves, See here 42. 44.

5 Vpon a *Capias vulgatum*, in any personall action, as also vpon a *Capias pro fine*, directed to the sherife, the sherif may breake open the doores &c. 27. *Aff.* 35.

6 Vpon a warrant or proces, for the apprehending of any Popish Recufant being excommunicate, the officer may breake open the house. *Stat.* 3. *1. M. 4. P. Rec.* 52.

7 Vpon a warrant for the P. or good behaiour, the constables may breake open the house, by the opinions of *Popham* and *Clerke* Iustices of Assise at Cambridge Assises. 3. *Inc. Reg.*

8 Lastly in all cases where the K. is a party, or hath interest in the busines, the officers may breake open the doores as aforesaid: For no mans house shall be a Castle against the king. *Co.* 5. 91.

Co. 5. 91.
13. E. 4. 9.

And yet the sherif nor his officers may not break open any mans house, to execute the K. Proces (vpon the body, or goods of any person) at the suit of any subiect, *Co.* 5. 92. 95.

But when a house is recovered by any reall action, or by *electione firma*, there the sherif may break the house, and deliver seisin or possession to the demandant or plaint. &c. For after iudgement, it is no more (in the right or iudgement of law) the house of the tenant or def. *Co.* 5. 91.

Co. 5. 91.

But note that the officer, before he break open the house or doores of any person, he must first signifie the cause of his coming, & desire that the doores may be opened vnto him.

Co. 5. 91. &
11. 82.
21. H. 7. 39.

Note also, although no man may forcibly keepe his house against the Kings Officers in the cases aforesaid, yet euerie mans house is (to himselfe, his family, and his goods) as his Castle, as well for his defence against iniury and violence, as also for his repose and rest: And therefore the law doth giue to dwelling houses diuers priuiledges. *Forcible defence lawfull.*

1 First, that it is a mans Castle for his defence as aforesaid. See *plus infra.*

2 Also a mans house hath the priuiledge to protect him against

gainst any arrest by force of any proceſſe at the ſuit of any ſubieſt as aforeſaid.

3 A mans houſe (in ſome caſes) hath a priuiledge againſt the K. prerogatiue; for it hath bin adiudged that Salt-peter men cannot dig in the manſion houſe of any ſubieſt without his aſſent, in regard of the daunger that may happen thereby in the night time, to the owner, his family, and goods, by theeues, and other malefactours, *Co. 11. 8. 11. 82.*

4 If theeues ſhal come to a mans houſe to robbe, or murder him, he may lawfully aſſemble company to defend his houſe by force, and if he or any of his company ſhal kil any of them in defence of himſelfe, his family, his goods, or houſe, this is no felony, neither ſhal they forfeit any thing therefor. *Co. 5. 91. & 11. 82.*

5 Alſo a man that is in poſſeſ. of a houſe peaceably, and doubteth that another (who in deed hath more right to the poſſeſ. & who may enter) wil enter vpon him; here he which is in poſſ. may defend and keep his poſſ. of the houſe with his ordinary company, and may iuſtifie to beat the other which ſhall attempt to enter vpon him: But if he kil him, it is felony: Nay he in poſſeſſion (in this former caſe) may not hire any ſtrangers to aid him, neither may he haue his owne ordinary company in armor, nor otherwiſe be provided with bowes or guns to ſhoot at the other as it ſeemeth. *Cromp. 70. a. See poſtea tit. Homicide.*

In defence of his perſon.

Alſo if a man being in his houſe, doe heare that another wil come thither to beate him, he may lawfully aſſemble his neighbours and friends, &c. to aſſiſt and ayde him there in the defence of his perſon. *21. H. 7. 39. Br. Riots. Co. 11. 82.*

And yet if he, or any of his company, ſhall kill the other (or any of the other company) in ſuch defence of himſelfe, or his, this ſeemeth to be felonie in all of them which be in the houſe, and in that action; ſo as they ſhall forfeit their goods thereby. See hereof *poſtea tit. Homicide.*

But if a man be threatned that if he come to ſuch a place, that then he ſhall be beate, in this caſe, he may not aſſemble any company to goe thither to ſafeguard his perſon; for there is no neceſſitie of his going thither: Beſides he may haue ſuretie of the peace againſt ſuch as threatned him. *21. H. 7. 39. Co. 11. 82.*

In defence of others.

If there be an attempt made to beate a man, his wife, father, mother, or any of his children (within age) hee may lawfully vſe force to reſiſt it, and may iuſtifie the bearing of the other in ſuch caſe.

Alſo the ſeruant may iuſtifie to beate another in defence of his maſter. *Br. Trm's 217.*

In defence of his goods.

Alſo a man may iuſtifie to beate another in the defence of the poſſeſſion

Cromp. 65. 69. poſſeſſion of his goods: And if another hath taken away my goods, I may take them againe from him with force.

Alſo if there be an attempt made to diſſeiſe me of my land, or to diſturbe me of my high-way, or to turne an auncient water-courſe from my mill, I may lawfully vſe force to reſiſt it. See *antea tit. Surety for the peace.*

Dyer 317. Cromp. 63. A keeper doth enter and chace vpon my land, pretending this to be within his purliue, where it is not, if I command my ſeruants to beat him of my ground, this ſeemeth iuſtifiable in the defence of my poſſeſſion, againſt ſuch vnlawfull claime. *Tamen quere.*

Where forcible detayner of poſſeſſion is lawfull.

2. H. 6. c. 9. 31. El. 11. P. Force 4.

THE ſtat. of 8. H. 6. concludeth thus, Provided that ſuch as keepe their poſſeſſion by force after that they, or their anceſtors &c. haue continued their poſſeſ. in the ſame 3. yeres, or more, ſhall not be indamaged by force of that ſtatute.

21. H. 6. f. 18. b.

This prouiſe muſt (as it ſeemeth) be thus conſtrued, ſc. that where a man is ſeiſed (of a lawfull eſtate or poſſ.) of an houſe, or lands, and he or his anceſtors, or they whoſe eſtate he hath therein, haue continued the poſſ. of the ſame peaceably, by the ſpace of 3. whole yeres together without interruption, (and his eſtate not ended) there hee may hold and keep ſuch poſſ. with force, againſt all others: yea it ſeemeth if he ſhall hire ſtrangers to ayd him, to keep ſuch poſſeſſion, or ſhall haue his company in armour, he is not puniſhable by theſe ſtatutes: But he may not reſiſt the Iuſtices of P. that ſhall come to view this.

See the ſtat. 31. El. 11.

And if he ſhall be indicted for ſuch his forcible holding (after three yeres ſuch quiet poſſeſſion) he may plead ſuch his lawful and peaceable poſſeſſion by the ſpace of three yeres next before ſuch indictment, And thereby he ſhall auoid both the imprisonment and fine, and alſo ſhall debarre the other party of his reſtitution: Neither may the Iuſtices of Peace remoue him from his poſſeſſion, though it be found by the Inquiſition taken before them, that he held that houſe, or land by force, after 3. yeres lawfull and peaceable poſſeſſion, as aforeſaid.

PR. 27.

But here it ſeemeth theſe 4. diuerſities are to be obſerued.

6. & 7. Ed. 6. 22. H. 6. 3. Lamb. 165. Br. Reſti. 11.

First, where the party in poſſeſſion, did enter peaceably, & where forcibly: for if a man enter forcibly, and after continueth his poſſeſſion peaceably, by the ſpace of three yeres without interruption, yet (it ſeemeth) he ſhall not be ayded by theſe ſtatutes.

Br. forc. 22. & 29.

Secondly, where the party in poſſeſſion, hath continued his 3. yeres poſſeſſion peaceably, and where by force.

For if after a lawfull and peaceable entry, a man ſhall continue or hold his poſſeſſion by force, this is a forcible holding or detay-

detainer, and punishable by the stat. of 8. H. 6. And 3. yeares of such possession shal not ayd him as it seemeth.

Thirdly, where the party in possession, is in by right, and of a lawfull estate, and where by wronge: And therefore if a disseisor (or other person that commeth in by a wrongfull and vnlawfull title) hath continued such his possession peaceably by the space of 3. yeares, without interruption, *quare* if he shal be aided by either of these statutes of 8. H. 6. or 3. 1. El.

But if a disseisor hath continued his possession forcibly by the space of 20. yeares together, yet hee may bee indicted, vpon the statute of 8. Hen. 6. before a Iustice of peace, of the forcible detaining of the same, And the same being found, the said Iustice of peace is to reuise the same, and to award restitution to the party disseised, or so put out.

Fourthly, where the party hath continued such his possession 3. yeeres without interruption, and where his posses. hath bin interrupted or discontinued.

For if a man hath bin in peaceable posses. of land &c. by the space of 3. yeares, & about, by a good title, and then is disseised and expelled by force, and the disseisee reenteth peaceably: or the disseisor is therefore indicted, vpon the stat. of 8. H. 6. and the disseisee is thereupon restored, and is in possession accordingly: yet in these cases the disseisee cannot iustifie the detainer of the possession of those lands by force, because his possession was once interrupted: But after, (such interruption, & reentry, or restitution) if he shal continue a peaceable posses. againe for 3. yeeres together, then it seemeth he may iustifie the detainer of the possession thereof by force, by vertue of the prouiso in the stat. of 8. H. 6.

If a disseisor hath continued his possession peaceably 3. yeeres, and after the disseisee doth reenter, or doth make his claim so neere as he dareth, & then the disseisor reenters againe, or continueth his possession, after such claim, here the disseisor cannot iustifie to hold the same with force, for by the reentry or claime of the disseisee, the first disseisin and possession of the disseisor was determined, and the disseisor is in of a new disseisin.

Also if he that hath been a lawfull possessor of lands by the space of twentie yeares together, bee once cleerely and wholly remoued from the possession of the same land, hee cannot come with force, or multitude, to put himselfe in possession thereof againe, and to detayne the same with force, because his possession was once interrupted: And if he be indicted (vpon the statute of 8. H. 6.) for such forcible entry, he shal not be relieved (touching the restitution) by the stat. 3. 1. El. for that he had not the occupation of the said lands, nor had bene in quiet possession thereof by the space of three yeeres together.

22 H. 6. 18. b.
Fi. Entre 20
Br. forc. 4.
vide 23. H. 8.
pag. seq.

14. H. 7. 28.
Br. forc. 10.

Dyer 141.
Br. forc. 22.
& 29.

32. H. 8.
Br. forc. 12.

Litt. 429.

Dyer 141.

together, next before the day of such indictment found.

Now, how many seuerall remedies the party hath, which forcibly is either put out, or kept out of the possession of his houses or lands &c. contrary to these statutes.

1. R. 2. c. 9.
8. H. 6. c. 9.
P. 3.
F. N. B. 248.
c. c. & 249 a.
Co. to. 115.
PR. 39.

First, the party so grieued (having an estate for life, in taile, or fee) may haue his assise, or action of trespassse of forcible entrie vpon the statute of 8. H. 6. against such disseisor: and therein if the defendant be attainted of force, he shall fine to the King, and also answer to the plaintife his treble dammages, and treble costs of suit, and also the pl. shal thereupon haue a writ of restitution to restore him to his former estate.

1 Assise vpon the stat. of 8. H. 6.

9. H. 6. 16.
Fitz. 248. b.

But (this action being the suit of the party, and only for the right) this remedy (by action) is only where the entrie of the defendaunt was not lawfull: for if a man entreth with force, where his entrie is lawfull, as if the disseisee shall enter vpon the disseisor with force, he shall not be punished by action: But yet he may bee indicted vpon the statute, and vpon such indictment found, the party put out shall be restored: for the indictment is for the force, and for the K. And here the offendor shall make fine to the K. although his right be neuer so good. *Br. Force* 11.

Lamb. 173.

2 Also the party so grieued, if he wil loose the benefit of his treble damages & costs, he may be aided, and haue the assistance of the Iustices of P. and that after diuers sorts: First he may purchase a writ out of the Chancery (directed to the Sheriff only, or to the Sheriff and Iustices of P. and to euery of them) for to remoue the force, and this is vpon the stat. of Northhampton 2. Ed. 3. cap. 3. the forme of which writ you may see *F. N. B. 249. f.*

2 Writ vpon the stat. of Northampton.

Lamb. 176.
Crom. 74.
162.

But vpon this writ the Iu. of P. is to proceed only as a minister, and is to certifie his doings herein: and that Iust. of P. to whom the writ shall be deliuered, ought for to execute it, *scz.* he may remoue the force: but here he may not put the party in possession againe, who was put out.

For the maner of the Iu. proceedings herein. See in the other title of *Forcible Entry* before.

Dyer 187.
Cromp. 165

3 Also the party grieued, may, at the generall sessions of the P. within the same county, prefer his bill of indictment, vpon the stat. of 8. Hen. 6. for such forcible entrie, or detainer: which being found there, the complainant shall be restored to his poss. by a writ of restitution, granted out of the said court to the Sheriff.

3 Indictment in Sessions.

4 Also the party so grieued, for a more speedy remedy, may com-
plaine to any one or more Iustices of Peace of the same county, of the said force: and therupon the said Iustice of Peace may, *ex officio*, and without any writ, either do execution of the statute of Northhampton

4 By the Iu. out of Sessions.

hampton as aforesaid: Or else the said Ju. of P. vpon such complaint must go to the place where such force is, to see it, and to remoue the force, & to arrest and commit the offenders, and shall also keepe a special sessions to inquire of the said force: & if vpon such inquiry such force shall be found, then the said Ju. shall restore the party grieued to his possess. again; and here no other Ju. of P. can grant a *Superfedeas* to stay the same restitution.

See more hereof before in the other title of *Forcible Entrie*.

Also the party grieued may remoue such indictment, found either at such generall or special sessions, by a *Certiorari* into the kings Bench, and the Iudges of that court may award a writ of restitution, to the Sherife of the county, to restore possession to the party. See here 44.

Enquire.

Now when the Ju. of P. shall make such inquiry, he shall direct his precept or warrant, to the Sherif, commanding him to cause to come before the said Ju. of P. at some good town there neere, 24. sufficient and indifferent persons dwelling neere to the said lands or tenements (wherof euery one shall haue in lands or tenements 40. s. by the yere at the least) to inquire vpon their othes of such force &c. See before in the other title of *Forcible Entrie*.

Vpon default of apparance of those Iurors, the Iust. of P. may award an *Alias*, and after that *Pluries infinite*, till the come; but so that at the day of the second precept, or writ, the Sherif must return 40. s. in issues, vpon euery one of them, & at the third writ 5. li. and at euery day after the double.

And although any of such Iurors shall not haue 40. s. land *per annum*, yet their presentment of such force, is good for the K. so as the offenders shall fine therefore to the King: But whether the party shall haue restitution vpon such a presentment, it being pleaded or shewed at the time of the restitution to bee made, seemeth a doubt. See here pag. 188.

If the Sherife shall returne smaller issues vpon the Enquirors then the stat. doth appoint, yet the party indicted shall not impeach the enquiry therefore.

Neither is it cause to impeach the enquiry, though the Ju. of P. do not go to see the place where the force is. *Marryow*.

And it is conuenient, vpon such inquiry, that the euidence be giuen openly to the Iury, to the intent it may appeare to the Ju. of P. or court, whether there shall bee reasonable cause to stay restitution, or no, after the indictment found. See *Dyer* 122.

Of restitution to be made to the party put out.

Restitution.

I Will here shortly recite the words of the stat. which for this business of restitution will giue the better light.

And

2. H. 6. cap. 9. And if vpon such inquiry, it be found before the said Iust. that any haue done contrary to this stat. (*viz.* haue entred, or held with force) the said Ju. of P. &c. shall reueise the said lands or tenements so entred vpon, or holden, and put the party so put out, in full poss. of the same lands and tenements so entred or holden, as before.

P. R. 35. Here we see that after such forcible entry, or holding, so found by enquiry, the said Iustice of P. &c. shall reueise the said lands or tenements, & shall remoue the force (*sc.* all such offenders as shall be found in the house, or vpon the lands that either entred or held with force) and vpon the prayer of the party so put out, the said Ju. of P. shall restore him to his possession againe.

And herein the Iustice of Peace needeth not to stay, or stand vpon the right and title of either of the parties. See hereof a little after *sub hoc tit.*

But no restitution shall be made, but where the forcible Entry, or detainer, is first found by inquisition. *Br. forc. 27.*

Crom. 166. Concerning this Inquisition or Indictment, the Iustices of Peace shall doe well to peruse and regard the same, to see if it be sufficient, for the Ju. of Peace ought not to award restitution, where the indictment shall appeare to them to be any way insufficient in the Lawe, either in matter or forme.

Lamb. 156. First therefore to haue Restitution, the putting out (by expresse words) must be in the indictment, and found by the Inquisition: for another man may enter vpon me, and yet not put me out, And then there needeth no restitution to be made by the Iustices.

And this putting out, is to be vnderstood onely of house or land, and not of a rent, common, aduowson, & such like, into which an actual entry cannot be made: & therefore none shall haue restitution, but such only as are put out of house, or land. See *antea sub hoc tit.*

Lamb. 481. Also the indictment ought to expresse the quality of the thing entred vpon &c. *scz.* whether it bee a messuage, cottage, meadow, pasture, wood, or land errable: for if the indictment be, *quod manus forti intrauerunt in tenement* &c. it is void for the incertainty, because the word *tenementum* may extend to either of them.

14. H. 6. 16. Br. forc. 13. Also the indictment must haue these words, *scz. adhuc extra tenent*, otherwise the partie shall haue no restitution; and yet these words be not in the statute: But without these wordes in the Indictment, it may bee supposed and thought that hee which put me out, hath left the possession againe; or that I haue gotten it againe; and then the restitution is needlesse.

So as in euery such indictment, these words are materiall, *scz. expulerunt, & adhuc extratenent*: And for lacke of either of these words, no restitution shall be made or awarded.

Lamb. 145. Also one of these two words *Manus forti*, or *cum multitudine*, seeme

to be materiall in the indictment, vnlesse they bee implied by recyting the stat. of 8. H. 6. and concluding *contra form' stat. predict.* or by some other words in the indictment. See the Presidents herein.

For the forme to be vsed in these Indictments, see more *postea tis. Indictments.*

If a man shall be restored vpon an insufficient indictment taken Cromp. 162 before the Iustice of P. and this be remooued into the Kings Bench, the Court there will cause the party to bee restored, that before was put out by the Iustice of peace.

Also, if error, or insufficiency bee in the Indictment, taken before Iust. of Peace, & yet restitution is awarded by them, any two of those Cromp. 161 & 166. b. Iust. of P. which were present at the taking of the said Indictment, vpon the prayer of the partie, may (at another Sessions, or out of the Sessions) graunt and award a *Superfedeas* to the Sheriffe to stay the same restitution, if the Sheriffe hath not made restitution before the *Superfedeas* come to his hands.

But no other Iust. of P. (besides those which were present at the taking and finding of the said Indictment) can grant a *Superfedeas*, if the Indictment were found at a speciall Sessions; *quare*, if it were found at the quarter Sessions, *ibid.* Dyer 157.

A man is indicted that he entred with force, and held with force, and vpon the trauerse, it is found that hee entred with force, but not that he held with force, yet this indictment seemeth good enough, and the party shalbe restored. Crom. 165.

So, two are indicted of a forcible entry and detainer, and vpon the trauerse, it is found that the one entred with force, and the other held or detained with force, yet the party shalbe restored. ibid.

Generall Indictments.

If it be found by one Enquest, that *A.* put me out by force, and by another Enquest, that I did put out *A.* by force, either of vs may pray to haue restitution against the other: but he that is first restored is in the worst case; for the other may haue restitution afterwards, and then he that had restitution first is without remedy, by the hands of the Iustice of peace, sauing that he may reenter, if hee can, peaceably, or haue his action. Crom. 166. Br. forc. 6.

If it be found by one Enquest, that *A.* did put me out by force, and by another Enquest taken at the same Sessions, that *B.* did put mee out by force, I may chuse vpon whether of these indictments I will be restored: and if I haue restitution against *A.* and this bee returned, I cannot haue restitution vpon the other: But if (vpon the Writ of restitution) it bee not returned that I haue restitution, then I may afterwards haue restitution against *B.* vpon the other verdict, if *B.* hath reentered vpon the first restitution made to me. *Marrow.* Crom. 166.

A. is disseised, or put out with force by *B.* and after *B.* is put out with force by *C.* and all this is found by one and the same Inquisition, Lamb. 158.

sition, here *B.* may haue restitution against *C.* (for *B.* hath more right to the possession then *C.*) and then may *A.* haue Restitution against *B.* But vpon this Inquisition, if *A.* haue restitution first, then *B.* shall not haue any restitution: otherwise if these had been found by seuerall Inquisitions.

Who shall award and make this restitution.

After the force is found by the Inquest, the Iust. of peace (before whom the said force shalbe so found) may himselfe put the party in possession againe: Or hee may make his precept (vnder his owne *teste* alone) to the Sheriffe to do it.

The forme of the Precept to the Sheriffe to make restitution. See *postea tis. Presidents.*

Dyer 187.

3. El. Dist. Co. 11. 59. 55.

But no other Iustice of Peace hath any authority (by the statute) to grant or award Restitution, but onely hee or they, before whom the force was found by Inquisition. Nay the Iust. of Oyer and Terminer, nor the Iust. of Gaole deliuey, cannot grant restitution, nor the Iust. of P. at their generall Sessions of the peace, cannot graunt this restitution, except the indictment were found before them.

Co. 9. 11 B. Co. 11. 65. 4. H. 7. 18.

And yet the Iust. of the Kings Bench (in regard of their supream authority in all cases of the crowne) either vpon Certificate (to them made by the Iustice of Peace before whom such force was found) of the presentment of such force; or if the said presentment, or indictment, shall be removed before them by *Certiorari*, in both these cases, the Iustices of the Kings Bench may award restitution. See *antea in the other title of Forcible Entry.*

Lamb. 161.

But neither the Iu. of the K. Bench, nor any other (besides him or them that made the inquiry) can personally restore the party, but only by way of Precept to the Sheriffe.

The Sheriffe (if need be) may take the power of the County, to execute the Precept of the Iustice of P. herein.

Lamb. 160.

And if the Sheriffe vpon such a Precept, or vpon a Writ of restitution (from the Sessions &c.) shall returne that he cannot make restitution, for resistance &c. hee shalbe amerced for making such a returne, because in such case hee might haue taken the power of the County to assit him therein. See the like case *Fitz. Execution 147.*

To whom Restitution shall be made.

This restitution ought to be made, to him that was put out, and to none other, for so are the words of the statute.

P. R. 38.

Therefore if the father be put out by force, and dieth, his heire shall not haue restitution: yet here the Iustices may imprison, and fine the offenders; for by such forcible entry they haue broken the Peace. See *antea in the other title of Forcible Entry.*

Also, if after the death of the father, a stranger abate, or entreth into his land by force, before the heire hath gotten a actual possession indeed, the heire shall not have restitution, because hee had but a possession in law descended vpon him. Lamb. 156.

The disseisee doth put the disseisor out with force, the disseisor shall be restored; for the right or title is not commonly disputable or materiall: but by the words of the statute, he that is in such sort (scz. forcibly) put out, shall be restored. Fitz. 248 h

Yet it seemeth in this case, that vpon trauerse tendred by the disseisee, and his right appearing, the Iust. of peace may stay restitution. Dyer. 122. See here of *postea sub hoc tit.*

Also if the disseisor be restored againe, yet the disseisee may after reenter peaceably, or haue his Assise. Br. forc. 6.

But if the disseisee shall enter peaceably vpon the disseisor, and so they both shall abide & continue there together, for diuers dayes, and after the disseisee doth put out the disseisor with force, and is thereof indicted: here it seemeth the disseisor shall not be restored; for the disseisors possession was auoyded in quiet maner at the first entry of the disseisee, and so the disseisor had no possession, in the eie of law, when he was put out. Crom. 163.

If the disseisee shall enter peaceably, the disseisor and his family being abroad, and after the disseisee shall keepe his possession with force, the disseisor shall not be restored, by reason of the eigne title of the disseisee, and for that he entred peaceably. See *antea* in the other title, *Forcible Entry*. Crom. 162 & 164.

But here the disseisee shall be imprisoned and fined, for keeping his possession with force: For forcible keeping or detaining, is as well prohibited, as forcible entrie.

And heere note, that the being of a mans wife, children, or seruants, in the house, or vpon the land, doe preserue his possession; but his cattell being vpon the ground, &c. doe not preserue his possession. Crom. 164. Fitzh. Assise 418

Also when two are in possession of an house &c. and the one claimeth by one title, & the other by another title, here the law shall adiuudge him to be in possession, who hath the best right to the possession: So that if A. shall wrongfully enter vpon B. and they both shall continue in the house, and after B. shall put out A. with force, A. shall not be restored; for A. neuer gained any possession by his entrie. Lit. 140. Park. 45.

Two Ioyntenants, or Tenants in Common, and one of them doth forcibly put out the other out of his possession, hee that is so expelled, may haue an action of Trespasse of forcible entrie against his companion, vpon the statute of B. H. 6. and thereupon hee shall haue a Writ of Restitution to restore him to his former estate: But what the Iustice of Peace can do herein, *quare*, for that his entrie and Fitz. 249 d. P.R. 39.

and possession is lawfull through the whole land, in respect of his owne moitie and estate.

Lamb. 158 Two Ioyntenants bee put out with force, and one of them onely sueth to haue Restitution, Restitution shall be made vnto him.

Whether a Copiholder, lessee for yeares, or tenant at will, shall haue restitution; see before.

P.R. 38. If Lessee for yeares bee put out of his Terme by force, and die, though after his death, this force bee found by Inquisition, taken by a Iustice of Peace, yet his Executors shall not be restored to that land (by the Iustice) for that they are not the same person which was put out.

What causes there may bee for staying the Iustices of Peace from granting Restitution.

Lamb. 157. Cromp. 163. Br. forc. 11. **A**lthough the party thus to be indited for a Force, shall not bee heard, nor suffred to giue his title in euidence, to excuse himselfe of his Forcible entrie, or detainer, to saue his fine due to the King for such force (which fine hee shall make though his right bee neuer so good); yet to the restitution (which the Complainant shall demand if the force be found) the Defendat shall be heard to disproue the title of complainant, or what he can say otherwise for the stay of restitution. *Quare*, and see before in the other title of *Forcible Entry*. Dyer 122.

Now the Defendant (or partie indited) for the stay of restitution, may, at the time of the restitution to be made, pleade or alledge any of these things following:

1 His quiet possession by three yeares together.
2 He may deliuer to the Iust. of Peace, or Court, a *Certiorari*, and this is a *Superfedeas* to them.

Lamb. 162. 3 Hee may tender his Trauerse: But Mast. Lambert seemeth to doubt whether the partie may bee admitted to his Trauerse before the same Iustice of peace.

4 He may pleade the insufficiencie of the Inditement. See *paulo antea sub hoc tit.*

5 He may pleade the insufficiency of any of the Iurours, scz. for not hauing forty shillings land *per annum*: And in this case Master Marrow is of opinion, that the party shall haue no restitution: Yet Mast. Lambert, and Mast. Crompton seeme to be of the contrary opinion. Lamb. 155. Cromp. 165. Ideo quare.

And it seemeth (by the opinion of Mast. Lambert) that the Iust. of peace ought not to stay restitution, saue onely, either by alledging three yeares quiet possession, or by remoouing the record and presentment into the Kings Bench, by a *Certiorari*.

Lamb. 156. For the first, there shall be no restitution awarded, where the partie indited hath been in quiet possession by the space of three whole Three yeares possession.

yeares together, next before the day of such inditement found, if his estate be not ended; And this the partie indited may alledge to stay the restitution, And the restitution vpon this shall be staid by the Iu. of peace, vntill it bee tried, if the other party will deny or traueserſe the same. See more hereof before *sub hoc tit.*

Certiorari. Also if a man who hath made a forcible Entrie or detainer bee in doubt that he shall be indited thereof before the Iust. of P. (vpon the stat. of 8. H. 6.) & that thereupon restitution will be awarded against him, hee may haue a writ of *Certiorari* out of the K. Bench ready, and when the bill of inditement is found, he may presently deliuer it to the Iust. of P. or Court. And this is a *Superſedeas* to them for to stay the restitution; for that vpon this Writ, the said inditement shall be remoued from them into the Kings Bench.

And although the inditement be found after the *teste* of the *Certiorari*, it is not materiall, for they be both the Kings Courts, &c.

But if a *Certiorari* commeth to remoue an inditement taken before the Iu. of P. in the country, & the party will not sue to remoue it, but suffereth it to lie still, the Iust. of P. may proceed to grant restitution, notwithstanding the Writ, as *Hoberi* the K. Attorney said in 6. H. 7. But *Keble* held opinion against him; and it seemeth the Iustices of P. ought *ex officio*, to send the inditement away, because they are commanded so by the Writ; And this Writ is a *Superſedeas* of it selfe to the Iust. of peace to stay their proceedings; and if they shall proceed after, it is erroneous. *Br. Judges* 17.

After restitution made by the Iustices of Peace, if the other partie doth remooue the inditement by a *Certiorari* of a more eigne date then is the inditement, the Iust. of the Kings Bench may award Restitution backe againe: for vpon the matter the Iust. of Peace had no power to make Restitution, for that the *Certiorari* hath relation from the date thereof.

After Restitution granted from the Sessions, and deliuered to the Sheriffe, the other partie hauing a *Certiorari*, deliuereth it also to the Sheriffe after the Sessions, the Sheriffe shall not surcease thereupon (for he hath no authority to allow thereof.) But if the *Certiorari* were deliuered to any Iu. of Peace, he may thereupon grant a *Superſedeas* to the Sheriffe; And if Restitution were made by the Sheriffe before the said *Superſedeas* came to his hands, then the other partie shall haue restitution backe againe, in the Kings Bench vpon the inditement remoued thither.

Trauerſe. The tender of a Trauerſe (to an inditement of Forcible entry, vpon the statute of 8. H. 6.) is no *Superſedeas* but in discretion; So as the Iustices of P. or Court, may grant, or may stay the restitution at their discretion, according as the truth of the right or title shall appeare to them; And so is the vse of the Kings Bench.

Or

Or else the Iustices of Peace, (before whom the Inditement was found) may, after Trauerſe tendred, certifie or deliuer the Inditement into the Kings Bench, and so referre the further proceedings therein to them.

Crom. 165. But if the partie indited shall tender a Trauerſe presently, wherevpon Restitution is staid, and after hee shall not pursue his Trauerſe with effect (but discontinueth it) and after doth tender another Trauerſe vpon Restitution prayed at another time, the Iustices of Peace, or Court, shall do well to proceed to grant restitution, notwithstanding such Trauerſe tendred.

Crom. 166. And it is the course of the Kings Bench, that he that tendreth the Trauerſe there (vpon such an Inditement) shall beare all the charges of the triall, and not the King, nor he at whose suite the Inditement was found; And the same reason seemeth vpon an Inditement traueserſed before Iustices of Peace.

Ryotts.

IT may easily and manifestly appeare to all such as haue bene conuersant in our Chronicles, how pernicious and dangerous to this kingdome, vnlawfull assemblies haue bin in all precedent ages, yea, such as at the first were very small; and began vpon very small occasion, yet not being repressed in time, grew to such greatness and height, that they afterwards put in hazard the state and gouernment of this land; And therefore it is behouefull and good wisdom for all Iustices of Peace, to indeauour by all good meanes to quench the beginnings and first sparkes of such assemblies, as knowing, that for want of timely restraint, they may soone growe to the like danger againe.

Now for the better suppressing of such vnlawfull assemblies, and and partly for the better enabling of the Iust. of P. therein, there were three statutes deuised and provided specially by the wisdom of the Realme, and are remayning yet in force, that is to say, The statute of 13. H. 4. 7. 2. H. 5. 8. and 19. H. 7. 13.

23. H. 4. ca. 7. The Stat. of 13. H. 4. authorizing, nay, vpon a great penalty inioyning, the Iustices of P. (together with the Sheriffe) to arrest, remooue, and punish the offenders.

2. H. 5. 8. But for that the aforesaid Statute gaue no remedy to the partie grieved, if the Iust. of P. or Sheriffe should make default, as also for the better stirring vp of the Iustices in this busynesse, The statute of 2. H. 5. was made, authorizing the L. Chancellor of England, (at the instance of the party grieved) to grant a Commission to inquire of the

the defaults of the two next Ju. of P. & Sheriffe, in nor executing the aforefaid stat. of 13. H. 4. And withall providing how the charges of the Iust. spent about the suppresssing & inquiry of such Riots, should be borne; and also limiting what punishment as well the offenders atteined of such Riots, as also all such as should not be ready to assist and aid the said Iust. to repressse such Riotters, should suffer.

And lastly, for that the two former stat. did not expresse of what sufficiency the Iurors impanelled to inquire of riots, should be; nor what issues they should lose if they appeared not; nor any certaine punishment was inflicted vpon the maintainors or imbracers of such Iurours: Therefore the said Statute of 19. H. 7. was made: 19. H. 7. 13. But so much of these things as concerne the Iustices of Peace, doe appeare more particularly heere before. And therefore now I will proceed in this businesse.

First, what shall bee said to bee a Ryot, Rout, or Vnlawfull Assembly, within the meaning of these Statutes.

WHEN three persons or more, shall come or assemble themselves together, to the intent to doe any vnlawfull Act, with force or violence, against the person of another, his possessions, or goods, as to kill, beat, or otherwise to hurt, or to imprison a man; to pull downe a house, wall, pale, hedge, or ditch, wrongfully; to enter vpon another mans possession; or to cut or take away corne, grasse, wood, or other goods wrongfully; or to hunt vnlawfully in any Parke or Warren, or to doe any other vnlawfull acte (with force or violence) against the peace, or to the manifest terrour of the people; If they onely meete to such a purpose or intent (although they shall after depart of their owne accord, without doing any thing) yet this is an vnlawfull assembly.

Vnlawfull assembly. Rout.

If after their first meeting, they shall ride, go, or moue forward, toward the execution of any such act (whether they put their intended purpose in execution, or not) this is a Rout.

Ryott.

And if they doe execute any such thing in deed, then it is a Ryot.

And yet by the opinion of some, a rout is only, where such a company (of three or more) are so assembled, for their owne common quarrell: As where the Inhabitants of a towne doe assemble together to pull downe a house, wall, pale, ditch, or other inclosure, pretending to haue title of Common, or a way there; or to beate a man that hath done them some publike offence; But yet the word Rout, seemeth to haue a more large and ample meaning, as appeareth by the Statute of 18. Edw. 3. St. 1. speaking of Routs that are brought in the presence of the Iustices: and the Statute of 7. Rich. 2. cap. 6. treating of riding in great routs.

Now

Now in Ryots, Routs, and vnlawfull Assemblies, these foure circumstances are to be considered:

First, the number of the persons assembled.

Secondly, the intent and purpose of their meeting.

Thirdly, the lawfulness or vnlawfulness of the act.

Fourthly, the maner and circumstance of doing it.

For the number, there must necessarily bee three persons at the least, so gathered together, or els it can be no Ryot, Rout, or vnlawfull assembly within the meaning of these statutes.

The number.

P. 16. 17.

By the stat. of 1. M. 1 2. & 1. Eliz. 1 6. if twelue persons, or more, assembled together, should haue intended or gone about to haue done any act contrary to those stat. if they had not departed within one houre after Proclamation, it had bin felony in them all.

P. 31.

And by the same stat. if the number had bin 40. or aboue that had assembled together, to the intent to haue done any act contrary to those statutes, or any other felonious or rebellious act, if they had continued together three houres after Proclamation, it had bene felony, but these two last statutes stand now discontinued.

But an assembly of an hundred persons or moe (yea though they be in armour) yet if it bee not *in terrorem populi*, and were assembled without any intent to breake the peace, it is not prohibited by any of these statutes, nor vnlawfull: see *infra*.

Crom. 61.

P. R. 25.

For the intent: It seemeth it can be no Ryot, &c. except there be an intent precedent, to doe some vnlawfull act, and with violence or force.

The intent.

Lamb. 183.

Crom. 61.

And therefore if diuers bee assembled, and none of them doe know to what end or purpose they are met, This can make no Ryot or Rout, till the intent be known.

Lamb. 183.

If the master (intending to make a Ryot) taketh with him his ordinary seruants, and maketh an affray, or other outrage with them, this is no Ryot in the seruants, except their Master had made them priuy to his intent before; but the Master only shall be punished for the Ryot.

And in this former case, it is not materiall, though the number of his seruants which go with him be aboue his degree, so long as they be his household seruants. Lamb. 184. P. R. 25.

Crom. 61.

If diuers being lawfully assembled, shall quarrell, or fall out vpon the sudden, without any former such intent; this is no Ryot, but a sudden affray.

Lamb. 184.

If diuers be at an Ale-house, and without any intention of an affray, they suddenly fall together by the eares; this is no Ryot, but a sudden affray, because they had no such intention before.

Ibid.

If a Iury being together, shall fall out, and fight; this is no Ryot, because they were lawfully assembled.

Also

Also where there be three or more gathered together, either to execute the iustice of the law; or for the exercise of valour, and triall of actiuity, or for the increase of amity & neighbourly friendship (and not being met with an intent to breake or disturb the peace, or to offer violence or hurt to the person of any) such assemblies be not prohibited by any of these stat. nor vnlawfull; As if the Sheriffe, Vnder-sheriffe, or Bailiffe, shall take power (what number they shall thinke good) to execute the Kings Proceffe, &c. it is lawfull; so of other officers. See more hereof, *postea tit. Possé Comitatus.*

So it is a lawfull assembly which is gathered together to runne at Tilt &c. by the Kings commandement.

So the assembly of people, and their vse of Harnesse vpon Midsummer night in London, beeing onely for disport, is lawfull, and though it be with a great assembly of people, and in armour, yet it being neither *in terrorem populi*, nor to do any act with force or violence against the Peace, it is lawfull.

Also, if diuers doe assemble and gather together, to drinke at an Alehouse, or to play at football, bucklers, Beare, or Bull-baytings, dauncings, bowles, cards, or dice, or such like disports, this is no Ryott nor here prohibited; for these meetings vsually are not with any intent to offer or doe violence or hurt to the person, possessions, or goods of any other: neither are they *malum in se*, they are in themselves neither euill, nor vnlawfull, though otherwise some of them are prohibited by statute. *Vide antea tit. Games vnlawfull.*

But if any of the persons assembled together for any the disports aboue mentioned (or for the like,) came with any intent or purpose to breake or disturbe the Peace, or to offer violence or hurt to the person of any, and shall make an Affray, or doe other outrage; this seemeth to bee a Ryott, in so many as came with any such vnlawfull intent or purpose.

And if any of the persons assembled together (to drinke, or play) at an alehouse, or for any the disports aboue mentioned, or the like, shall fall out suddenly (without any former intention of an Affray) and in that their falling out they shall betake themselves to sundrie parts, and shall make an affray, it seemeth (by the opinions of some) that this shall be adjudged a Ryott in so many of both sides, as shall be parties to that affray or quarrell: but *quere* hereof, for that it was without any such intent before their said assembly, and done onely vpon the sudden, & vpon a sudden occasion happening after their said meeting; and againe, their said assembly was at the first lawfull, or at least not prohibited by any of these Statutes, nor yet by the Common Law.

But otherwise, if by agreement they shall meete againe, and fight afterwards, that maketh it a Ryott, as being a new assembly vpon the former

former quarrell; and so their second meeting was vpon an intent precedent to doe an vnlawfull act.

Concerning the lawfulnessse, or vnlawfulnessse of the act.

Note, that the lawfulnessse, or vnlawfulnessse of the thing done or intended, doth not alwayes excuse or accuse the parties to a Ryott, &c. but so, that the maner and circumstances of the fact, must also be considered. *Lawfulnessse of the act.*

For euery man may assemble company to aid him in his house, against iniury or violence: but if a man bee threatened, that if hee come to such a place, he shall be beaten; in this case if hee shall assemble any company to goe thither with him (though it bee to safeguard his person) it seemeth to bee within the compasse of these Stat. and vnlawfull. *Br. Ryotts. 1.*

Crom. 66. Euery man in peaceable maner, may assemble meet company (and may come) to do any lawfull thing; or to remoue or cast down any common nufans done to them.

Co. 5. 101. & 9. 55. Euery priuate man, to whose house, or land, any Nufans shall be erected, made or done, may in peaceable maner, assemble a meet company, with necessary tooles, and may remoue, pull, or cast down such Nufans (& that before any prejudice receiued thereby,) and for that purpose if need be, may also enter into the other mans ground.

16. Eliz. Croisp. 66. A man erects a Weare, crosse a common riuer (where people haue a common passage with their Boates) and diuers did assemble with spades, crowes of iron, and other things necessary for to remoue the said Weare, & made a trench in his land that did erect the Weare, to turne the water, so as they might the better take vp the said Weare, and they did remoue the same nufans, this was holden neither any Forcible Entry, nor yet any Ryott.

But in the Cases aforesaid, if in remoouing any such Nufans, &c. the persons so assembled shall vse any threatening wordes (as to say, they will doe it in spite of the other; or they will doe it though they die for it, or such like words) or shall vse any other behavior, in apparent disturbance of the peace, then it seemeth to be a Ryott: and therefore where there is cause to remoue any such Nufans (or to doe any like act) it is the safest nor to assemble any multitude of people, but onely to send one or two persons, or (if a greater number) yet, no more then are needfull, and only with meet tooles, to remoue, pull, or cast downe the same, and that such persons tend their businesse onely without disturbance of the peace.

For the maner of doing a lawfull thing, may make it vnlawfull.

Also the maner of doing an vnlawfull act by an assembly of people, may bee such (and so handled) as that it shall not bee punished as a Royott.

As if I shall assemble a meete company to carry away a piece of timber, or other thing (where to I pretend a right) that cannot be carried without a great number; if the number bee not more then are needfull for such purpose; although another man hath better right to the thing so carried away, and that this act be a wrong and vnlawfull, yet is it of it selfe no Ryot, except there be withall threatening words vsed, or other disturbance of the Peace.

For the manner and circumstances.

The manner. AS there must necessarily be three persons at the least, assembled together, to make a Ryot, &c. so their being together, and their demeanor; must be such, or shal or may breed some apparant disturbance of the peace; either by threatening speeches, turbulent gesture, shew of Armor, or actuall force or violence, (to the terror & fearing of the peaceable sort of people, or to the emboldening and stirring vp of such as are busie headed, and of euil disposition, by such fact;) or else it can be no Ryot, &c. For, as I said before, the maner of doing a lawfull thing, may make it vnlawfull, &c. *conuerso.*

And therefore if diuers in one company, going to the Church, Fayre, or Market, shall goe armed; or one going to the Sessions, or other like assembly, shall goe with his seruants in Harnesse (to the terror of the people) though hee, or they, haue no intent to fight, or to commit any Ryott, yet this is a Rout by the manner of his or their going, being needlesse, disordered, and against the Law. See the Statute 2. Ed. 3. cap. 3.

But in the former cases, if they had gone in priuy coates of Plate, shirts of Maile, or the like, to the intent to defend themselves from some aduersary; this seemeth not punishable within these statutes, for that there is nothing openly done, *in terrorem populi.*

One *N. W.* together with four score persons, came with Spades, Mattocks, Pistolls, Swords, and Daggers, in the night, to a piece of ground (where *Sir Thom. St.* had made a great Weare crosse ouer the Riuer of Trent, in the Countie of Notting. to the great Nufans of passengers there &c.) and there they made one or two little trenches to let out the water, &c. And though it were lawfull to make the Trenches, and to debruse the Nufans, yet for that they came with such number and weapons, they were deeply fined in the Starre-chamber. 36. Eliz.

Also one *Kemp* Lord of a Coppihold, did enter with twenty persons, and cut his Coppiholders corne with force, for that his Coppiholder would not compound with him for his fine; and although the entry of the Lord was holden lawfull, yet punishable as a Ryot in regard of his number and force.

In all

Cromp. 64. In all cases where three (or more) shall enter into lands &c. with force (vpon the possession of another) where their entry is lawfull, yet it is a riot, by reason of the number and force: for the stat. of 5. R. 2. prohibeth the entry with force, or with multitude of people, although the Entry be (otherwise) lawfull.

What persons may commit a Ryot, &c.

IF a number of women (or children, vnder the age of discretion) do flock together for their own cause; this is no assembly punishable by these statutes, vnlesse a man of discretion moued them to assemble for the doing of some vnlawfull act, as *M. Marrow* held.

Lamb. 184. Cromp. 62. Yet certain women, that had apparrelled themselves in mens apparrell, & had pulled down riotously a lawfull inclosure, were worthily punished for the same in the Star-Chamber, as *M. Lambert* reporteth.

Also women, and children, may commit a force, may commit Larceny, and may be bound to the peace, as breakers of the peace. *Vide antea tit. Surety for the Peace, & Forcible Entry.*

Co. 3. 72. & 51. Also women couert are holden to be within the stat. of *Mert. ca. 6.* for rauishment of wards; and within the stat. of *Westm. 1. ca. 20. de Malefactoribus in parcis:* & within the stat. of *8. H. 6. of Forcible Entry:* and within the statutes of *1. El. ca. 2. & 23. El.* for Recufancie, although they be not named within any of these statutes.

Co. ibid. f. Bfe 670. 4. E. 4. 16. Also if a woman couert shall commit any ryot, or do any trespass or other wrong, she is punishable for it; and for a trespassse done by the wife, or for a scandall published by her, the action lyeth against both the husband & wife, *sc.* an action of trespassse, or of the case, shal be brought against the husband & the wife, and there the husband is chargeable to the damages, or fine, because he is a party to the action and iudgement, (*See paulo ant. sub tit. Forcible Entry*) But if a woman couert without her husband be indicted of a Trespas, Ryot, or any other wrong, there the wife shall answere, and be party to the judgement only: and in such case the fine set vpon the wife shal not be leuied vpon the husband; yet after the husbands death it seemeth such damages or fine shal then be leuied of the wife her selfe, *quare.* And as for imprisonment, or other corporall paine, it shalbe inflicted vpon the wife onely, and not vpon the husband for his wiues act or default.

Lamb. 185. If a Mayor and Aldermen, or Baylife and Burgessees, or the Fellowes of any other Society, do assemble in their common quarrell, and make a Ryot or Rout; this shalbe punished in their own priuate naturall persons, and not in the body politike.

T

High



High Treason.



High Treason (called in Law, *Crimen lesa Maiestatis*) is a grievous offence, done or attempted against the estate regall, *videlicet*, against the King (the head, life, and ruler of the Common-wealth) in his person, the queen his wife, his children, realm, or authority, as

To compass the death of the King, the Queen his wife, or of their eldest sonne and heire. 35.E.3.c.3. P.1.

To intend or imagine their or any of their deaths, though they bring it not to effect, *scilicet*, if they shall declare this by any open act, whereby it may be knowne, or to vter it by words or letters. Stamf. 2. h. Co. 2. 28. Br. 24. 29.

To intend to depriue or depose the K. or to say that he will be K. after the kings death &c. Br. ibid.

If one that is *non Compos Mentis*, do kill, or attempt to kill the K. it is in him high treason; whereas pety treason, homicide, or larceny shall not be imputed to such a person. Co. 4. 124.

One Constable pointed to another, saying to his friends, Behold K. Ed. (who was then dead) and for those words he had iudgement and execution as a traytor, *Dyer* 128. but *Co.* 7. 10. obserueth that the words were accompanied with other circumstances; which appeare not in our vsuall printed bookes. Dyer 128. Abc.

Also to deflower the K. wife, his eldest daughter being vnmarried, or his eldest sonne & heires wife, is high treason. P. 1.

To leuy war against the King &c. in this realme, is high treason: Note that to detain or hold a castle, or fortresse, against the King, is to leuy war against the K. See *Br. Treason* 24. P. 1.

So to conspire to leuie war against the K. &c. is high Treason. Dyer 98. Dyer 298.

To practise with (a gouernor of) another country, to inuade this realme, is high treason. Dyer 98. Dyer 298.

So to kill one that is sent in the Kings message. *22. Aff. Stamf.* 1. r. *Br.* 13. 21.E.3.23. Stamf. 4c.

To incounter in fight, and kill such as be assisting to the king in his wars, or such as come to helpe the king, is high treason, *45.E.3. 25. Br. Treasf.* 7. 21.E.3.23. Stamf. 4c.

These two last cases were holden to be high treason, before the statute of 25. *Ed.* 3.

To

P. 1. To be adherent to the K. enemies, (ayding them in his realme, or elsewhere) is high treason. See *Br. Treason* 1. & 13.

Br. Treas. 32. But if an alien enemy come to inuade this realme, and bee taken in war, he cannot be indicted of Treason, but he shall be put to death by Martiall Law, *Co.* 7. 6. b. Otherwise it is of an alien whose King is in league, or at peace with our King, he shall be indicted and arraigned of Treason, and shall haue iudgement accordingly. An English Traytor pleading that he is a subiect to a forreine Prince, shall notwithstanding (vpon a *Nihil dicit* recorded) haue iudgement as a traitor. *Dyer* 300. Dyer 145. vide.

P. 1. 2. 1. M. 6. To countefeit the K. great seale, signe manuel, priuy signet, or priuy seale, is high Treason.

Br. 3. 17. So to take an old seale, and put it to a new Patent, &c. yet *quare* whether this be treason, or but misprision.

Also *quare* of such as without authority shall set the K. scale vpon any writing; or shall fraudulently thrust a writing (amongst others) to the seale) and so get it sealed.

P. 1. 2. 1. M. 6. To countefeit the K. money, or any other coine which is currant within this realme, is high Treason.

Br. 17. P. 4. So to forge such coine, though he vtereth it not.

To forge or counterfeit any coine, which is not currant in this realme, is misprision of Treason. 14. El. 3.

To clip, wash, round, file, impaire, diminish, lighten, or falsifie any coine currant within this realme, is Treason. 5. El. 11. 18. El. P. 51. 6.

To bring from beyond the sea, into this Realme, any false and counterfeit coyne, of any other Realme, being currant within this Realme, knowing it to bee false, is high Treason; but to bring such money into England out of Ireland, is but Misprision, though hee knoweth it, and vtereth it, *Quia Hibernia est quasi membrum Anglia.* 1. & 2. P. & M. P. 3.

If he which by the K. Warrant, doth coyne mony (either in England, Ireland, or elsewhere) maketh it much lesse in weight then the ancient ordinance; or coineth false mettall, it is Treason. *Br. Treason* 19. 3. H. 7. 6. 10. Br. 19.

To vter false mony made within this realme, or other the K. Dominions, knowing therof, is misprision of Treason. 3. H. 7. 6. 10. Dyer 266.

To kill the K. Chancellor, Treasurer, Iust. of either Bench, Iust. in Eyre, Iust. of Assise, or Iust. of *Oyer* and *Terminer*, being in his place doing his office, is high Treason. 25. Ed. 3. 2. P. 1.

Note that the counsellors, procurers, consenters, & ayders to any of the aforesaid Treasons, be all within the compasse & danger of high Treason; for in Treason all the offenders be principalls. Stamf. 3. P. 23. 4. 5. 6.

To conceale or keepe secret any high Treason, is misprision of Treason *1. E. 6. c. 12. & 1. El. ca. 6.* P. 2.

T 2

And

And all Receivers, and accessaries (to high Treason) after the offence, seeme to be in case of misprision. *Vide postea tit. Accessorie.*

If two or more do conspire to commit high treason, and some of them after do commit and execute it; this is high treason in them all by the common law. Dyer 98.
Co. 1. 28.

Note also, that the aforesaid stat. of 25. Ed. 3. ca. 2. is but a declaration & explanation of the common law before; for all the said treasons in the said stat. mentioned, were treason by the ancient common law of this realm, before the making of the said statute. Co. 8. Pref.

Treasons by statute.

Since which time of King Edw. 3. diuers other offences were made Treason, as appeareth by the statutes 21. Rich. 2. 2. H. 5. 6. 3. H. 5. 6. 8. H. 6. 6. 4. H. 7. 18. 22. H. 8. 9. 26. H. 8. 13. 27. H. 8. 2. 28. H. 8. 10. 31. H. 8. 8. 32. H. 8. 25. 33. H. 8. 21. 35. H. 8. 1. and first Ed. 6. 12. all which were repealed againe by a stat. made 1. M. Parliament 1. or before.

Also since the aforesaid statute of repeale, there haue been diuers other offences made or declared to be treason, whereof some were but as an addition to, or an exposition of the treasons before specified, & mentioned in the said stat. of 25. Ed. 3. ca. 2. viz. the statutes 1. M. 6. 1. & 2. Ph. & Ma. 1. 1. 5. El. 11. 18. Eliz. 1. and 14. Eliz. 3. by which fiue severall stat. last mentioned, the countefeiting of the Kings seale, or abusing his coyne, and bringing in of false coyne, &c. are in some particulars more fully prohibited then before, as may herein before appeare.

There are also diuers other offences made high treason (by other statutes made since the beginning of the raigne of Queene Eli.) and those specially made for the preservation of the said Qu. her heires and successors, and of the dignitie of the imperiall Crowne of this realm, and for the auoyding of the dishonours, inconueniences, and dangers growing to the whole estate, by meanes of the iurisdiction of the See of Rome, heretofore vsurped within this realme, &c. as hereunder appeareth.

The Bishop of Rome.

First, the maintayning or extolling the authority of the Bishop or See of Rome, within any the K. dominions; & the procurers, counsellors, ayders, and maintayners thereof, and euery of them; 5. El. 1.
P. Rome 1.

For the first offence they shal incur the danger of *Præmunire*; the second offence is high Treason.

Also the bringers ouer of any bookes, that shall maintaine, set forth, or defend any such authority; and the readers and hearers of such bookes, that shall iustifie them:

And such as shall deliuer any such bookes to others, with allowance and liking of the same:

And the Printers and vterers of such bookes within the realme: All and euery such offenders, are (by the Judges) resolved and constrained Dyer 81.
Co. 7. Prof.

strued to be within the meaning of the same stat. of 5. El. ca. 1. & their first offence to be a *Præmunire*, the second high treason.

5. El. 1.
P. Crowne
6. & 8.

Againe, the refusall of the oath for the K. supremacy (in all causes, and ouer all persons &c.) after lawfull tender thereof made; the first refusall is a *Præmunire*, the second refusall is high treason.

3. Jac. 4.
P. Recuf. 45.

The second refusall of the oath of Allegiance, being tendred according to the stat. is a *Præmunire*, & 7. Jac. 6.

13. El. 2.
P. Crowne 2.
P. Præmun. 5.

Againe, to obtaine or get from Rome, or from any claiming authority from thence, any Bull or writing, (the effect whereof is, to absolve, & reconcile all those that will forsake their due obedience to the K. & yeeld themselves to the B. of Rome); Or to giue or take absolution, by colour of any such Bull: Or to grant or promise any such absolution, or reconciliation: or to vse, publish, or put in vre, any such Bull: euery such act shalbe high treason aswel in the offenders, as in the procurors, abettors, and counsellors to the fact.

Ibid.

And all ayders, comforters, & maintainers of any such offender, after the fact shall incur a *Præmunire*.

12. El. 2.
P. Rome 4.

To conceale such Bull (or writing) or such absolution offered them, & nor within fixe weekes to disclose it to some of the K. priuy counsell, is misprision of treason.

To purchase or pursue (in the court of Rome, or elsewhere) any Excommunication, Bull, or other Instrument, against the king, his crowne, or realme; Or to bring them within the realme; Or to receiue them, or to make notification, or any other execution thereof, within the realme, or without, Euery such offender, their procurors, maintainers, abettors, and counsellors, shall incur the danger of a *Præmunire*, 16. R. 2. ca. 5.

23. El. 1.
3. Jac. 4.
P. Rome 7.

To practise (beyond the seas, or vpon the seas, or elsewhere within the K. dominions) to absolve, persuade, or withdraw, any subiect, or any within any his highnes dominions, from their obedience to his maiestie; or to reconcile them to the Pope, or to draw them to the Romish Religion, for that intent; or to moue them to promise obedience to the See of Rome, or to any other prince, euery such person, and their procurors, ayders, counsellors, and maintainers, knowing the same, are all in case of high treason.

3. Jac. 4.

To be willingly absolved, persuaded, withdrawne, or reconciled, as aforesaid, or to promise any such obedience; euery such person and their procurors, counsellors, ayders, and maintainers (knowing the same) shalbe adiudged traytors; except they submit themselves according to the stat. within 6. daies after their return into this realm &c. *Vide antea tit. Recufants.*

23. El. 1.
3. Jac. 4.
P. Recuf. 49.
P. Rome 7.

P. Rome 8.

To conceale any such offence, and not within 20. daies to disclose it to some Iu. of P. or other higher Officer, is misprision of treason by the stat. 23. Eliz. 1. P. Rome 8.

Againe, for any Iesuiste, Priest, or other Ecclesiasticall person (borne within any the Kings Dominions, and made by any authority from the Bishop of Rome) to come into, be, or remaine, in any of the Kings Dominions contrary to this statute, is high Treason.

To receiue, relieue, aide, or maintaine any such Iesuiste, &c. (being at libertie, and knowing him to be a Iesuiste &c.) is felony, without benefit of Clergie.

To conceale such a Iesuiste, &c. *sc.* not to discouer them to some Iustice of peace, or other higher officer, within twelue dayes, is punishable by fine and imprisonment:

And the Iustice of Peace or other such officer, to whom such a person shall be discouered, if within eight & twenty daies, they giue not information thereof to some of the Kings Councill, &c. they shall forfeit two hundred markes: See *Plus tit. Recusants.*

If any of the Kings subiects (not being Iesuiste, or Ecclesiasticall person), which are or shall be brought vp in any Seminary or Colledge of Iesuistes, or Seminary beyond the Sea, shall not (within fixe moneths after proclamation in that behalfe to be made in London, &c.) returne into this Realme, and within two daies after such returne (before the Bishop of the dioces, or two Iu. of P. of the county where he shall arriue) submit himselfe to the K. lawes, and take the oath of Supremacie, (set forth *1. El. 1.*) then euery such person, which shall otherwise returne or come into this Realme, or any other his Maiesties Dominions without such submission, shall be adiudged a Traytor.

For (as one saith) it may iustly bee feared, not onely of all Iesuistes and Seminary Priests, but also of all such other (Iesuisted) persons whatsoever, that shall come into any his Maiesties dominions, or returne into this realm, contrary to this stat. That it is not Faith, but Faction; not Truth, but Treason; not Religion, but Rebellion, which is the cause of their comming.

To conuey, deliuer, or send, yeeld or giue any reliefe, to or for any Iesuiste, or Priest, &c. or other person abiding in any Seminary beyond the Seas, &c. is a *Præmunire*.

To bring into this realme any *Agnus Dei*, Crosses, Pictures, beads or such like superstitious things, consecrated by authority from the Pope, and to deliuer them, or to offer or cause them to be deliuered to any subiect of this Realme, is a *Præmunire*, as well in such person, as also in them that shall receiue any such thing, to the intent to vse or wear it.

The person to whom such *Agnus Dei* &c. shall be offered, must apprehend the party offering the same, and bring him to the next Iu. of P. or else must within 3. dayes disclose his name and place of aboad, to the Ordinary, or some Iust. of P. of that county: and if hee

27. El. 1.
P. Iesuiste 2.

P. Iesuiste 3.
101.

27. El. 2.
P. Iesuiste 4.

21. El. 1.
P. Iesuiste 5.

13. El. 1.
P. Rome 5.

13. El. 1.
P. Rome 6.

receiued any thing, he must deliuer the same within one day to a Iu. of P. of that county, where the party so receiuing the same shall then be resident or happen to be. And that Iust. of P. within fourteen daies must disclose the same to one of the K. maiesties priuy councill, vpon danger of a *Præmunire*.

Misprison.

There be also certaine offences which by the Common Law, are Misprison of Treason, or at least punishable in the same degree, and more, as

21. E. 3. 13.
Stamf. 3. 8. b.
PR. 117.
Ibid.

To draw a sword to strike a Iust. sitting in place of iudgement, is Misprison of Treason. So

To strike a Iuror, in the presence of the Iu. sitting in place of iudgement. *Br. Contempts* 9. So

Stamf. 3. 8. c.

To strike another in Westminster hall, sitting any of the K. courts there.

So it seemeth to draw any weapons (therewithal to strike any person) in the presence of the Iustices: Or to make any affray in their presence. *Br. Paine* 16.

So to rescous any such offender, *Br. ibid.*

So to strike any person in the K. Court, (Pallace, or other house) the K. being then in his Court: And iudgement was giuen accordingly in such case, vpon a Knight, *An. 32. H. 8.* for striking another at Greenwich, the K. being there. *Br. ibid.* Yet now see the stat. of 33. H. 8. 12. That such an offender in the K. Pallace, (although he shall draw bloud by striking there) he shall forfeit neither the profits of his lands, nor his goods; but shall loose his right hand, be imprisoned during his life, & shall pay fine and ransome at the Kings pleasure: And so now such offence done in the K. Pallace, shall not haue so grieuous a punishment, as if it be dohe in Westminster Hall: see *Stamf. 3. 8. d.*

Ibid.

And in the former cases, the offender shall haue iudgement as in Misprison of Treason, and besides that haue his right hand cut off. *Br. Paine* 16. *Fitz. Forf.* 21.

Ibid.

If one of the K. Iu. do arrest one who made an affray before him sitting in place of iustice, & a stranger shall rescue the prisoner, whereby he escapeth, this is misprison of Treason in them both.

Stamf. 3. 7. d.
Cromp. 44.

Note that euery Treason, or Felony, doe include Misprison, so that where any person hath committed Treason or felony, the king may cause the offender to be indicted and arraigned but of Misprison.

Misprison is properly, when one knoweth that another hath committed, or is about for to commit any Treason or Felony; but was not, or is not consenting thereto, and will not discouer the offender

dor to the K. or his counsell, or to some Magistrate, but conceales the offence. *Stamf. 37.*

For misprision of Treason, the offender shall forfeit to the K. his goods & chattels for ever, & the profits of his lands during his life, and also shall be imprisoned during his life, *Br. Trea. 19. & Stamf. 38.*

*The forfei-
ture.*

For misprison of felony the offender shall be only fined & ransomed as it seemes, and shall be committed to prison vntil he hath paid his fine. See *Br. Trea. 25.*

For high treason, the offender shall be hanged, cut down aliue and quartered, & he shall forfeit all his lands & goods &c. to the K. yea at this day his lands intailed shall be forfeited (*vide Stamf. 187. et Co. 1. 103 et 7. 33. 34. & Dyer 332. Pl. 227. b. 249. b. 554. b. & 559.*) & his wife shall loose her Dower, and his bloud shall be corrupted, sauing in certaine cases.

In case of *Præmunire*, the offender (being attainted) shall forfeit all his lands (which he hath in fee) for ever, & all his goods & chattels to the K. but his lands wherof he hath an estate taile, he shall forfeit only during his life, & shall be imprisoned during his life: And yet vpon the stat. of 27. E. 3. c. 1. the offender shall forfeit nothing if he appeare at the day of the *Præmunire* returned. See that stat. & *Br. Præm. 6.* But vpon the stat. of 16. R. 2. c. 5. the offenders shall forfeit their lands and goods if they be attainted, *Br. Præm. 6. & 20.*

Now for the offenders in high treason, misprison of treason, & *Præmunire*, although the Iu. of P. (by their commission, nor by stat.) cannot meddle with them in the very point of their offences, sauing in some particulars, & that by way of inquiry only, which you may see *hic antea tit. Felony*, yet for that all treasons & such other offences are against the Peace of the K. & of the realm, therefore vpon complaint made to the Iu. of P. or other knowledge had by him of any such offenders, it shall be his part to cause such offenders to be apprehended, and to ioine with some other Iu. of P. in taking their examination, and the information vpon oath of such as bring them, or of others that can proue any thing materiall against them, & to put the same in writing (vnder the hands of the informers) and then to commit the offenders to the gaole; and also to bind ouer by recog. all such as do declare any thing materiall, to appeare & giue euidence against such offenders, before the Lords of the K. Maiesties priuy councill, or elswhere, when they shall be called, vpon reasonable warning, and after to certifie their doings therein to some of the Lords of his maiesties said councill.

Note, that all treasons, misprison of treason, & concealment of treason, done or committed out of the realm, shall be enquired of, & tried within the realm, see stat. 35. H. 8. ca. 2. *P. Treason 10. & Dyer 287. 298. 132. 360. Co. 7. 23. & 11. 63.*

Pety

Pety Treason.

25. Ed. 3. c. 2.
P. Treason 8

Pety treason is when wilfull murder is committed (in the estate Oeconomically) vpon any subiect, by one that is in subiection, and oweth faith, duty, and obedience, to the party murdered; as in these cases following:

Ib. & 12. aff.
30.

If a seruant maliciously killeth his or her master or mistres; this was pety treason by the common law, *Stamf. 10. i.*

Ibid.
Fit. Co. 118.

A seruant of the age of 13. yeres, killed her mistres, it was adiudged in her pety treason. *Br. Trea. 12.*

Stamf. 10.

A seruant that is departed out of his seruice, and a yere after killeth his master, vpon malice conceiued when he was in his said seruice, it is pety treason, *Br. Trea. 15. 33. aff. p. 7.*

Cromp. 29. b.
20. a.

A seruant doth procure another to kill his master, who killeth him in the seruants presence; this is pety treason in the seruant, and murder in the other.

Dyer 128.

But if the estranger doth kill the master in the seruants absence, then the seruant is onely accessary to the murder, but it is no pety treason in him.

A seruant conspireth with a stranger to rob his master, & at a time appointed in the night, he letteth in the stranger into the house, and led him to his masters chamber, & the stranger killeth his master, the seruant standing by; this is pety treason in the seruant, and murder in the stranger: yet by some, this is but murder in the seruant *ibid. Et 40. aff. Br. Coron. 119.* where the principall is but a felon, the accessary cannot be a Traytor. See *Pl. 100. a.* that the seruant is a principall in this case, *Et postea tit. Accessary.*

Cromp. 20.

A seruant commands one to beate his master, and he killeth him, this is pety treason in the seruant if he be present.

Cromp. 20.

A seruant vpon malice pretended, shooteth at an estranger, and misseth him, and killeth his master, being by, this is pety treason in the seruant, (though he intended no hurt to his master) yet because he intended murder thereby.

Br. Trea. 30.

The wife maliciously killeth her husband; this is pety treason. *The wife.*

The husband maliciously killeth his wife; this is but murder.

The reason of this difference is, for that the one is in subiection, and oweth obedience, and not the other.

Dyer 332.

The wife and a seruant do conspire to kill the husband, and he killeth him in the wifes absence: this is pety treason in them both.

Dyer ibid.

The wife and a stranger do conspire to kill her husband, and hee killeth her husband in the wifes absence: this is no pety treason in the wife, but murder in the stranger, and she shall be hanged as accessary to murder.

Cromp.
20. 24.

Also where the wife or seruant (procuring, conspiring, or practising

ing such Murder) at the time of such murder, is in the same house, though they be not present thereat, but are in another roome, yet it is petie treason in them, as it seemeth by two cases reported by Mast. *Crompton in 4. Co. 5. Marie.*

The wife poisoneth a thing, to the intent to poyson here husband therewith, the husband eateth of it, & becommeth very sick thereof, but recouereth: after, an estranger eateth thereof, & dyeth thereof, this is (only) murder in the wife.

The wife poisoneth an apple, to the intent to poison a stranger therewith, and layeth it (to that purpose) in a secret place, and the husband by chance eateth of it, and dyeth thereof within a yere and a day, this is pety treason in the wife, for that she intended murder thereby.

The wife poysoneth an apple, or other thing, and deliuereth it to B. (knowing nothing of the poyson) to giue to C. and B. giueth it to the husband (without the assent of the wife) who eateth thereof in the wiues absence, and he dyeth thereof, this is Pety Treason in the wife.

The child.

The child maliciously killeth the father, or mother, this is pety treason (although the father or mother at the same time giue neither meat, drinke, nor wages to such child:) But it is Treason in the child, in respect of the duty of nature violated.

A Bastard killeth his mother, this seemeth pety treason; for the mother is certainly knowne.

The sonne, or daughter in law, kill the father or mother in law, with whom they dwell and do seruice, & haue meat and drinke, it is pety treason, although such child take no wages: but the indictment shalbe by the name of Seruant.

A Clerke.

A Clerke or any Ecclesiasticall person maliciously killeth his ordinary, or Superiour, to whom he oweth obedience, this is petie treason.

Note further, that whatsoever act will proue murder betweene strangers, the same will make pety treason from the seruant to his master, from the wife to her husband, from the child to the father or mother, and from the Clerke to his Prelate or Ordinary, *Mutatis mutandis.*

Breake pri-
son.

Breaking of prison, wherby prisoners that were therein for treason, do escape; this also is petie treason. *1. H. 6. 5. Br. 11.*

Piracy.

A Norman being captaine of an English ship, wherein also were certain English men, & they robbed vpon the sea, this was adiudged felony in the Norman, and treason in the English men, & they were drawen and hanged. *40. Ass. p. 25. Br. Coron. 119. & Treason 16.*

Inditor.

Also it hath bene adiudged petie Treason in some bookes, and felony in some other, for an Inditor (in case of treason, or felonie)

Plow. 474.
Co. 9. 31.
See more in
the title of
Murder.

Crompt. 10.

Crompt. 20.

21. E. 3. 17.
Co. 7. 13. b.
Br. Treas. 6.

Crompt. 12.

Dalison
Rep.
1. M. 1.

1. Ed. 3. ca. 2.
P. Treas. 7.

Stam. 11.

Scam. 11. 36
Fitz. Cor.
107. 27.
Br. Cor. 113

to discover the K. councell & their fellows, (sc. to discover to others what person they haue indicted, or if they haue indicted any, then to shew to others what they haue done therein &c.) But now that offence is taken only to be finable to the king.

1. R. 3. 4.
Br. Treas. 8.
11. 15. & 30.

The punishment for pety treason is this; The man so offending, shall be drawne and hanged: the woman shall bee burned alive, in case as well of petie treason, as of high treason, *1. R. 3. 4.* But in case of felonies, the iudgement both of the man and woman is to be hanged.

Punishment.

The forfeiture for pety treason is, the K. shall haue all his goods; and for his lands the King shall haue *annuum, diem, & vastum*, and the Escheate thereof shal be to every Lord, of his owne proper fee. *2. 5. Ed. 3. cap. 2.*

Forfeiture.

The Iustices of peace may inquire of pety treason, as of felony: and out of their Sessions, euery Iust. of P. may deale with the offenders therein, as in case of felony, by examination of the offenders, by taking information against them, and binding ouer the Informers to the generall Gaole deliucty, and by committing the offenders to the gaole.



Of Felonies by the Common Law.



Felonies by the Common Law, are of diuers sorts; as Homicide, Burglarie, Theft, burning of houses, Rescous and Escape.

Homicide most properly is, *hominis occisio ab homine facta*; for if a man be killed by a beast (as a horse, or dogge) or by any other thing or mischance, although that be *hominis occisum*, (of which two words Homicide is deriued) yet in such cases it is not aptly nor vsually said that homicide is committed, but only a man is said to be slaine.

Homicide.

Lamb. 333.

Others do thus define or describe it: Homicide is the felonious killing of one man by another within the realme, and liuing vnder the kings protection.

But to kill a man beyond the seas, or to strike and giue one a mortall wound beyond the seas, or vpon the sea, wherupon he dieth vpon the land (within this realme) these homicides are not punishable as felony; for that they cannot be inquired of, nor tried here: for in criminall cases, the rule is, *Vbi quis delinquit ibi punietur*: See *Co. 2. 93. 6. 47.* Yet in treason it is otherwise: See hereof *paulo antea tit. Treason. &c.*

Lamb. 333.

But whether he that is slaine, be an Alien, or a Denizen, an Englishman

lishman or stranger, it maketh no difference (if he live vnder the K. protection.)

To kill a man attainted (by verdict, or by outlawry, or otherwise) of any murder, felony, or treason, is felony: For none may kill or put to death any of these, but the Officer of iustice, and by warrant. See *Doct. & Student* f. 133.

Also to kill a man attainted vpon a *Præmunire*, is felony at this day. See the *stat. 5. Ed. 1.*

Also to kill a man that hath abiured the realm, is felony: see *Co. 7. 9. b.* and the *Doct. & Student* fo. 133.

Note, that the K. protection belongeth by the law of Nature, to all these, and the K. may protect and pardon them all.

Homicide is threefold	}	<i>Voluntate, & est</i> } Murder.
		<i>duplex.</i> } Man-slaughter, or Chance-medley.
		<i>Casu,</i> or Misadventure, this also is considerable after two sorts, } Lawful, or, Vnlawfull.
		<i>sc.</i> whether it happen in doing a thing
		<i>Necessitate,</i> this is sometimes } Tollerated } for aduancement of iustice. <i>Se defendendo.</i> Prohibited. See <i>postea tit. Homicide.</i>

But first to write something of *Felo de se.*

Felo de se. If a man kil himself (either with a meditate hatred against his own life, or out of distraction, or other humor) he is called *Felo de se*; and he shall forf. to the K. his goods and chattels real & personal, and his debts due to him by specialty (but no debts due to him without specialty, or vpon simple contract, *Dyer 262. 16. Ed. 4. 7.*)

But he shall not forf. his lands, neither shall his blood be corrupt: see *Fitz. Coron. 362. & 426.*

If a man doe giue himselfe a deadly wound, and dyeth thereof within the yeare and a day after, All his goods &c. which he had at the time of the blow giuen, or at any time after, shall be forfeited to the King.

Yet the goods of *Felo de se*, be not forfeited till his death be presented & found of record; neither can these goods be claimed by prescription, (by Lords of Liberties, &c.) but by the K. grant.

If A. do strike B. to the ground, and then draweth his knife to kill B. and B. lying vpon the ground, draweth his knife to defend himselfe, and A. is so hastie to kill B. that he falleth vpon B. his knife, and so A. is slaine: here A. in a manner is *Felo de se*: and yet shall not A. forfeit his goods in this case. *Br. Cor. 12. Sec. 44. aff. p. 17. Br. Cor. 12. et 14.* that A. was after adjudged not to be *Felo de se*, in this case.

If one that wanteth discretion, killeth himselfe (as an infant, or

Co. 7. 13. 14
Cromp. 14.

Co. 7. 14.

Dyer 262.
Flo. 261.

Fi. Cor. 303
Flo. 261.

Flo. 262.

Co. 5. 110.
21. H. 7. 33.

44. Ed. 3. 44.
Fit. Cor. 94.

Stamp. 19. Co. 7. 99. Flo. 260. Fi. Cor. 342. Co. 4. 125. or a man *Non compos mentis*) he shall not forfeit his goods, &c. If a lunaticke person killeth himselfe, he shall forfeit his goods, (if he killeth himselfe out of his lunacie, otherwise if he kils himselfe during his lunacy.)

Co. 5. 110. The enquiry of such a felony, belongeth to the Coroner; And yet if *Felo de se*, bee cast into the Sea, or so secretly buried, that the Coroner cannot haue the sight of his body, and so cannot enquire thereof; then the Iustices of Peace, or any other hauing authoritie to enquire of felonies, may enquire thereof (for that it is Felonic:) and a Presentment thereof found before them, intituleth the King to his goods.

Murder.

OF olde time every killing of one man by another, was called Murder (of the effect) because death ensued of it: Afterward Murder was restrained to a secret killing only, and therefore *Bracton* & *Britton* in their definition of Murder, calleth it, *Occulta occisio nulla presente &c.* But since murder hath bene and is taken in a middle degree, neither so largely as it first was, nor so narrowly as *M. Bract.* & *Britton* speaketh of it; For Murder is now construed to be, when one man vpon malice pretended, prepedned, or precedent, doth kill another feloniously; *viz.* with a premeditate and malicious mind, whether it be openly, or priuily done, this is felony of death.

This malice pretended or precedent, may bee either apparant (as where there was a precedent falling out, Or where there is a lying in wait, or a time & place appoynted, &c.) Or it may be lesse apparant or manifest, and yet shalbe implied, presumed, and taken to be out of malice precedent, by the manner and circumstances thereof:

Co. 9. 67. As where one killeth another without any prouocation, the Law implicth and adiudgeth it to haue proceeded of malice prepedned: Therefore if one suddenly, and without any shew of quarrell, or offence offered, shall draw his weapon, and therewith kill another;

Cromp. 23. 27. Or if one shall be reading of some booke, or otherwise busied, so as he saw not the party that shall stab or strike him (and he dieth thereof; or shall be going ouer a stile, &c. and another shall kill him; such offenders shall suffer death, as in case of wilfull murder.

1. Jac. cap. 8. And accordingly hath the Statute, 1. *Jacob.* well provided, that if one shall stabbe, strike, or thrust another, that hath not then a weapon drawn, or hath not then first stricken the other, and if the partie so stabbed, stricken, or thrust &c. shall die thereof within sixe moneths after, although it cannot bee proueed; that the same was done of malice forethought, yet the offender shall suffer death as a wilfull Murderer, without benefit of Clergie.

Co. 4. 40. & 9. 66. 68. To kill the Sheriffe, or any of his Officers, in their execution of the

the Kings Proceffe, or in doing their Office, is murder in him that killeth the Officer.

But if he be not an Officer known, he must shew his Warrant before he arrest the party, or vpon the arrest (if the other shall demand to see it,) or else it seemeth the arrest is tortious; And where the arrest is tortious (bee it by an officer knowen, or by another) there the killing of him that maketh such an vnlawfull arrest, is no Murder, but Manlaughter onely, as it seemeth. Co. 9. 69.

Againe, where an Officer hath the Kings Writ, or other lawfull Warrant, though it be erroneous, yet in the executing thereof if hee be slaine, this is Murder; Co. 9. 65.

For the Officer is not to dispute of the validitie of his Warrant, or the authoritie of the Court, or of the Iustice of Peace, that sent the Warrant. Co. 9. 68.

To kill any Magistrate, or Minister of Iustice, in the execution of their office, or in keeping the peace (according to the dutie of their office) is murder, and the law implieth it to be of malice prepenced; And therefore if the Sheriffe, Iu. of peace, high Constable, pery Constable, Watchman, or any other Minister of the King, or any that come in their aid, be killed in doing their office, this is murder. Co. 4. 49. & 9. 68.

The Sheriffe, or Iustice of Peace come to suppress R iottors, and one of the Sheriffe or Iustices company is slaine by one of the R yotters, this is murder in all the R iotters that be there present. 22. Eliz. Crom. 23.

A Constable with others to aid him, doe come to part an affray, if the Constable or any of his company shalbe slaine in doing this his office, it is murder in him that killed him, although the affray were on the sudden, and though it were in the night; for when the Constable commands them in the kings name to keepe the peace, although they cannot know him to bee a Constable, yet at their perill they ought to obey him, vpon such commandement. Co. 4. 40. Co. 9. 66.

And in these cases, the killing of such an officer, or of any of their company is in law intended to be by malice pretended: *scz.* that the murderer had a malicious resolution in him, to oppose himselfe against the law, the officers thereof, and the Iustice of the realme.

Also if a Theefe that offereth to robbe a true man, killeth the true man in resisting him, it is Murder, of malice pretended. Plo. 474. 474. Co. 9. 67.

A man caried his father (being sick, and against his will) in a frosty and cold time, from one towne to another, and the father died thereof; this was adiudged murder in the sonne. 1. Ed. 3. 18.

A Harlot deliuered of a childe, hidde it in an Orchard (it being aliue) and couered it with leaues, and a Kite stroke at it, and the childe dved thereof, and the mother was arraigned and executed for Murder. 1. Eliz. Cromp. 24.

A man

Fitz. Cor. 341. Stamf. 17. Exod. 21. 29 A man hath a beast that is accustomed to do hurt, and the owner knowing thereof, doth not tye him, or otherwise keepe him fast shut vp, but suffreth him to go at liberty, and after the beast killeth a man, this is felony in the owner of the beast; for by such sufferance, the owner seemeth to have a will to kill.

And in these three last cases, *voluntas reputabitur pro facto*, death ensuing thereupon; For it may plainly appeare, that they had a wil and meaning of that harme which followed, which will in them doth amount to malice, and so maketh their offences to be Murder: And in such cases where death ensueth, *Nihil interest utrum quis occidat, an causam mortis praebeat.*

F. Cor. 163. If a man dieth in the hand of a Phisicion, or Surgeon, this is no felony in the Phisicion, or Surgeon.

43. E. 3. 23. Lamb. 236. But if one which is no Phisicion, or Surgeon, will take a cure vpon him, and his Patient dieth vnder his hand; this hath bene holden to bee felony: but *quare* of this last case, for it cannot bee discerned whether the patients death commeth by any wilfull default, in the party taking such cure vpon him, or by the patients infirmity: againe, there appeareth in them no will to doe harme, but rather to doe good; and then the statute of 34. H. 8. 8. leaueth so great a liberty of such practise to vnskilfull persons, that it will be hard now to make it felony. But if a Smith or other person (having skill onely in dressing or curing the diseases of horses, or other cattell) shall take vpon him the cutting, or letting blood, or such like cure of a man, who dieth thereof, this seemeth to be felony; for the rule is, *Quod quisque norit, in hoc se exerceat.*

Crom. 23. Two playing at Tables, fall out in their game, and the one killeth the other with a dagger suddenly, this was holden murder, in one *Emeryes* case, before *Bromeley* at the Assises in Cheshire about 27. *El.* as *M. Crompton* reporteth.

Crom. 25. The husband, vpon words betweene him and his wife, suddenly stroke his wife with a pestell, whereon she died, and it was adiudged murder at the Assises at Stafford before *Walmesley*, 43. *Eliz.*

Quare the reason why it should be murder in these two last cases, considering there appeareth no precedent malice, and that it was done vpon the sudden, and vpon prouocation.

Lamb. 247. *A.* hath wounded *B.* in fight, and after they meet suddenly & fight againe, and *B.* killeth *A.* this seemeth murder, and malice shall bee intended in *B.* vpon the former hurt: but now if *A.* had killed *B.* this seemeth but manslaughter in *A.* for his former malice shalbe thought to be appeased by the hurt he first did to *B.*

Two are in suite, and they meet suddenly, and quarrell about the suit, and the Defendant killeth the Plaintiff; this seemeth murder. *Tamen quare.*

V 2

Also

Poysoning. Also wilfull killing of another by poyson, was, and is murder by the Common law. See *Stamf. 21. & Br. Indictment 41.*

The husband gaue a poysoned apple to his wife, to the intent to kill her, and she not knowing of it, gaue it to her childe, who died thereof, this is murder in the husband, and yet he loued that childe dearly: and so had it bene if a stranger of his owne accord had after eaten thereof, and died thereof: for the putting of poyson into the apple &c. vpon an euill and felonious intent, maketh it murder, who soeuer be killed thereby. *Co. 9. 81.*

A. bringeth drinke that was poysoned (knowing of it) to *B.* who aduised *B.* to drinke of it, telling him it would doe him such good, by reason of which perswasion, *B.* drunke of it (in the absence of *A.*) and died thereof, this was adiudged murder in *A.* *Co. 4. 44.*

If one giueth corrupt victuall to another, to the intent to poyson him, and he dieth thereof within the yeare and day, this is murder. *Cromp. 30.*

But if a man shall prepare Rattes-bane, &c. to kill Rattes &c. and shall lay this in certaine places to that purpose, without any euill intent, and another man findes and eates this, and dieth thereof, yet this is no felony. *Co. 9. 81.*

The Master vpon malice precedent, goeth to kill another, and taketh his seruants with him, (but they know nothing of their Masters intent) and the Master and his seruants doe meet the other, and doe assault and kill him, this is murder in the Master, and but manslaughter in the seruants. *Plo. 100.*

Rules. 1 Note, that when a man hath malice to one, and intending, and endeouoring to kil him, he killeth another man, this is murder whom soeuer he killeth. *Vide Plo. 101. Dyer 128. Fitz. Coron. 262. Stamf. 16.* For his intent was to doe murder. *Plo. 474.*

Nay, if two fight vpon malice pretended, & in their fight a stranger (that would part them) is killed, this is murder in them both, if it may not be proued which of them did kill him. *Lambt. 238. Fitz. Coron. 262. Dyer 118.*

A man vpon malice, shooteth at one, or lieth in waite to kill one, and killeth another vnwittingly, in both these cases it is murder. *Plo. 474.*

2 Note also that in all cases where a man commeth or goeth about to do any thing vnlawfull, as to kill, beat, or disseise another, or to doe any other trespassse, and in doing this, he killeth any man, this is murder. See *Cromp. 24. b.*

One stealing Peares in another mans Orchard, and the owner came and rebuked him, and the other killed him, this was adiudged murder, *4. Maria.* *Crom. 24. Lambt. 237.*

Also where a man commandeth another to beat *A.* and hee bea- teth him, so as *A.* dieth thereof, this is murder in him that gaue this commandement to beat him, for that he commaunded him to doe an vnlawfull act, by reason whereof the killing of a man ensued. *Plo. 475. Fitz. Coron. 314.*

3 Note

Br. Cor. 172. Fitz. Coron. 350. Co. 11. 5. 3 Note also, that if diuers persons come in one company to doe any vnlawfull thing, as to kill, rob, or beate a man, or to commit any Ryt, or affray, or to doe any other trespassse, and one of them in doing thereof, killeth a man, this shall bee adiudged murder in them all that are present of that party, although they did but look on &c. See *Stamf. 40. Fitz. Indictment 22.*

Nay, if they be not present, yet if they be in the same house, or vpon the same ground, it is murder in them all. See the Lord *Dacres* case. *Cromp. 25.*

Plo. 100. See here. 4 Note also, that all that are present, and aiding, abetting, or comforting to another to do murder, are principall murderers, although they shall giue neuer a stroke. See more *4. H. 7. 18. 13. H. 7. 10. Fitz. Coron. 309. Co. 9. 67. 112. & 11. 5.*

As if *A.* and *B.* fall out, and appoint the field, and they meet accordingly, each of them bringing company with them, *A.* killeth *B.* this is murder in all those that came with *A.*

5 Note also, that in case of murder, it is not materiall who giueth the first blow; for if hee that is slaine gaue the first blow, yet if there were malice prepenced in the other, it is murder in him that killed him.

6 Also in case of poysoning, the party poisoned must die thereof, within a yeare and a day, after the poison receiued.

Coron. 303. Co. 4. 43. Also, if a man do beat or hurt another, wherof he dieth, to make it murder or other homicide, the party hurt must dye within a yeare and a day next after the hurt done, or stroke giuen. But to haue an appeale, it shall haue relation to the death, and not to the stroke, so as the appeale must bee brought within the yeare after the death, and not after the stroke.

F. Cor. 6. 263. Stamf. 11. c. See Exo. 21. 22. 27. It was death by the law of God. Lambt. 229. Br. Coron. 68. 91. 7 Note also in murder, or other homicide, the party killed must be in esse, (*sc. in reru natura.*) For if a man hurteth a woman with child, whereby he killeth the infant in his mothers wombe, by our law, this is no felony; neither shall he forfeit any thing for such offence: and whether (vpon a blowe or hurt giuen to a woman with child) the child die within her body, or shortly after her deliuary, it maketh no difference: yet *Mr. Braſton* tooke it to be homicide, if the blow were giuen *postquam puerperium animatum fuerit*: But if the mother of the child die within a yeare and a day after such hurt done to her, and vpon that hurt, this is felony.

In cases of murder or poisoning, the offenders shall not haue the benefit of clergy. *1. E. 6. c. 12. 23. H. 8. 1. & 26. H. 8. 12.*

Note also that by the law of God, no recompence was to bee taken for the life of a murderer, *Nomb. 35. 31.*

13. R. 2. c. 1 P. Pardon 3 Plo. 502. And by diuers old Statutes, no Charter of pardon ought to bee graunted to any person in case of murder, or other homicide, saue onely

onely where a man killeth another in his owne defence, or by misfortune. See *P. Pardon. 1.* See also the statutes of *6. E. 1. c. 9. 2. E. 3. c. 2 4. E. 3. c. 13. & 14. E. 3. c. 15.*

And by our law at this day, a pardon of all felonies, will not discharge murder, except the pardon be with a *Non obstante &c.* or that murder be expressly mentioned in the pardon.

Neither wil a pardon of all felonies discharge a man that is attaind of felony, except also the attainder and the execution be pardoned. See *9. Ed. 4. 29. Co. 6. 13. b.*

Note, that he which hath a pardon for felony, if he hath not found sureties for his good Abearing; Or if afterwards during his life, hee shall breake the peace, such Pardon shall be holden for none, but that hee may bee hanged, notwithstanding his Pardon: for by the Pardon, the offence, *regitur, non tollitur.* See the stat. *10. Ed. 3. ca. 3. P. Pardon 5. & 3. H. 7. 7.* where one was executed vpon this statute, for making an affray after his Pardon. *Br. Coron. 134.*

None haue authority to pardon any treason, murder, or other felony, or any accessary to the same, saue onely the King; it being one of his royall prerogatiues.

Manslaughter.

Manslaughter in the right signification thereof implieth all manner of Homicide, and is the generall, as well to murder, as to the rest: Neuertheless for that in common speech it is restrained to Manslaughter by Chauncemedly alone, in that sence I will heere write of it.

Manslaughter, otherwise called Chauncemedlye, is when two doe fight together vpon the sudden, and by meere chance, without any malice precedent, and one of them doth kill the other; this also is felony of death.

And yet in case of manslaughter, the offender shall haue the benefit of Clergy: and by the law of God, there was a citie of refuge appointed for such to flee vnto. *Exod. 21. 13. Deut. 19. 3, 4.*

Two fall out vpon the sudden and fight, and the one breaketh his weapon, and a stranger standing by (yet being none of their company) lendeth him a weapon, and therewith he killeth the other; this is Manslaughter as well in him that killed the other, as in the stranger, who lent him his weapon.

A. and *B.* fall out vpon the sudden, and fight, and *A.* is so fierce, that he runneth vpon the others weapon, and is slaine, yet this seemeth manslaughter in *B.* for he should haue fled to some wall or strevt &c. *Quere.*

And if *B.* had fled to a wall &c. and *A.* pursueth him, and *B.* perceiving that *A.* would assault him, holdeth his weapon betweene them, and

See the 2.
Sta. 13. R. 2. 1

3 H. 7. fo. 7

27. H. 8. 2. 5.
P. P. 17.

and *A.* runneth vpon the weapon, and is slaine, this is homicide in his owne defence, and for which *B.* shall forfeit only his goods: but otherwise it had bin if *B.* had fallen, and lying vpon the ground had drawn his knife or dagger, and *A.* falleth thereon, and so is slaine, for then *B.* could not flie nor make any other defence for his safetie, and therefore heere *B.* shall not forfeit his goods, nor be culpable of his death, but bee discharged; for *A.* in manner killed himselfe. See heere of *postea.*

Two combat together vpon the sudden, and part, and presently after meet and fight againe, and the one killeth the other; or the one presently fetcheth a weapon, and commeth and killeth the other; these seeme but manslaughter, for that it is done all in one continuing fury, which was at the first without malice, and could not in so short time be appeased, or asswaged. *Cromp. 23. b. 24. a. 26. a. b.*

So if two haue borne malice the one to the other, and be reconciled, and after meeting againe, they fall out vpon new occasion, and by agreement immediatly they go into the field and fight, & the one killeth the other; this seemeth but manslaughter, (*causa qua supra:*) vnlesse the respire or distance of time or place had bene such, that by reasonable coniecture their heat might be asswaged.

See more of Manslaughter, before in Murder, and after in Misadventure.

What persons are charged with Homicide, and what not.

If one that is *Non compos mentis*, or an ideot, kill a man; this is no felony; for they haue no knowledge of good and euill, nor can haue a felonious intent, nor a will or mind to doe harme: And no felony or murder can be committed without a felonious intent & purpose; for it is called *Felonia, quia fieri debet felleo animo.* *Co. 4. 124. b.*

So it is, if a lunatike person killeth another during his lunacie, (see *Cok. 4. 125.*) for all acts done by him in his lunacie, are as the actes of an Ideot.

Now there be 3. sorts of persons accounted, *Non compos mentis*, to this purpose, and the like.

1 A foole naturall, who is so (*a natiuitate*) from his birth; and in such a one there is no hope of recouery.

2 Hee who was once of good and sound memorie, and after (by sickness, hurt, or other accident, or visitation of God) looseth his memorie.

3 A lunatike, *qui gaudet lucidis interuallis*, & sometimes is of good vnderstanding and memory, and sometimes is *Non compos mentis.*

An Infant of eight yeares of age, or aboue, may commit Homicide, and shall be hanged for it, *viz.* If it may appeare (by hiding of the person slaine, by excusing it, or by any other acte) that hee had know-

Fitz. N. Br.
202.
2. H. 7. 33.
Plow. 10.
Co. 4. 124.

Co. 4. 124.

P. R. 122. b.
Stam. 16 a.

and

knowledge of good and euill, and of the perill and danger of that offence. See 3. Hen. 7. 1. & 12. Stamf. 27. Fitz. Coron. 118. 126. & Br. Coron. 133. 136.

But an infant of such tender yeares, as that he hath no discretion Plow. 19. or intelligence, if he kill a man, that is no felony in him. 3. H. 7. 1. b.

If one that is dumbe killeth a man, it is felony: yet *quare* how he shall be arraigned.

A man borne deafe and dumbe, killeth another, that is no felony: for he cannot know whether he did euill or no; neither can haue a felonious intent &c. See hereof *tis. Suretie for the Peace antea. Quere* if he were not so borne, but becommeth so afterwards. See Br. Coron. 101. & 217.

Note in these former cases of Homicide, committed by persons being *Non compos mentis*, or wanting discretion, such things happen by an involuntary ignorance, and therefore the law accounteth such act of theirs to be no felony.

But if a man that is drunke, killeth another, that is felony; for it is a voluntary ignorance in him, in as much as such ignorance cometh to him by his owne act and folly. Plow. 19. Co. 4. 125.

Misadventure.

Homicide by Misadventure or Misfortune, is when any person doing of a lawfull thing, without any euill intent, happeneth to kill a man: by the Law of God there was a citie of refuge appointed for such person to flie vnto, *Nomb. 35. 15. & 22. Iosh. 20. 3.* And by our Law now, this is no felony of death: for hee shall haue his Pardon of course for his life and his lands; yet hee shall forfeite his goods, in regard that a subiect is killed by his meanes. See *Stamf. 16 a. b. Fitz. Coron. 69. 302. & 354.*

As if a Schoolemaster, in reasonable manner beating his scholler, for correction only: or a man correcting his child, or seruant in reasonable maner; and the scholler, child, or seruant happen to die thereof, this is homicide by misadventure. See Exod. 21. 20. 21. Stamf. 12. c.

So if a man shooting at butts, pricks, or other lawfull marke, and by the shaking of his hand, or otherwise against his will, hee killeth one that standeth or passeth by. 21. H. 7. 29. Rede. 6. Ed. 4. 7.

So if a Carpenter, Mason, or other person doth throw or let fall a stone, ryle, or piece of timber from an house, or wood, or other thing from a cart, &c. (and giueth warning thereof) and another is killed thereby against his will. 21. H. 7. Br. Coron. 59.

So if a labourer that is felling, or cropping of a tree, and the same, or part thereof falleth and killeth a man. 6. Ed. 4. 7. f. Coron. 398.

So, if the head of his hatchet, or other toole falleth from him, and happeneth to kill one standing by. *Dent. 19. 15.* accordeth. Plow. 19.

So;

So, if a man be (in due and conuenient time) doing any other lawfull thing, that may breed danger to such as passe by, and shall giue warning thereof, so that such as passe by, may heare and flie the perill, and yet another passing that way, shall be killed therewith.

And so if men shall run at Tilt, Iust, or fight at Barriers together by the Kings commandement, and one of them doth kill another; In these former cases and the like, it is misadventure, and no felony of death. 11. H. 7. 23. See Br. Coron. 229. contra.

And yet in cases of Misadventure, as also where one killeth another *Se defendendo*, by the Common Law these offences were felony of death, and the offendor should haue died for the same; But now by stat. such offenders are to haue pardon for their life & lands, yet their goods remaine forfeit as before (at the common law.) See the stat. 6. E. 1. c. 9. & 2. E. 3. c. 2. 21. E. 3. fo. 17. Br. Cor. 40. & forf. 9. 13. 15.

Also in these cases of misadventure, and in the former cases of homicide committed by infants, and other persons, being *Non compos mentis*: As also where one killeth another in defence of his person, they shall be discharged in this manner, *scz.* if they desire to purchase their pardon, they must, vpon their triall, plead not guilty (and shall giue in evidence the speciall matter) and then this speciall matter being found by Verdict, they shall bee bayled, and then they must sue forth a *Certiorari*, to haue this Record certified to the Lord Chauncellor of England, who thereupon shall make them a Charter or Pardon of course vnder the great Seale, without speaking or suing to the King for it. See *Stamf. 15. 1.* Fitz. 246. c. & 248. b. Br. Cor. 1. See stat. 6. E. 1. 9. 4. H. 7. fo. 2. 2. Reg. fo. 309.

But if a man be doing of an vnlawfull act, though without any euill intent, and he happeneth, by chance, to kill a man, this is felony, *viz.* manslaughter at the least, if not murder, in regard the thing hee was doing, was vnlawfull. Stamf. 16. c. Unlawfull all.

As shooting of arrowes, or casting of stones into a highway, or other place, whither men doe vsually resort. Stamf. 12. c.

So of fighting at Barriers, or running at Tilt or Iusts without the Kings commandement, whereby a man is slaine: And although it were by the Kings commandement, yet it was holden felony by the Iustices *tempore H. 8.* 11. H. 7. Br. Cor. 229.

Playing at hand-sword, bucklers, foot-ball, wrestling, & the like, whereby one of them receiueth a hurt, and dieth thereof within the year and day; in these cases, some are of opinion, that this is felonie of death: some others are of opinion, that this is no felony of death, but that they shall haue their Pardon of course, as for misadventure, for that such their play was by consent, and againe there was no former intent to doe hurt, nor any former malice, but done only for disport, and triall of manhood. 11. H. 7. 23. Crom. 26. b. & 29. a.

A man casteth a stone at a bird, or beast, and another man passing by

by is slaine therewith, *quare* whether this be manslaughter, or but misadventure; The opinion of *Fineux* chiefe Iustice in 11. H. 7. fo. 23. is, that if a man cast a stone ouer a house, and killeth a man, this is no felony, but misadventure: But *Maſt. Brooke* abridging this case, saith, it seemeth to be no law, but where the casting of a stone is lawfull, as where a mason is vntiling of a house, &c. but to cast it for pleasure, and not in lawfull labour, seemeth to bee felony; and so was the opinion of *M. Bracton*, and *M. Stamford*.

Casuall Death.

Also a man may be slaine by other casualty, then by the hands or meanes of another man, as by the fall of a house, pit, or tree, &c. vpon him; or be killed by a Bull, Beare, or other beast, &c. or bee killed by some fall, which he himselfe taketh.

And in these and the like cases, obserue these rules:

1 First, if a man be slaine in any such manner, yet if it bee by the meanes or procurement, or wilfull default of another man, this shall be felony in the party procuring or causing it.

2 The thing which is the cause of such casuall death, shall be forfeit to the King, taken for a Deodand, and distributed in almes by the kings Almner. But the Almner hath no interest, as it seemeth in such goods, but hath onely the disposition of the Kings almes, *durante bene placito*, so that the King may graunt them to any other. See *Co. 1. 30. Dyer 77.*

3 The forfeiture shall haue relation from the stroke giuen; so as the party or owner selling thereof (scz. of such thing as was cause of such death) after the stroke giuen, taketh not away the Kings right, but that he shall haue it as forfeited, notwithstanding such sale.

4 Deodands are not forfeited, vntil the matter be found of record, and therefore they cannot be claimed by prescription.

5 The Iury which find the death of the man, must also finde and appraise the Deodand; and the Sheriffe shall be charged with the price of such Deodand, and shall leuy the same of the towne where it falleth, although it were not committed to the town to keepe; and therefore it behoueth the towne to see it forth comming. See the statute *de Officio Coronatoris. 4. Ed. 1.*

6 If he that is so slaine, be vnder 14. yeares of age, nothing shall be forfeit to the King, as Deodand for him as it seemeth.

And if a man that is vnknown, be found dead in the field, his apparell and money about him shall be giuen to the poore, &c. And if he were known, then his goods shall be deliuered to his Executors or Administrators, or to the Ordinary; but shall not be taken as a Deodand, in either case (for they are not of the nature of a Deodand) they being no cause of his death.

Next,

Next, what shall be forfeited and taken for a Deodand; The old rule is, *Omnia quae mouent ad mortem, sunt Deodanda*: And yet besides, Deodands may bee of some things that a man shall moue or fall from, though the thing it selfe moues not; as to fall from a ship, cart, mow of corne or hay, &c. So as Deodands are any goods which doe cause or are occasion of the death of a man by misadventure. See more, *Fitz. Coron. 314. 326. 341. 342. 348. 388. 389. 398. 401. 409.*

If a man killeth another with my sword (or other weapon of mine) my weapon shall be forfeited as a Deodand. *Doct. & St. fo. 156. b.*

The inquiry of such casuall death, belongeth also to the Coroner: but if the Coroner cannot haue the sight of the body, and so cannot inquire thereof, *quare* how the King shall be intituled to the goods.

Homicide vpon necessitie.

Sometimes the Iustice of law commaundeth a man to bee put to death. As when the Iudge hath pronounced sentence of death against an offender (attainted by due course of law) there (in execution of Iustice) an officer, or other person thereto lawfully deputed, may orderly execute such iudgement or sentence according to his Warrant: and such sentence or iudgment pronounced by the Iudge, and after lawfully executed by the officer, leaueth the name and nature of murder, or homicide, and is called Iustice, or rather Iudgement, which is the lawfull execution of Iustice.

But if the officer, or other person, shall proceed therein vpon his owne authoritie, without Warrant, or *Non obseruato ordine iuris*; as where an offender hath iudgment giuen vpon him to bee hanged, if the Sherife, or other officer &c. shall behead him, or by other meanes put him to death; this is felony in such officer &c.

Also if a stranger, being not thereto lawfully deputed, shall (vpon his owne authority) put to death an offender that is condemned to die, this is felony.

Nay if the Iudge himselfe, who gaue the iudgement of death vpon an offender, shall after put the same offender to death, it is not iustificable by him.

Sometimes also the Iustice of law, tollerateth and suffereth a man to be slain, scz. for the necessary execution & aduancement of iustice, which otherwise should be left vndone: And in such case, the law of the land impureth it not as any fault to him that shall so kill a man, but freely discharge him thereof, without the Kings Pardon.

As a Sheriffe, bailiffe, or any other person who hath a lawfull warrant to arrest a man indired of felony, may well iustifie the killing of him, if he will not suffer himselfe to be arrested, and yeeld himselfe, and that they cannot otherwise take him.

And so euery person whatsoever without any warrant may apprehend a felon vpon huy and cry, or otherwise; and if hee will not yeeld

yeeld to bee arrested, but shall resist, or flie, the pursuer may kill him without blame.

Herewith also agreeth the Doctor and Student, *lib. 2. cap. 41.* saying, If any person that is no Officer, would arrest a man that is outlawed, abiured, or attainted of Murder, or of any other Felony, and such offender shall disobey the arrest, and by reason of that disobedience hee is slaine, the other shall not bee impeached for his death; For it is lawfull vnto euery man to arrest, and take such persons, and to bring them forth, that they may be ordered according to the law.

An offender in felony is led towards the Gaole, and breaketh away from those that condu& him, and maketh resistance, or flyeth; his conductors may iustifie to kill him, if they cannot otherwise take him againe.

A prisoner in the gaole attempeth to escape, and hauing broken his irons, striketh the Gaoler (comming in the night to see his prisoners) and the Gaoler slayeth such a prisoner, this is no felony.

Ryotters, and such as shall make any forcible entry, or deteyner, against the statutes, if they shall resist the Iustices of Peace, or other the Kings Officers, or shall not yeeld themselves, but shall stand at their defence, when the Iustice of Peace, or other Officer shall come to arrest, or remooue them, if any of them happen to bee slaine, this is no felony in the Iust. of Peace, or officer, or in any of their company that killed such Ryotters, &c.

The Sheriffe, or his Bailiffe, or other officer commeth (by verue of the Kings Proesse) to arrest another for debt, or trespassse, who maketh resistance, and thereupon is slaine by such Officer, or any of his company, this hath bene taken to be no felony, *tamen quare.*

But in all these former cases, there must be an ineuitable necessity, *sc.* that the offender could not be taken &c. without killing of him.

Also in an appeale of felonie, if the Appellant and Appellee doe ioyne to trie it by battell, and therein the one doth kill the other; as the law doth allow such triall, so doth it allow the euent to bee iustifiable, as depending vpon the iudgement of God, who giueth victory according to truth.

Also, when one man killeth another in the necessarie defence of himselfe, or his, thereby to deliuer himselfe, his possessions, or his goods, or some other persons, which he is bound to defend from perill, and which cannot otherwise escape; this is Homicide tolerated vpon necessitie:

As

To kill an offender, which shall attempt feloniously to murder or rob me in my dwelling house, or in or neere any highway, horseway, or footway, or that shall attempt burglarily, to breake my dwelling house in the night; this is iustifiable by my selfe, or by any of my seruants, or company.

And

Se defendendo tolerated.

And this being so found by verdict vpon triall, we shall be all discharged without losse of life, lands, or goods, or pardon.

To kill a theefe or murderer in the defence of my person, my house, or goods, was no felony, but iustifiable by the common law, before the statute of 24. H. 8. ca. 5. *Stamf. 14. See Co. 5. 91. & 11. 82. Br. Coron. 100. 102.*

And if one or moe come to burne my house, I, or any of my seruants, may iustifie to shoote forth of my house at them, and to kill them, for such intent of theirs is felonious.

But if a man shall forcibly get, & keep possession of a house, & the other shall come in the night & fire this house, they within cannot iustifie to shoot and kill him, or any of his company, for that they in the house were there vnlawfully. *See Cromp. 26. b.*

If one commeth (in the day time) to my house, to beat me, & doth make an assault vpon me in my house, & fighteth with me, and I kill him in defence of my person, yet in this case I shall forf. my goods, and must haue the K. pardon, except it be found, that the assailant came with a felonious intent to kill or rob me.

And if one commeth (in the day time, or in the night) to enter into my house, pretending title thereto, & to put me out of my possession, and I kill him, this seemeth to be manslaughter in me.

Note if one kil a true man, in defence of his person, there ought to be so great a necessity, that it must be esteemed to be ineuitable, or otherwise it wil not excuse: and therefore he that shall be assaulted by a true man, must first fly as far as he can, & til he be letted by some wal, hedge, ditch, presse of people, or other impediment; so as he can sic no further without daunger of his life, or of being wounded or maimed: and yet in such case if he kil the other, he shall be committed till the time of his triall, & must then get his pardon for his life and his lands, (which pardon notwithstanding he shall haue of course) but he shall loose & forf. his goods & chattels, for the great regard which the law hath of a mans life, *Co. 5. 91. b. See hereof paulo antea tit. Felony by casualty.*

A. maketh an affray vpon B. and striketh B. and B. flyeth so farre as he can for sauing his life, before any stroke giuen by B. and A. continueth his assault, whereupon B. doth also strike A. and killeth him, this is Homicide in his owne defence: otherwise it seemeth to some, if B. had stroken the first blow, or had stroken before hee had fled: and yet by other good opinions the first stroke, or who began the affray, is not materiall, but the whole matter will consist vpon the ineuitable necessity (*sc.* whether the said B. who killeth A. could not haue escaped with his life &c. without killing A.) for otherwise it wil not excuse B. for *cuncta prius tentanda*; And as it is a charitable, so it is a safe principle (in these cases) not to trie an

24. Aff. 32.
f. Coro. 161
305. & 330.

26. aff. 22.

f. Coro. 375.
See here
178.
Co. 5. 91.

Stamf. 14.

Co. 5. 91.
4. H. 7. 22.

6. E. 1. c. 9.
P. Pardon 1

Stamf. 15.

Prohibited.

The penaltie.

extremite, till thou hast tried all meanes.

Also it is holden in the former case, if *B.* (before he had fled) had stricken *A.* and giuen him diuers wounds, that yet if he fly to a streight before he giue *A.* the mortall wound, and then he giueth his deathes wound, this is homicide in his owne defence.

f. Coro. 284.
& 286.
Stamf. 15.

But in the former case, if *B.* vpon malice prepenched had first stroken *A.* & then *B.* flyeth to a strait or wall, and *A.* pursueth him, and striketh him, & *B.* killeth *A.* therupon, this is murder in *B.* for the malice prepenched was the ground and beginner hereof.

f. Coro. 387.
Cromp. 22.
28.b.

Yet if there had bene former malice between *A.* and *B.* and they meet sodenly, and *A.* assaulteth *B.* and *B.* before any stroke by him giuen flyeth so far as he can, and *A.* pursueth him, & then *B.* killeth *A.* this seemeth to be homicide in his own defence notwithstanding the former malice.

Capstones case: There was malice betweene *Capstone* and one *S.* and they had fought diuers times, and after met sodenly in London street, and *C.* told *S.* that he would fight with him, and *S.* answered that he had nothing to say vnto him, and *S.* went to the wall, and after *C.* assaulted *S.* and then *S.* stroke and killed *C.* and it was found that *C.* began the affray, and *S.* was thereupon discharged without forfeiting any thing: But that was by force of the statute 24. H. 8. ca. 5.

15. EL.
Cromp. 27.

A man in fight falleth to the ground, there his flying &c. is not necessary &c. see here pag. 214.

Also if a thiefe assaults to rob or kill me, I am not bound to fly to a wal &c. as I must in case a true man assaults me.

Stamf. 14.

If an Officer of iustice, or Minister of the law, in the execution of his office, be assaulted, he is not bound to fly to a wall &c. as other subiects are.

Co. 9. 98.

Also the seruant may iustifie the killing of another, in defence of his masters person or house, if the hurt cannot be otherwise auoided

21. H. 7. 39.

Br. Coron. 63. Also the seruant may iustifie the killing of him, who robbed and killed his master, so that it be done presently.

In the defence of the possession of my goods, I may iustifie to beat him that shall wrongfully take them from me: but I cannot iustifie to kill him, except he be a thiefe.

So then to kill a true man in defence of my person, in case where there is an ineuitable necessity (i.e. that I first shall flye so far as I can for sauing my life &c.) this is no felony of death &c. But otherwise it is to kill a true man in defence of my house, lands, or goods, that is manslaughter (at least) as it seemeth.

If any forester, parkeeper, or warreiner, or any in their company, shall kill an offender in their forest, parke, or warrine, which

27. Ed. 1.
P. Forests 46
Stamf. 1. 14
huy

huy and cry leuyed to keep the P. and to obey the law) will not yeeld themselves, but will fly, or defend themselves by violence, this is no felony: Yet *quare*, if there were any former malice in such Keeper: But if any such keeper by reason of any former malice, will lay to any mans charge, that he came to do hurt, whereas he did not, neither was found wandring nor offending, and so kil him, this is felony in such keeper.

Burglarie.

Burglary, is when one or moe in the night time, do break a dwelling house, or a Church, or the wals or gates of a city, or walled towne, with an intent to do felony, although he or they carry away nothing, yet it is felony of death, and the offenders shall not haue the benefit of their Clergie.

22. E. 3.
18. EL. 6.

First for the time: Burglary cannot bee committed in the day time, but onely in the night, for all Indictments of Burglary, be *Quod noctantur fregit*: And the night (to this purpose) beginneth at the Sunne setting, and continueth to the Sunne rising: And therefore to breake a house &c. after the Sunne setting, and before it be darke; or after day light in Summer, and before the Sunne riseth, is Burglary.

Br. Cor. 185
Stamf. 30.
Co. 11. 36.
21. H. 7.
See the ri-
de Watch.

Next, for the manner: It is holden (by some good opinions) that if a man breake the house to doe felony, and yet entreth not, it is no Burglary; and that the Indictment must be *fregit & intravit*: And yet by the opinion of *Shard*, 27. *Aff.* 38. and by the opinions of sir *Anthony Browne*, sir *Edward Montague*, and sir *Rob. Brooke*, late chiefe Iustices of the Common Plees, and others, as *Mast. Crompton* reporteth if a man do but attempt or enterprife to breake or enter into a dwelling house by night, to the intent to rob, or kill any person there, though he make no actuall entry, yet it is a ful and compleat Burglary:

Stamf. 30.
Dyer 99.
Br. Cor. 106

Cromp. 31.
32. 33.

As to put backe the leafe of a window, with his dagger.

To draw the latch of the doore.

To turne but the key, being on the inner side of the doore.

So to breake the glasse windowe, & to draw out any goods there with a hooke, &c. 26. EL. at Staff. Assises.

So to breake a hole in the wall, and to shoote in thereby at any within the house.

So (the doore being opened by some of the house) if any the attempters shall discharge a dag against any in the house, and in discharging his dag shall hold his had ouer the threshold, though he see no foot ouer.

26. EL.

So if vpon an attempt of burglary, they within the house, shall cast out their mony for feare, and the attempters take it away.

And yet there is no actuall entry made, in any of these cases.

But if a theefe setteth but his foot ouer the threshold, or into any part of the house to commit felony, this much more shall conuict him of Burglary.

Also one being let down the chimney in the night to commit felony, it was adiudged Burglary by sir *R. Manwood*, chiefe Baron, and yet he broke not the house. Cromp. 32.

So is it to come into the house by the help of a key.

So if sodenly one come into the house by night, the doores being open, and the owner fleeth to his chamber, and the offender is taken shewing at the chamber doore.

So it is, if theeues pretending that they be robbed, &c. shall come to the constable, & pray him to make search for the felons, & going with the constable into a mans house to search, they rob the good man of the house; this is Burglary.

So if a seruant conspiring with another to rob his Master, shall open his Masters doore or window in the night, & the other entreteth thereat, this is Burglary in the stranger, by the opinion of sir *Roger Manwood*. 21. El. Termes 34.

And yet the house was not broken in any of these cases.

But if one commeth into my house in the day, and there hideth himselfe till night, and then robbeth me: or if I shall lodge one in my house, and in the night he robbeth me (*sc.* goeth out of my house and taketh away some of my goods with him) yet this is no Burglary, for that he broke not my house: for the first case it was so holden at Derby. *Aff. 32. El. Cromp. 34.*

Also if diuers come to commit Burglary, and but one of them entreteth and commit it, the rest standing about the house, or not farre off, to watch that no helpe shall come; this is Burglary in all that company. 11. H. 4. 13.

The place.

Now concerning the place, it may be either publique, or priuate; publique, as the Church, or wals, or gates of a city, or walled towne; priuate, as a dwelling house: and here commonly it is no Burglarie, vnlesse some person be at that time within the house.

And yet if a man hath a dwelling house, and he and all his family (vpon some occasion) are part of the night out of the house, & in the mean time one commeth and breaketh the house to commit felony, this is Burglary. Co. 4. 40.

So if a man hath two dwelling houses, and sometimes dwelleth at the one, and sometimes at the other, and hath a family or seruants in both, and in the night when his seruants are out of the house, the house is broken by theeues; this is Burglary. *Adiudged, 38. Eliz.* Co. 4. 40.

If one breaketh a Chamber in Lincolnes Inne, (or in any other house Cromp. 33.

house of Court, or Chancery, or in any Colledge in Cambridge, or Oxford &c.) in the night, to the intent to commit felony there; this is Burglary, although there were no person in the same chamber; For that Colledges and houses of Court and Chauncery be entire houses, wherof such chamber is parcell; so that if any person shall be in any other chamber within the same house or Colledge at the same time, it is Burglary.

Cromp. 32. One *P.* was arraigned of Burglary, *Anno 22. Eliz.* for that he assaulted one of his companions of the Inner Temple London, in his chamber there, to haue killed him in the evening, &c. but had his pardon.

2. Ed. 6. Br. Cor. 183 Lamb. 156 Also the breaking (in the night) of a stable, barn, or other out house adioyning, or neere to the dwelling house, to the intent to steale, is burglary, though he take nothing.

At Summer Assises at Cambridge, *anno dom. 1616*, two men were arraigned and condemned for burglary before sir *James Altham*, knight, for robbing a backhouse of *Rob. Castle* Esquire, in the night, which backhouse was some 8. or 9. yards distant from his dwelling house, & only a pale reaching between them: so that though this offence be not committed in the very body of the dwelling house, but in some other house neere vnto it, and being parcel of or belonging to the dwelling house, it is burglary.

Co. 11. 37. But a booth or tent in a faire or market, are not esteemed in law for a dwelling house, nor the breaking thereof in the night time to be burglary; although the robbing of them be made as penall as burglary, if the owner, his wife, children, or seruants, were within the same.

11. 38. 95. Stamf. 126. Co. 11. 31. Lastly (to make it Burglary) the purpose and intent for which the offender commeth, must of necessity be, to kill, or rob some person, or to commit some other felony, otherwise it is neither burglary nor felony. *The intent.*

12. H. 4. 7. f. Coro. 267. And therefore to breake a house in the night, to the intent to kill any person therein, it is burglary, although he neuer touch him.

Fi. Cor. 187. & 264. So it is, if the purpose were to rob, although the offender taketh away nothing.

Stamf. 10. Co. 11. 31. But if a man breake and enter an house by night, of purpose only to beat a man, that is but trespasse.

Lamb. 260. Cromp. 32. And if the intent were to commit a Rape, which some thinke to be no felony by the Common Law, but onely a Trespasse, then there is some doubt, sayeth Master *Lambert*: But Master *Crompton* sayeth, that if a man breaketh anothers mans house in the night, and rauiltheth a woman there, this is no burglary; For saith he, Rauilishment is no felony by the Common Law, as Burglary is, although it be Felony at this day by the statute: *tamen quare*, for it may seeme

by M. *Bracton*, *Glanuill*, and *Stamford*, That by the ancient Common Law it was felony. The words of M. *Bracton* lib. 2. are thus, *Olim quidem corruptores virginitatis & castitatis suspendebantur, &c. modernis tamen temporibus aliter obseruatur, quia pro corruptione virginis, amittuntur membra, &c.* And a little after, *Adelstanus; raptus mulierum ne fiat, defendit tam lex humana, quam diuina: Et sic fuit antiquitus obseruatum, quod si quis obuiauerit solam, cum pace dimittat eam, &c. Si autem contra voluntatem suam &c. iactat eam ad terram, forissacit gratiam suam, &c. Quod si concubuerit cum ea, de uita & membris suis incurrat damnum, &c.* And with this Master *Glanuill* also agreeth, fol. 112.

Also amongst the Lawes of Saint *Edmund*, sometimes King of this Realme, you shall find this Law. *Qui cum Nunna uel sanctimoniali fornicetur, emendetur sicut homicida; A multo fortiori, then saith Master *Stamford*, shall hee be punished, if hee had rauished her? So as Rape at the first, saith *Stamford*, was grievously punished, vntill the time of King *Edward* the first, who seemed to mitigate the paine thereof by the Statute of Westminster, 1. cap. 13. which gaue two yeares imprisonment and fine: But spying the mischiefes ensuing vpon the said Law, at his next Parliament holden at Westminster, 2. cap. 34. he made the offence of Rape to be felony againe. *Br. Coron.* 204.*

Note also by *Britton*, f. 17. it is not Burglary in an Infant vnder 14 yeares of age; nor in poore persons that vpon hunger shall enter a house for victuall vnder the value of xij. d. Nor in naturall fooles, or other persons that be *non compos mentis*; But *quare*, of poore entring for victuall at this day.

Theft.

THeft, is the taking away of another mans goods, with an intent to steale them, against (or without) the will of him whose goods they be: And this is of two sorts, Robbery, and Larceny.

Robberie.

Robberie (in Latine called *Rapina*) is properly the felonious taking of any thing from the person of another, against his will, and putting him in feare therby: and here although the thing taken, be but to the value of an halfe peny, yet it is felony, for which the offender shall suffer death, without benefit of Clergy.

As if one by the high way assaulteth mee, and taketh away my purse, mony, or other goods.

But if a Theefe assaulteth me to robbe mee, and biddeth me deliuer my purse, but taketh nothing from me, in regard that I being too good for him, shall apprehend him, or shall leuie Huy and Cry,

Stamf. 21. c. 22. & 23.

Felony.

West. 2. 34. P. Rape 1.

Cromp. 33. See Plea. 19. 2

Dyer 224. Stamf. 27. d.

9. Ed. 4. 28. Stamf. 27.

Cry, whereby he is taken, this is taken to be no robbery nor felonie at this day.

Stamf. 17. g. And yet the assault only, to rob me, hath bin (in former times) holden to be felony, as appeareth by the Bookes 27. *Ass. pl.* 38. & 13. *H. 4.* 7. 25. *Ed.* 3. 42. *Fitz. Coron.* 383. *Br. Coron.* 106. 215.

20. El. Cromp. 34. In this former description of robbery, the word (taking) is largely to be extended against the offender; so that although the theefe taketh nothing from my person, yet if he assaulteth me, and vpon his assault he threatneth to kill me, if I deliuer him not my purse, and therupon I cast my purse down vpon the ground, and he taketh it away, this is robbery.

Cromp. 34. So if one draweth his sword vpon me, and biddeth me deliuer my purse, and I refuse, and after he prayeth mee to giue him a peny, and I doe so, yet it seemeth, this is robbery, for by the assault I was put in feare, and out of that feare I gaue him this money to be rid of him.

Stamf. 37. c. So if a theefe do only assault me to rob me, and I deliuer him my purse with mine own hand, yet this is robbery in regard this fact of mine proceeded from feare, or by his menacing &c.

Cromp. 35. So in flying from the theefe, I cast my purse into a bush, to saue it, and the theefe seeth me and taketh it away, this is robbery; for in this case had they not put me in feare, I should not haue cast my mony from me.

Cromp. 35. So if one assaults me to rob me, and I flying away from him, my hat falleth off, and the theefe taketh it vp and carrieth it away, this is robbery.

20. El. Cromp. 34. So if a theefe comes, and biddeth me deliuer my purse (without drawing any weapon, or other force vsed) & I deliuer him my purse, and he finding but two shillings therein, deliuereth me all againe, yet this is robbery.

44. Ed. 3. 14. 4. H. 4. 3. Stamf. 27. f. So if theeues do take a man, and by threats compell him to swear to bring them mony (at another time) or else that they will kill him, by force whereof he bringeth them the mony accordingly, this is Robbery.

Cromp. 35. One came to a Fisherman going in the high way to market with Fish to sell, and desired to buy some fish of him, and he refused, wereupon the other took away some of the Fishermans fishes against his will, and gaue him more money for them then they were worth, but the Fisherman was thereby put in feare, whereupon the other was indited and arraigned at Yorke about 26. *Eliz.* but iudgement was respited, for that the court doubted whether it were felony or no.

Also in the former description of Robbery, the words, from the person, are not so nicely to be construed, that (to make vp robbery) the

the

the goods must be needes annexed to the body of the person; For in some cases it may bee Robbery, notwithstanding the Thiefe doth neither take the goods from the person of the owner, nor yet assault him.

As if in my presence, a felon taketh away my goods openly against my will, this is Robbery, though he neither taketh them from my person, nor assaulteth me; for the losse is the same, and the feare alike as though it had bin from my person.

Stamf. 27.
Lamb. 265.

And if one or more do take a horse out of my pasture, or driue my cartell out of my ground, I standing by and looking on at the same time, this is Robbery, if so be that the felon doth either make an assault vpon me, or do put me in feare.

PR. 131.

Note, to make it Robbery, the person must be put in feare; for if a felon do take mony from me in the high way, & shall not put me in feare, this is no Robbery. Lamb. 266. Cromp. 35. P.R. 131.

And you shal find a Case in my Lord Dyer, how a felon did take mony to the value of xl.s. or aboue, from the person of another in the high way, And yet for that he did not put his person in feare, by assault & violence, this was holden no Robbery, and the offender was allowed his Clergy for the same felony. Anno 5. Eliz.

Dyer 124.

Note also, if two theeves shal attempt to rob me, and I flie from them, and one of the theeves follow me, and the other espying another true man (but out of the sight of his fellow) ride towards him, and robbed him, this was adiudged Robbery in both the theeves; and yet the one was neither in sight, or knowing of this Robbery; but because they both came to rob, & at the same time, this fact committed by the one, shalbe imputed to the other also: it was one *Pudseys case*. 28. El.

Cromp. 34.

Cut purse.

If one shall cut my purse, or take, or picke my purse out of my pocket secretly, or priuily and fraudulently, it is felony of death without benefit of Clergy, if it be about the value of xij.d. *Quare* if it be vnder twelue pence, because it is taken from the person of a man, and the forme of the Indictments are *Insultum fecit*. See *Fitz. Coron* 430. Also the words of the statute (8. Eliz.) are, That no person taking any mony, or goods (generally) from the person of another &c. shal haue his Clergy: And yet by the opinions of M. Lamb. and M. Cromp. this is no felony of death.

8. El. 4.
P. Clergy 2.
Lamb. 266.
Cromp. 34.
35.

So if one shall take my money or other goods from my person, secretly without my knowledge or by sleight only, I neither being made afraid, nor witting of it (if it be about xij.d. in value) it is felony of death.

P. Clergy 1.
Lamb. 266.

A man cutterh my girdly priuily, my purse hanging thereat, and the purse and girdle fallerh to the ground, but he did not take them vp (for that he was espied,) this is no felonie; for that the Thiefe neuer

26. El.
Cromp. 35.

neuer had an actuall possession therof, secured from my person: But if he had holden the purse in his hand, and then cut the girdle (although it had fallen to the ground, and that he tooke it vp no more) then had it bin felony (if there had bin about xij.d. in the purse) for he had it once in his possession. But these secret and priuy takings for my person, are no robbery, for he neither assaulted me, nor put me in any feare.

Larcenie.

Larceny (being fetched from the Latine word *Latrocinium*) is properly a fraudulent and felonious taking away of another mans personall goods, in the absence of the owner, and without his knowledge.

This is of two sorts, *Grand Larceny*, and *Petrie Larceny*.

Grand larceny, is when the goods stollen bee about the value of xij.d. and this is felony of death, *sc.* wherin iudgement of death shall be giuen vpon the offender (except he be saued by his booke.)

Grand Lar-
ceny.

F. Cor. 451.

And yet if the goods stollen be to the value of x.s. if the lury that passeth vpon his arraignment, shall find that the goods did not exceed the value of xij.d. then that offence shall be taken but for *petie Larceny*.

West. 1. c. 15
Br. Cor. 84.
& 85.

Pety Larceny, is when the goods stollen, doe not exceed the value of xij. d. and for this the offender shall bee imprisoned for some certaine time, and after shalbe whipped, or otherwise punished by the discretion of the Iustices before whom he is arraigned; but it is not felony of death.

Petrie Lar-
ceny.

Yet may not the Iustice of P. before whom such an offender shall be brought (out of the sessions) punish by his discretion the said offender for Pety Larceny, and so let them go, but must commit him to prison, or baile him, to the intent he may come to his triall, as in case of other felonies; and if vpon his triall the lury shall finde the goods stollen, to exceed xij.d. in value, the offender shall haue iudgement to die for the fault.

27. H. 8. 22.
F. Cor. 218.
Br. Cor. 2.
& 85. & 219

Also, although pety larceny be not punishable by death, yet it is a felonious taking: for the Indictment of pety larceny must be *Felonye cepit*: and he shall forfeit all his goods & chattels for such a felony: and there is no difference either in the nature of the offence, or in the mind of the offender, but only in the value of the thing stollen which also maketh the difference of punishment.

F. Cor. 415.
Stamf. 34.
Crom. 36. a.

If one shall steale goods to the value of 4.d. at one time, and 6. d. at anothe time, and of 3.d. at another time, which together doe exceed the value of 12.d. and that these seuerall goods be all stollen from one and the same person: then may they be put together in one Indictment, and the offender being thereupon arraigned and found

found

found guilty, shall haue iudgement of death therefore.

Againe if two, or more together do steale goods about the value of xj. d. this is felony of death in them all; for the felony in them is feuerall, though the stealing be iointly done.

F. Cor. 4. 4.
Stamf. 24. l.

Now first for the manner.

The manner.

IN Larceny, two things must concurre, *sc.* to take, and to carry away or remoue the thing taken, with a purpose to steale the same; for the Indictment must be, *Cepit & asportauit*, or *cepit & abduxit*; and yet in these words, the letter is not so much to be insisted vpon, as the meaning, and that for the better suppressing of offenders in this kind.

Deliuery.

For although by the Law in M. *Glanuils* time *a futuro omnimodo excusatur qui initium habuerit sua detentionis per dominum illius rei*; yet at this day it may bee felony, though the offender take not the thing, but comes first vnto it by deliuery from the owners own hand and so commeth lawfully to the possession: As

If a Tauerner do set a peece of plate before his guest to drinke in, and the guest carryeth it away, this is felony; for the Tauerner gaue him no possession thereof, but only the vse to dring in it for the time.

13. E. 4. 9.
Stamf. 25.

If I deliuer goods to a Carrier (or other person) and bargain with him to carry them to a certaine place appointed, if he carrieth them to the place, and then conuertieth them away fraudulently, this is felony; for the priuity of bailement was determined when they came at the place appointed. *Ibid.*

So if the Carryer shall take out parcell of the goods, this is felonie. *Ibid.*

Also if the Carrier shal carry them to another place, and there breaketh them vp, and conuerteth part, or all, to his owne vse, this is felony. *Ibid.*

But if the Carrier shall sell or giue away or otherwise imbefill the whole as he receiued them, this is holden to be no felony, because it was deliuered him. *Stamf. 25. a. Cromp. 36. a.*

And yet in this last case there is besides the deliuery, a bargain and agreement to carry the goods, and the deliuery was only to that intent, so that the property of those goods did alwaies remaine in the first owner, *Ideo quare.*

But if *A.* lendeth his horse to *B.* being a stranger, who rideth quite away with the horse, this is no felony in *B.* by reason of the deliuery. And so did sir *John Dodderige* knight giue direction at Cambridge Assises 1617. vpon an Indictment of felony preferred in such a case; *quare* if the horse had been deliuered to a seruant, who rideth away therewith. *Vide postea sub hoc tit.*

If a Clothier shal deliuer any wooll or yarne to his Carder, Spin-
ster,

7. Jac. 67.

ster, or Weaver, &c. to dresse, and they shall conuey away, imbefill, or sell any part thereof, this seemeth to be no felony, by reason of the deliuery, but they shall be punished at the discretion of two Just. of P. by whipping or stocking, &c. *Vide antea tit. Cloth.*

13. E. 4. 9.

So if I deliuer my goods to another to keepe, and he fraudulently consumeth them, or otherwise conuerteth them to his owne profit, this is no felony, because of the deliuery.

And so (it seemeth) if I deliuer mony or goods to *A.* to deliuer to *B.* and *A.* flyeth away with them, consumeth them, or conuerteth them to his own vse, this is no felony, by reason of the deliuery.

21. H. 4. 14.
23. E. 4. 10.
2. H. 7. 12.
21. H. 7. 15.

If a man deliuers money to his seruant to keepe, or plate to his Butler, or vessell to his Cooke, or Horse to his Horse-keeper, or sheepe to his Sheepeheard, and such seruant doth goe away with them, this is felony by the Common Law in that seruant, (for these goods were alwaies in the Masters possession, and kept and vsed by the seruant to the Masters behoofe.) But yet there was much difference of opinions herein: for the clearing whercof (in some part) the statute 21. *H. 8. cap. 7.* (which was made perpetuall by the statute 5. *Eliz. cap. 10.*) provided, that all and singular seruants of the age

SERVANTS.

21. H. 8. 7.
P. Feloh. 10.

of eightene yeares, other then an apprentice, (which must be vnderstood of such as are bound by Indenture, and by the name of an apprentice) to whom any money, goods, or chattels, &c. by his or their Master or Mistresse shall be deliuered to keepe, of the value of xl. s. or aboue, if such seruant shal go away with, or shal imbefill, or shall conuert to his owne vse, any such money, goods, or chattels of the said value, to the intent to steale the same, or to defraud his master or mistresse thereof, it shall be felony; but this must be prosecuted within one yeare after the offence.

*Apprentices
and seruants
under eigh-
teen shall be in
case as they
were before
the making of
this statute.*

Cromp. 50.

And now vpon the construction of this stat. of 21. *H. 8.* diuers new questions & cases haue since arose; As

Dyer 5.

If a man deliuer an Obligation to his seruant, to goe and receiue the mony therupon due, & the seruant receiueth the mony, and then goeth away therewith, or doth conuert it to his owne vse, this is holden to be felony within the meaning of this stat. for the Master did not deliuer the mony to his seruant.

Ibid.

So if a man deliuers to his seruant, wares or cattell to sell at Faire or Market, and he selleth them there, and receiueth the money, and then goeth away with the money, or conuerteth it to his owne vse, this is no felony within this statute, for he had not the money by his Masters deliuery; neither went he away with the goods his Mast. deliuered him.

Dyer 5.

28. El.
Cromp. 35.

But if the seruant receiued of his Mast. xx. li. in gold to keep, which he changed into siluer, & then ran away with that, this is felony, for that gold and siluer are both of the same nature, *sc.* mony.

And

And if a man deliuer to his seruant a horse to ride to market, or money to carry to a faire, or to buy cattell or other things, or to pay to another man, & the seruant goeth away therewith, this was no felony by the common law, by reason of the deliery thereof to him by his master; but *quare* if it be not felony by this stat. for that hee went away with the thing deliuered him. 21.H.7.15.

And if one of my seruants doth deliuer to another of my seruants goods of mine (to the value of xl.s.) and he doth go away therewith; or conuerteth them to his own vse, this is felony, within this stat. for this shalbe said my deliery. Dyer 5.

If a man deliuers to his seruant a peece of cloth to keepe, and the seruant maketh himselfe a garment thereof, and after goeth away therewith, this is felony (within this statute) for that the property is not altered, by the making a garment thereof, because the cloth may be knowne still. Otherwise is it of barley turned into mault, or of money melted and turned into a wedge or peece of metall, or the like, for that in these cases the barley, or money cannot be knowne againe, but are altered in their nature and kind: but *quare*, and see the words of the statute. 4.H.7.16. Br. property 23. Cramp. 50.

If my receiuer of my rents, receiueth x. li. of my tenants, and run away therewith, it is no felony; for the stat. is where the master deliuereth to kee & cc. Cramp. 50.

If a man deliuers to his seruant, the key of the chamber doore, and the seruant taketh away his masters goods in the chamber (about the value of xij. d.) this is felony at the common law, for the goods were not deliuered. 13.E.4.9.

Another felony there is by the stat. 32. H.6. ca. 1. in the seruant that shal take away or spoile the goods of their deceased master: but this felony groweth vpon their default of apparance in the K. Bench, after proclamation; and therefore neither the triall nor hearing thereof belongeth to the Iustices of P. because they cannot well take knowledge of such default in the K. Bench. P. Felon 11. P. Exec 5.

The second thing which must concur (in Larceny) to make it felony, is the carrying away of the thing so taken; and yet it is not of necessity that it be cleane carried out of the house, or place where it was, but it sufficeth that it be so far remoued, that the euil and felonious intent of the taker may plainly appeare; As

If a guest will feloniously take the sheetes, or other goods of the Inn-keepers, out of the chamber where he lodgeth, and then (going to the stable for his horse) is taken with them, or they bee found in some other roome of the house where he had layd them; it is felony in both cases, although the possession of those goods continued in the owner. 27. Aff. 39. See Stamf. 26. b. Br. Cor. 107

So is it if one taketh a horse in another mans Close, with an intent

to steale him, and he be apprehended before he hath gotten the horse out of the same close, this is felony.

Next, of what things Larceny may bee committed, and of what not.

NOte, that the felonious taking of any thing, wherein another hath propertie, is felony. 22. H.6. Br. Coram. 190.

And therefore Larceny may be committed by taking of any the moueable goods of any person, as money, plate, apparell, household stuffe, or corne, hay, trees, or fruit (that are seuered from the ground) or the like; the stealing of them is felony. Non-mouable goods.

It is also felony to steale any horses, mares, colts, oxen, kine, sheep, lambes, swine, pigges, hennes, or geese, ducks, turkies, peacocks, and other domesticall beasts or birds, of tame nature. Domesticall. 18. H.8.2.

It is felony also to take some things that bee of wilde nature; as to take young pigeons which cannot flie, out of another mans doue-house; so to take yong hawkes, or yong herons, out of their nestes (or ayries) and breeding in a Parke, or other feuerall ground; so to take fishes that be kept in a trunke, or feuerall pond. Wilde.

So of old doues taken in the douecoate (in the night time especially:) And so it seemeth of any other wild beast or fowle (being of value) and taken within a mans house. Stamf. 25. c. 13. E.4. 80. 8. Br. Cor. 92. 22. Aff. 35. Kit. 9. b. 19. b. 12. H.8. 9. b. 16. E.4. 7. 3.

Also it is Felony to take any Swannes that be lawfully marked, though they bee at large; For a man hath propertie in such. See *Co. lib. 7. fol. 16. b. 17. a.*

Also for Swannes vnmarked, if they bee domesticall or tame, *scz.* kept in a Moate, or in ponds neere to a dwelling house, and so be *Domui*, or *Manni assucta*, to steale such is felony. See *Coke 7. 17. b. hic postea.*

So it seemeth of Swannes vnmarked, so long as they keepe within a mans Mannor, or within his priuate Riuers: Or if they happen to escape out of a mans Mannor, or priuate riuers, yet if they shall bee pursued and taken and brought in againe. See *Co. 7. 16. b.*

But if Swannes that be vnmarked, shalbe abroad, and shal ataine to their naturall libertie, then the propertie of them is lost, And so long felony cannot be committed by taking of them:

And yet such vnmarked and wilde Swannes, the Kings Officer may seise them (being abroad) for and to the vse of the King, by his Prerogatiue, they beeing *Volatilia Regalia*: Also the King may graunt them; And by consequence another man may prescribe to haue them within a certaine precinct or place; For it may be intended to haue a lawfull beginning by the Kings Graunt. *Cok. lib. 7. fol. 16. a. b. & 18. a. b.*

Also it is felony to take a tame Deere, which is marked and Domesticall

metlicall (especially if the taker knowes it to be tame; or that it weareth a Bell.)

But by the common law, Larceny cannot bee committed by taking of sauage or wilde beasts, fowles, or fish, found in their wildnes and abroad or at large; as Deere, Conies, Hawkes, Doues, Phefants, Partridges, Herons, Swans vnmarked, or fish that are at liberty, &c. for no person can claime proprietie in them.

Howbeit by stat. it is made felony to hunt Deere, or Conies (after some sort) in a Forest, Parke, or Warren; or to take a tame beast, or other thing, in a Parke, by maner of robbery. See 3. Ed. 1. 20. & 1. H. 7. cap. 7. Vide postea Felony by Statute.

Also by Statute it is Felonie to steale, take away, or conceale a Hawke. Ibidem.

But for the better vnderstanding what the Law is, in things that be fera Natura, obserue these differences.

Propertie.

In some things that be fera Natura, a man hath a right of proprietie, and in some of them a right of priuiledge.

There be three manner of rights of proprietie, scz.

1. Absolute. This proprietie a man cannot haue in any thing which is fera Natura, but onely in such things as are domestica Natura.

2. Qualified. These properties a man may haue in things fera Natura; and to such properties a man may attaine by two meanes, scz.

3. Possessorie. 1. By industry: and this may be either by taking them onely; or making them tame, (scz. Mansueta id est manui assueta, or domestica, id est domui assueta:) But in these last a man hath but a qualified proprietie, scz. so long as they remaine tame, and so long felony may be committed by taking of them away: but if they attaine to their naturall libertie, and haue not animum revertendi, then the property of them is lost.

2. Ratione impotentie & loci; As where a man hath young Goshawkes, or Herons, or the like, which are fera Natura, and do breed (or ayre) in his ground, he hath a possessorie proprietie in them; So as if one takes them when they cannot flie, the owner of the soyle may haue an action of trespasse, Quare bos cum suum fregit, & tres pullos aspernorum suorum, or ardearum suarum, precij tantum nuper in eodem bos conidificantem, cepit & asportauit: And to take these away is felony, as is aforesaid. 18. E. 4. fo. 8. Stamf. 25. c.

But when a man hath beasts or fowles (that be sauage and in their wildnesse) Ratione Priuilegij, scz. by reason of a Park or Warren, &c. (as Deere, Hares, Conies, Phefants, or Partridges, or the like which be things of Warren) he hath no property in them: And therefore in an action Quare parcum, or Warrenam, &c. fregit & intravit, & 3. damus;

P. Felon. 24

P. Felon. 22

Co. 7. 17. b

See Do. & Stud. fol. 10.

damas, Sepores, cuniculos, Phasiones, perdices, &c. cepit & asportauit, he shall not say suos, for that he hath no property in them, but they belong vnto him Ratione Priuilegij (for his game & pleasure) so long as they remaine in the place priuiledged. And if the owner of the Parke die, his heire shall haue them, and not his executor or administrators; for that without them the Parke (which is an inheritance) is not complete; neither can felony be committed by taking of them.

Neither can Larceny be committed by taking of Dogges of any kinde, Apes, Parats, Squirrils, singing Birds, or such like thing (kept onely for pleasure, and not for any profite) though they bee in the house and made tame.

No not by taking a Bloodhound or Mastiffe, although that there is good vse of them, and that a man can be said to haue a proprietie in them, so as an action of Trespasse lyeth for taking them; yet in regard they are things of so base a nature, no felony can be committed by taking them.

Also it is felony to steale the flesh of any tame, or wilde fowle, or beast, that is dead, out of the possession of another man.

So is it to pull the wooll from the sheepes backe; or to kill them, and to take the skin, and leaue the body behind.

But note, that in all these cases of felony aforesaid, the thing so taken, or stollen, must exceed the value of xij. d.

Also the taking of any reall chattell or thing, is no felony, as Things reall.

If one cuts downe my Tree, or my Corne, and carrieth it away, or pulleth and stealeth my Apples hanging on the tree, and carrieth them away, these are no felony, for these things be part of my Freehold, till they be seuered:

But if I gather mine apples, or cut downe a tree, or corne of mine owne, then it is felony if another shall carry them away feloniously.

And by the opinion of Mar. if a stranger cuts downe my tree, or corne without title, and another time after fetcheth it away, that will proue felony, because it was a chattell seuered when he rooke it. See 12. aff. p. 32. Br. Coron. 76.

Also to take lead from off a house, or Church, will not amount to felony, for it is parcell of the house or freehold.

Also to take away the Euidences of a mans land, or an Indenture of lease, or other writings, (bee they in, or without a boxe) it is no felony, because they cannot bee valued, and againe, because they concerne inheritance, chattels, realls, or things in action.

So to take away an Infant in Ward, is no felony.

Also the taking and carrying away of such things whereof the owner is vnknowne, in some cases is no felony; As the taking away of treasure that was hidden, wrecke of the sea, or goods that be waiued, or strays (before they bee lawfully seised, &c.) But the takers

Stamf. 25. Br. Cor. 187. 265.

away of such treasure, Wrecke, and Waife, shall be punished by fine and imprisonment. 22. *ass. p. 99. Br. Coron. 96.*

And yet where the goods be, *bona cuiusdam hominis ignoti*, or *bona cuiusdam mortui & ignoti*, or *bona parochianorum*, or the goods of a Church, or chappel, or the goods of any Corporation in the time of vacation, in these cases there be owners of them to some purpose, and therefore it is felony to steale such goods.

One *Nottingham* digged a dead body out of his graue, and tooke away his winding sheet, this was holden to be no felony, but punishable as a misdemeanor, & the offender was adiudged to be whipped &c. for it: this was at Cambridge Summer Assises, *anno 1617.*

His owne goods.

Note also, that a man may commit felony, by taking his owne goods; as

If *A.* doe lend, or deliuer goods to *B.* to keepe, and after *A.* doth take them away feloniously or priuily and fraudulently (to the intent to charge *B.* or to recover dammages for the same against *B.* by an action of *Detinue*) this is felony in *A.* and yet the property of the goods were in him.

So it is, if I lend my plate, or deliuer my goods to another to keepe, and he melteth my plate, or changeth the fashion of my goods; now if I should take that mettall, or those goods feloniously, it were felony in me, because the propertie is altered by altering of the fashion. See a little before.

If the party robbed taketh his goods againe from the Thiefe, and suffereth him to escape. *Vide postea tit. Accessories.*

A man findeth my purse in the high way, and being asked thereof, denieth it, this seemeth to be no felony, for hee came not thereby at the first feloniously.

A man commeth to my wife, or to my seruant with a false message, token, or letter made in my name, and therby getteth my goods, yet this is no felony, but it shall be punished by the statute of 33. *H. 8. c. 1.* See *antea tit. Counterfeiters.*

What persons are chargeable in Larceny.

Wife.

A *Feme* couert doth steale goods by the compulsion of her husband, this is no felony in her. *F. Coron. 160.*

But if by the compulsion of her husband, she committeth murder, this is felony in them both.

If a *feme* couert doth steale goods by the commandement of her husband (withour other constrain) this hath been holden to be felonie in her: Matter *Bracton* also saith it is felony; for *Licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum*; but Master *Stamf.* and others seeme to bee of another opinion, *Stamf. 26. P. R. 130. Br. Coron. 108.*

If

F. Cor. 160. Lamb. 177. If the husband and the wife together doe steale goods, this shall be taken to be the only act of the husband, and not to be felony in the wife. *Stamf. 26. vide.*

Stamf. 26. But a woman couert, alone by her selfe (the husband not knowing thereof) may commit Larceny, and may be either principall, or accessary; as if she steale another mans goods, or receiue the thiefe that stealeth them, or shall receiue stolne goods into her house knowing them so to be, or shall lock them vp in her chest or chamber, her husband not knowing thereof: and in such case if her husband so soone as he knoweth thereof, do forthwith forsake his house and her company, and make his abode elsewhere, he shall not be charged for her offence; whereas otherwise the law will impute the fault to him, and not to her. *P. R. 130.*

F. Cor. 383. See Stamf. 26. Goods are deliuered to the husband to keepe, and his wife stealeth them, it is no felony; Otherwise is it if the husband had deliuered them to a stranger, and then the wife had taken them feloniously out of the possession of the stranger, this had beene felony in the wife. *Mar. Lect. 12.*

Also the wife shall not be accounted a felon, for taking or stealing the goods of her husband: And if the wife doe take her husbands goods secretly, and deliuers them to a stranger knowing thereof, yet this is no felony in the stranger:

F. Cor. 455. Br. Cor. 142. Stamf. 27. But if a man doe take away another mans wife, with her husbands goods, against the wiues will, this is felony by the Statute Westminster 2. *cap. 34.* as it seemeth; and so if a man takes away another mans wife, with her husbands goods, against the husbands will, this also is felony.

Br. Cor 77. Crom. 35. P. R. 130. And if the husband commits Larceny, and the wife knowing thereof, doe receiue or relieue him, &c. (hee is not thereby Accessary to the felony. *Vide postea tit. Accessorie.*

If a seruant by the compulsion of his Mast. stealeth another mans goods, this is felony in them both.

See more of seruants here before *sub hoc tit.*

Lambr. 278. An Ideot, Lunatike, dumbe and deafe person, and an Infant, are chargeable in Larceny, after the same sort, as they are chargeable in Homicide; which see here before in Manslaughter. And yet if an Infant shall commit Larceny, and shall be found guilty thereof before the Iust. of P. it shall not be amisse for them to respite the iudgement; and so hath it often bin done by the Iudges: See *Stamf. 27. & 3. H. 7. fol. 1. b. & 12. b. & 35. H. 6. 11. Br. Couert. 80.*

Other Felonies by the Common Law.

11. H. 7. 11. Co. 4. 10. Burning of a Barne (which is adioyning, or neere to a dwelling house) in the night feloniously, is felony by the common Law. *Burning houses.*

So is it to burne a Barne (in the day time) having corne in it, and though it adioyne not to the dwelling house. Lamb. 261.

Burning of any dwelling house, or other house parcell thereof, wilfully and feloniously done, is felony by the common law, whether it be done by night, or by day. 3.H.7.10.4. Co.11.29. Stamf.36.

Burning of any other house, or of a stacke of corne, feloniously, seemeth also to be felony by the common law; for the words of the stat. of Westm. 1. c. 15. (which St. seemeth to be but a rehearfall of the Common Law, Br. Mainpr. 78.) ordaineth, that such as bee taken for burning (generally) feloniously done, bee not bayled: and of that opinion seemeth Master Britton, who wrote presently after the making of the same statute. Britton fol. 16. See Stat. Winchest. 13. Ed. 1. cap. 1. & 18. Ed. 1. cap. 17. Stamf. 36.

If an Indiſtor (or Juror) in case of Treason, or Felony, shall discover the Kings Counsel, and his fellowes, it hath bene adiudged felony. Vide antea tit. Petit Treason.

Rescom. Rescuing, or taking away from an Officer, any offender, who is attainted, imprisoned, or but arrested for felony, such Rescom is felony, as well in him that made the Rescom, as in him that is rescued. See more here pag. sequent. 1.H.7.6. Br. Coron. 137. 130. Stamf. 31. b.

Escape. Also when a man hath arrested another for felony, and after letteth him goe at liberty; this is a wilfull escape, and shall be adiudged felony in him that did so let him escape. And in case of Treason, such escape is Treason. See paulo postea. 9.H.4.1.

Breaking of prison. Breaking of Prison (before the Statute De frangentibus Prisonam, made 1. Edw. 2.) was Felony by the Common Law, for what cause soeuer hee were in prison, yea though hee had benee imprisoned but for a Trespasse: But now that Statute hath changed the Common Law therein: so that now if a man bee arrested or taken for a Trespasse, and doe make an escape, or be rescued by a stranger, this is but fineable at this day. Stamf. 30. 37. See the Sr. 1. Ed. 2. & P. Prison. 5.

Felonies by Statute.

If any man being the K. sworne seruant, &c. shall confederate, imagine, compass, or conspire with another, to destroy the King, or any Lord of this realme, or any other sworn to the K. Council, or the Steward, Treasurer, or Controller of the K. house, it is felony: But what the Iust. of P. may doe herein, see antea tit. Felony. 3.H.7. c. 14. P. Felon. 13.

Breaking of prison. Breaking of Prison, by one being therein for felony; or by one being a Prisoner for felony, is felony. 7. Ed. 2. R. Felon. 25.

Now every one who is vnder arrest for felony, is a prisoner, and that as well without the prison, as within; or in the Stocks in the high street, or in the possession of any that hath arrested him, or that hath the keeping of him, being arrested for felony.

And

1. E. 3. 17. P. R. 147. And therefore if any person who is vnder arrest for felony, or suspicion thereof (whether he be in the gaole, or out, or but in the stocks, or but in the possession of any that hath arrested him, if he shall make an escape, this is a breaking of prison in such prisoner, & is felony.

2. Ed. 3. 1. Note, that there is no difference whole Prison the offender doeth breake, whether it be the Kings Prison, the Lords of a Franchise, or any other persons.

1. H. 7. 6. 1. Ed. 3. 17. Dyer 99. And if a stranger doth breake the Prison, or open the Stocks, or make a rescou, whereby one imprisoned, or arrested for felony, escape; this is felony both in the prisoner, and in the stranger, although the Prisoner was neuer indicted of the felony. Rescou.

9. H. 4. 1. F. Cor. 333. Stamf. 33. By some opinions, if a stranger shall disturbe the arresting of a felon, it is no felony, except the felon were taken and arrested, and after rescued: yet Fitz. Iust. P. fol. 114. saith, that such disturbance before arrest, is felony.

1. H. 7. 6. If a prisoner be rescued at the gallows, or as he is in going to execution, this is a breaking of prison, and felony within this statute.

P. R. 147. 149. 44. aff. 12. Br. Ele. 31. Stamf. 31. If a Gaoler, a Constable, or any other, which hath a prisoner vnder arrest for felony, or suspicion thereof, voluntarily letteth or suffereth him to go at liberty; this is felony in the Gaoler, or him that letteth such prisoner escape, but it is no felony in the prisoner: but if such a prisoner shall escape by the negligence of his keeper, then the felony resteth in the prisoner onely, and not in the Gaoler, &c. Escape.

P. R. 149. 150. 9. H. 4. 1. The voluntary letting of a felon to escape, which is not arrested for felony; though he knoweth of the felony, yet it is not felony: neither can it be an escape without an arrest; and yet such an offender (being an officer) may for such his negligence or default, be indicted and fined, as it seemeth by the words of the Commission: Quare if he be not accessory to the felony. See Br. Escape 43.

Dyer. 44. a Note, that a man is alwayes said to bee in prison, so long as hee is within the sight of the Gaoler, or of him that hath him in custody, though he doth breake away, or escape.

Stamf. 33. b. Br. Ele. 43. y. And if a Prisoner shall make an escape, (of his owne wrong, and without the consent of the Gaoler, or other person that hath him in custody) though he escape out of their sight, and into another country, yet if he be taken againe vpon fresh suit, before the gaoler &c. (be sued, or) hath fined for the escape (though it be seven yeres after) yet this is no escape, as it seemeth, for which the officer shall be charged; for there is no prejudice to the King by the escape, though it be felony in the prisoner, as aforesaid, and a breaking of prison in him. Co. 3. 44. & 52. accordeth in case of a prisoner taken in execution, that shall make an escape of his owne wrong.

Co. 3. 44. Stamf. 33. c. If a Gaoler or other officer &c. shall licence his Prisoner to go abroad for a time, and to come againe; this is an Escape because the prisoner

prisoner is found out of the bounds of his prison, though the prisoner returne againe according as he shall be prescribed: and so is it, if the officer shall suffer his prisoner to goe abroad for a time, by baile or baston, this is an escape; yet they are holden in both cases to be but negligent escapes in the officer, and so but finable. But *quare*, for the Gaoler and other officers ought to keep their prisoners in *Salua & arcta custodia. Vide post. tit. Imprisonment.*

Note that the Sheriffe of euery County shall haue the keeping of, and shall be chargeable & charged with the common gaole & prison of the same County, and of all the prisoners therein; And must put in such Gaolers or keepers for whom they will answer (as appeareth by the stat. 14. E. 3. c. 10. & 19. H. 7. c. 10. which also seemeth to haue bene the common Law before, (as you may see by the Preamble of the stat. of 14. E. 3. & Co. 4. 34.) And therefore the high Sheriffe himselfe shall be answerable for such an escape of a felon, suffered by his Gaoler, and may be indicted for the same (See the *Presidents in Lambert, West*, and *Crompton*.) And so the high Sheriffe as hee hath an Office of great Antiquity, and of great trust and authoritie (for the time:) So withall it is a place of great perrill and charge; And if the rigour of Law should be laid vpon them, then should they haue a warme office, and be well rewarded. But in such cases I haue obserued the fauourable exposition and dealing of the learned and reuerend Iudges: First, you shall find in *Sir Ed. Cok. Reports, lib. 9. fol. 98.* that the Gaolers who haue the actuall possession shall be answerable for escapes, if they haue wherewith: Also *Popham* chiefe Iustice, did cause one *Stauer* (a Gaoler at Cambridge) to be indicted, arraigned & hanged for an escape of a felon suffered by him.

Now an escape is of two sorts, voluntary, and negligent.

Voluntary escape, is where one doeth arrest, or hath imprisoned another for felony (or other offence) and after letteth him goe at liberty whither he will.

Escape is of two sorts.

Negligent escape, is when the party arrested or imprisoned, doth escape against the will of him that arrested or imprisoned him, and is not freshly pursued and taken againe before he hath lost the sight of him; the penalty thereof seemeth to be onely a fine at the discretion of the Iudges or Iustices: Yet see *Stamf. 35. k.* a difference of the fine, where the Prisoner is attainted, where but indicted, and where onely taken vpon suspicion.

But for voluntary escape, if the arrest or imprisonment were for felony, it shall be adiudged felony in him, which did voluntarily suffer the prisoner to escape; And if the arrest &c. were for Treason, it shall be adiudged Treason; And if the arrest or imprisonment were for Trespasse, it shall be adiudged Trespasse: And yet see *Fitz. Coron. 248.* Escape *non adiudicabitur pro transgressione*. And in case of felony,

felony, there is no difference, whether the felon bee arrested by an Officer, or by another. See *Br. Coron. 112.*

One *Nichols* assaulted *Cholmeley* to rob him, and killed him, after *Qu. Eliz.* graunted *Nichols* his pardon; But *Cholmeley* his wife hauing commenced her appeale against *Nichols*, he was still deccined in prison at the womans suit; After the Gaoler suffered *Nich.* voluntarily to go at large, & so to escape: by the opinion of *M. Plowden* this was felony in the gaoler, although *N.* the prisoner were now no felon as to the *Qu.* in regard he had obtained his pardon. *Pla. 476. b.*

F. Cor. 430. & 431. P. R. 150.

A prisoner found guilty of petty Larceny, is adiudged to be imprisoned by the space of a moneth (for his punishment) & after the moneth he breaketh prison, & escapeth: *quare* what this is in the prisoner, & what in the gaoler. It is holden that the gaoler shall be charged with this escape, But if a prisoner be discharged (by iudgment) paying his fees, if hee escape here, the gaoler is not chargeable; the difference is, the prisoner in the first case was by iudgment committed to prison; and in the last case he is adiudged to be acquit of his imprisonment, paying, &c. *21. H. 7. 17. a. Br. Escape. 16.*

11. H. 4. 12. Plow 158. 263. & 401.

Note, that a voluntary escape is no felony, if the act done were not felony at the time of the escape made; As if *A. doe* strike *B.* and hurt him mortally, whereupon the Constables doe arrest *A.* and after willingly suffer him to escape, and after *B.* dieth of that stroke, this escape is no felony, either in the Constable, or in the prisoner; yet the Constables shall make a great fine, yea shall be fined to the value of their goods (as it seemeth) by *11. H. 4. 12.* and *Stamf. 35. b.* Because this escape was voluntary.

Cromp. 39.

The voluntary suffering him to escape, who hath killed another *se defendendo*, or by misadventure; or of him that hath committed petty Larceny, seemeth not to be felony, for that these offences are no felony of death; but he that suffereth such an escape, shall be fined onely, *Cromp. 39.* Yet *quare*, for they that suffered this escape, are not to iudge whether these offences be felony or no. See hereof *postea tit. Evidence against Felons.*

A man was taken for suspicion of felony, and was deliuered to the Constable of *C.* and after escaped for want of good keeping, and the Constable was therefore taken and arraigned; And pleaded, that forasmuch as the felon was not taken with the manner, nor at the suit of the party, nor indited of felony, therefore it was no escape &c. And so was the opinion of the Court then. See *42. ass. p. 5. Br. Escape. 29.* But the contrary was after holden, although the prisoner were taken only vpon suspicion. *44. ass. p. 12. Br. Escape 31.*

3. Ed. 1. c. 4. P. Escape 2. Stamf. 35. c.

Note also, where one is a prisoner by arrest only, & he doth escape, there the escape shall be presented before the Iust. of Peace, or other Iustices hauing authoritie to enquire of the escape, before hee that suffered

suffered the Escape shall answer it.

Note also, if a man be arrested for felony, by the Constable, or other person, and after they shall have intelligence that there is no such felony committed, here they may set the party arrested at liberty againe, and they shall not be charged with the escape; for there can be no felon, where there is no felony committed.

But if a man be slaine, or that there be any other felony committed, and one is arrested for the same felony, or for suspicion thereof, though he that made the arrest, shall after have intelligence, and certaine knowledge, that the party arrested is not guilty of that offence, yet hee, or any other may not set the party so arrested at liberty; for now he must not be deliuered by any mans discretion, but by course of Law, otherwise it will prouue a voluntary escape, and so felony, or at least finable.

If a Justice of Peace shall send for a felon out of the Gaole, and shall deliuer him without Baile, this seemeth to bee a voluntary escape, and so felony in the Justice; Otherwise where the Justice erreth *pro defectu scientie*, as to baile one that is not baileable, this is but a negligent escape.

Now to proceed with Felonies by Statute.

Buggery committed with mankinde, or beast, is felony (without benefit of Clergie) 25. H. 8. 6. 5. Eliz. 17. it being a sinne against God, Nature, and the Law.

Burning of houses, and stacks of corne: see before, 246.

If a man maketh a bill or writing, and layeth or casteth the same at another mans doore, therein threatening to burne his house, if hee giueth him not some money &c. this hath beene taken to bee felony. See 6. H. 7. f. 13. a. And *quare*, what Stat. it is that the book meaneth. Note by the Statute of 8. H. 6. cap. 6. such offence was made Treason, if after the offender did burne the house; but that stat. of 8. H. 6 standeth now repealed.

Congregations, and confederacies holden by Masons, it is felony in the causes thereof, and finable in the Masons, 3. H. 6. ca. 1.

Cutting out of any the Kings subiects tongue, or putting out their eyes, of malice pretended, is felony, 5. H. 4. 5.

Cutting or breaking down of Powdike, or other banks in Marshland, maliciously is felony. 2. & 3. Ph. & M. cap. 19.

1. Coniuration, or Inuocation of any euill spirit, for any intent &c. or to be counselling or aiding thereto, is felony, without benefit of Clergie. See Exod. 22. 18.

2. To consult, couenant with, entertaine, employ, feede, or reward any euill spirit, is felonie in such offenders, their aydors, and counsellors.

3. To

3. To take vp any dead body, or any part thereof to be imploied or vsed in any manner of witchcraft, is felony in such offenders, their aydors, and counsellors.

4. Also to vse or practise Witchcraft, Inchantment, Charme, or Sorcery, whereby any person shall be killed, pined, or lamed in any part of their body, or to be counselling or aiding thereto, is felony.

5. Also the second time to practise Witchcraft, &c. thereby to declare where any treasure may be found:

6. Or where any goods lost, or stolen, may be found:

7. Or whereby any cartell or goods shall be destroyed or impaired:

8. Or to the intent to prouoke any person to loue:

9. Or to the intent to hurt any person in their body, though it be not effected: All these are felony, *scz.* the second offence, and without benefite of Clergy.

Now against these Witches the Iustices of peace may not alwaies expect direct euidence, seeing all their workes are the works of darkness, and no witnesses present with them to accuse them; And therefore for their better discouery, I thought good here to insert certaine obseruations out of the booke of discouery of the witches that were arraigned at Lancaster, *ann. Dom. 1612.* before Sir James Altham, and Sir Edward Bromeley Iudges of Assise there.

1. These Witches haue ordinarily a familiar, or spirit, which appeareth to them.

2. Their said familiar hath some bigg or place vpon their body, where he sucketh them.

3. They haue often pictures of Clay, or Waxe (like a man, &c.) found in their house.

4. If the dead body bleed, vpon the Witches touching it.

5. The testimony of the person hurt, vpon his death.

6. The examination and confession of the children, or seruants of the Witch.

7. Their owne voluntarie confession, which exceeds all other euidence.

Embezilling of the Kings Maiesties Ordnance, armor, shot, powder, or other habiliments of warre, or victuals provided for soldiers, &c. If it be by any person hauing the charge or custody thereof, and to the value of xxx. s. though at severall times, it is felony. 31. Eliz. 4.

Embezilling of any Record, or parcell thereof, Writ, Returne, Panell, Proccesse, or Warrant of Atturney in the Chauncery, Exchequer, Kings Bench, Common place, or Treasury, (by reason whereof any iudgement shall bee reuerfed) it is felony in the parties, their counsellors, procurers, or abettors.

So the raising of such Record, is felony (within the said statute of 8. Hen. 6.) yet if a Iudge doe imbezill, or raise a Record, this is but

1. R. 3. fo. 10
Co. 11. 34.
See 8. R. 1.
cap. 4.

but misprison in the Iudge. *2.R.3. Br. Coron. 174. & Treason 31.*

But it seemeth the Iu. of P. haue not to do with these two last sorts of felonies, (*sc.* with imbezilling, or raising of Records) for that these felonies are committed to other Iudges to deale with by the same stat. of *8.H.6.P. Records. 4.* See before *tit. Felony.*

Egyptians; *sc.* if any person of the age of 14. yeares or aboue, shall call himselfe an Egyptian; or shall be in the company of such, or shall disguise himselfe in apparell, speech, or otherwise like such, and shall be or continue in England one moneth, at one, or seuerall times, it is felony, without benefit of Clergy. *St. 1.2. P. & M. 4.*

Forestalling, or buying any merchandis before they come to the Staple &c. was made felony by the stat. *27.Ed.3. ca. 11.*

Forging of Euidences, *sc.* of any Deed, Charter, Obligation, Bill, Receipt, or other writing sealed, or of any Court Roll, or Will, or of any Acquittance, or to cause or assent to be made any such forged writing; or publishing any such writing knowing the same to be false; The second offence is felony, without benefite of Clergie. But it seemeth also, that the Iust. of P. haue not to deale with this, for that they cannot well take notice of the former conviction. See *Cok. 9. 118.b. & hic antea tit. Felony.*

Gaolers (by duresse of imprisonment, & paine) in forcing their prisoner, to become an approver (that is an accuser of others as coadiutors with him in felony) this is felony in such Gaoler, *14.Ed.3. 10.*

Hawkes; whosoever findeth any Hawke that is lost, if he shall not immediatly bring the same to the Sheriffe of the same County, to be proclaimed &c. but doth imbezill the Hawke, it is felony.

So is it in him whosoever that taketh vp any Hawke, and concealeth the same from the owner, or his Faulconer; or that taketh away any Hawke from the owner, or stealeth any Hawke, and carrieth it away not obseruing the foresaid ordinance.

Hunting of Deere or Conies in any parke, forrest, or warrein vnlawfully in the night time, or with visors, or other disguisings, & (vp-on examination by a Iu. of P. &c.) to conceale the offence, or any offender therein, is felony in such concealor: But if such offender (vp-on his examination) shall confesse all the truth, then he is but finable. See hereof *antea tit. Hunting.*

If any person to be arrested for such offence shall disobey the arrest: Or if any person shall make rescous, so that the warrant (of the Iust. of P. &c.) for arresting them, be not executed, it is felony.

Quere, if such hunting and concealment, or resistance, be felony, where the offenders killed no Deere, &c. it seemeth no: for all the Presidents doe runne, *Occiderunt & asportauerunt &c.* See *Lambert, Cromp. & West.*

Also *quere*, if all such hunting disguised; or any other vnlawfull hunting

hunting in the night time, bee not felony, although the offender bee neuer examined therof as abouesaid. See the stat. *1.H.7. ca. 7. in fine.*

If any person shall take a tame beast, or other thing in a parke, by manner of robbery, it is felony.

Imprisoning, or taking against their wils (without lawfull authority) any subiect, in Cumberland, Northumberland, Westmerland, & the B. of Duresme, & carrying them away, to make a prey of them.

Or to be priuy, consenting, procuring, aiding, or assisting thereto. Or to receiue, carry, or giue any consideration (called Blackmaile) for protection therein.

Or to burne any barne, or stack of corne there: or to bee ayding, procuring, or consenting thereto.

Euery of these offences is felony, without benefit of Clergy, *43. El. ca. 13.*

Marriage, *sc.* if any person being married, shall marrie a second husband or wife, the first being aliue, &c. it is felony: Except notwithstanding where the husband or wife haue bin absent 7. yeares, & the one not knowing the other to be liuing within that time: Except also persons diuorced &c. by sentence in the Ecclesiastical court: And except persons marrying within the age of consent.

Multiplication of gold, or siluer, or to practise that art, is felony. *5. H.4. 4.*

Mony called Galley Halfe-pence, Suskin, or Dotkin, & all Scottish mony of siluer, to bring and put in payment any such, was made felony by the stat. *3.H.5. 1. & 2.H.6. 9.* but they are now out of vse.

Plague, *sc.* if any person being infected with the plague, which being commanded by any officer to keep his house, shall notwithstanding go abroad, and conuerse in company, hauing an infectious fore vpon him, it is felony.

Poysoning, *sc.* wilfull killing of any person by poyson, is wilfull murder in the offenders, their ayders, abettors, procurers and counsellors, *1.Ed.6. 12. Co. 11. 31.* But the party poysoned must dye therof within a yere and a day after the poison receiued: see *antea* in the other title, *Felony, Murder.*

Popish Priests: to receiue, relieue, ayd or maintaine any such, &c. is felony: see hereof *antea tit. High Treason.*

Popish Recufants, and such other Recufants or sectaries which (by the statutes of *35. Eliz. 1. & 2.*) are to abiure, if they shall refuse to abiure; or after abiuration shall not depart the realme according as they shall be appointed; or after such departure shall returne again without the K. speciall licence in that behalfe first obtained, it is felony, without benefit of Clergy.

Purueyors, *sc.* If any Purueyer, Taker, or other person, their deputies or seruants, shall make any purueyance, takings (or prises) for the

Kings maiesties house, of any thing about the value of xij. d.

1 Without warrant, or commission vnder the great seale 28. E. P. Puru. 3. 4. 1. c. 2. 4. E. 3. c. 4. 36. E. 3. c. 2. (which warrant they shal shew to the parties, before they do take any thing from them.)

2 Or shall buy or take any thing in other manner then is contained in their warrant. P. Puru. 19. fel. 25. Rast. 350. 36. Ed. 3. 2. 23. H. 6. 2.

3 Or shall take any carriage in other maner then is comprised in their commission. Stat. 36. Ed. 3. 2. P. 19. P. Fel. 25. P. Puru. 19.

4 Or shall carry away any thing, about the value of xij. d. and vnder the value of xl. s. (as it seemeth) against the owners will, without paying for the same presently, and according as they can agree with the seller. See the statutes 28. Ed. 3. 1. 2. 34. E. 3. 3. 36. E. 3. 5. 2. H. 4. 1. 4. & 20. H. 6. c. 8. 36. E. 3. 5. Rast. 351. Crom. 48.

5 Or being about the value of xl. s. shal not make his prouision or purueyance, by the testimony and appraiment of the Constables, and foure neighbours sworn, (if the puruey our and owner cannot well agree) And shall not deliuer Tales, or Indentures, sealed with his seale, testifying the same. Stat. 10. E. 3. c. 1. 35. Ed. 3. 2. 36. Ed. 3. 2. P. Fel. 25. P. Puru. 17.

6 Or shall take more victuals or carriages for the K. house, then he shall deliuer to the same house. P. Fel. 25. P. Puru. 18.

7 Or shall take any sheepe with their woolls, between Easter and Midsummer, at small prises; or more then be sufficient for the K. house, and to carry them to his owne house, and sheare them. P. Fel. 25. P. Puru. 9. 25. E. 3. 15.

In euery of these cases it seemeth to be felony in such Purueyor, their deputies and seruants. And yet a purueyor, or taker &c. may take vittaile, or other thing, according to his Commission, at reasonable prices, to the vse of the kings maiestie, and according to the Statutes, although it be against the will of the owner. Br. Puru. 1.

But if a Purueyor shall take any prouision for the kings house, by force of his Commission, And shall after sell away the same, now his first taking is become tortious, and he punishable as a Trespasser, if not as a felon *ab initio*. Co. 2. 146.

If any subiects Chator or other Officer, shall take any victuals, corne, hay, carriage, or other thing against the owners consent, or do not pay for it presently, it is felony. P. Puru. 1. See the stat. 23. H. 6. c. 14. here before *tit. Purueyor*. 24. E. 3. 2. 36. E. 3. 6. 7. H. 2. 2.

Rebellious and vnlawfull assemblies of any persons, to the number of twelue or about, &c. their procurers or relieuers, it was felony in them all. 1. M. 1. 2. P. Fel. 27.

Rogues, being by the Iustices of P. at their quarter Sessions, adiudged incorrigible and dangerous, and therefore by them banished this realme, if they shall returne againe into any part of this realme without licence, it is felony. 39. El. 4. P. Fel. 34.

Rogues, adiudged (as aforesaid) incorrigible or dangerous shall

shall by the iudgement of the same Iustices, in their open Sessions of the Peace, bee branded in the left shoulder &c. And after such punishment, if any so punished shall offend againe in begging, or wandering contrary to the statutes of 39. Eliz. 4. or 1. Jacobi 7. it is Felony. 2. Jac. 7. P. va. 4.

Robbing in the day time of any dwelling house, or of any out house, belonging & vsed to and with any dwelling house (as a barn, or stable &c.) if it be to the value of 5. s. or aboute (although no person be therein;) or to rob any house by day or by night, any person being therein, & therby put in feare: or to rob any person in any part of his dwelling place or house, the owner or dweller, his wife, children, or seruants therein, or in any other place within the precinct of the same house or dwelling place (sleeping or waking:) Or to rob any booth or tent in a faire or market, the owner, his wife, children, or seruants being then within the same (sleeping or waking) euery of these offences are now by stat. made felony, & as penal as burglarie, by the losse of the benefit of Clergy. But to breake a house in the day time, although he hath a felonious intent; yet if he carieth away nothing, this is no felony: for there must be an actuall felony done, besides the breaking of the house in the day. And by the report of M. Dalison, these statutes shall be straightly construed (in fauour of life) and according to the bare letter; so that if the robbery bee done by day, & there be in the house but one seruant only, or there bee in the house, booth, or tent, but a stranger, or sojourner only; the fact shall not be adiudged an offence against these statutes. 39. El. 5. Co. 11. 36. P. Clergy 13. 5. Ed. 6. 9. Lamb. 405. 23. H. 8. c. 1.

See Co. 11. 36. 32. & 36. Stamp. 126.

Lamb. 261. Dalison, these statutes shall be straightly construed (in fauour of life) and according to the bare letter; so that if the robbery bee done by day, & there be in the house but one seruant only, or there bee in the house, booth, or tent, but a stranger, or sojourner only; the fact shall not be adiudged an offence against these statutes.

Seruants imbecilling their masters good: see hereof *antea tit. Theft*. Souldiers, *scz.* if any subiect shall passe out of this realme, to serue any forreine Prince &c. not hauing before their passing, taken their oath of allegiance &c. before the officer thereunto appointed, it is felony. 3. Jac. 4. P. Recus. 48.

If any gentleman, or person of higher degree, or any captaine or other officer in campe, shall passe out of this realm, to serue a foreine prince &c. or shall voluntarily serue any foreine prince &c. before they shal become bound to the K. Maiestie, with two sureties (before the officer therto appointed) with condition to this effect, *viz.* not to be reconciled to the Pope &c. nor to make, or consent vnto any conspiracie against the K. &c. but to disclose all conspiracies vpon knowledge thereof &c. it is felony. *Ibidem*.

Souldiers entred of record, and hauing taken prest money, or parcell of their wages of their captaine, if they shall not passe the sea, or go with their captaine: or being in the kings seruice, shall depart without licence, it is felony. See Co. 6. 27. that this statute of 18. H. 6. 19. is now of litle force: But yet the departure of a souldier without licence is felony by the statute 7. H. 7. 1. & 3. H. 8. 5. which

two statutes are yet in force, and are acts perpetuall, *Co. libid.*

Souldiers, if they shal depart without licence (of the Lieutenant &c. after they haue serued in the K. wars, it is felony. 2. E. 6. c. 2. Co. 6. 27. See 4. & 5. P. & M. ca. 3.

Euery mariner or gunner hauing taken prest wages, to serue the King on the sea, that shal not come vnto, or shall depart from their captaine without licence, it is felony.

1 Souldiers and Mariners, and all idle persons, wandring as souldiers, or mariners, which shall not settle themselues to some lawfull course of life, but shall wander vp and downe idly, it is felony in them, without benefit of clergy.

2 So it is, if any idle and wandring souldier or mariner coming from beyond the seas, or from the seas, shall not haue a lawfull testimoniall vnder the hands of some one Iustice of P. ncerre the place of his landing, setting downe therein the place, and time of his landing, and the place vnto which he is to passe, and a conuenient time for his passage;

3 Or hauing such testimoniall, if they shall wilfully exceede the time therein limited aboute 14. daies;

4 Or if they shal: forge or counterfeit any such testimoniall, or shall haue any such forged testimoniall, knowing the same to be forged &c.

5 Or being retained into seruice after his arraignment &c. if he shal depart within the yere, without licence of his master, in all these former cases, it is felony in such souldier &c. without any benefit of clergy.

And yet see the stat. of 43. El. 3. that souldiers and mariners, begging, or counterfeiting a certificat from their Captaine &c. shall be adiudged & punished but as rogues. See *hic antea tit. Rogues.*

Transporting, or sending any liue sheepe out of the K. dominions, the second offence is felony.

It was made felony, for any man to carry any wools, leather, or woollfells into Scotland &c.

Witches, see Coniuration.

Women, *sc.* to rauish a woman, where she doth neither consent before nor after - or to rauish any woman with force, though she do consent after, it is felony: and the offender shall haue no benefit of clergy. 18. El. c. 6.

But a woman that is rauished, ought presently to leuy huy & cry, or to complaine thereof presently to some credible persons as it seemeth. *Glauuile* 115. See the stat. *de Officio Coronatoris*, 4. E. 1.

If a woman at the time of the supposed rape, do conceiue with child, by the rauishor, this is no rape, for a woman cannot conceiue with child, except she do consent.

Raft. 50.

5. El. 5.
P. Fel. 23.

39. El. 7.
P. Fel. 35.

8. El. 5.
P. Fel. 2.

27. E. 3. 12.

13. E. 1. 33.
P. Fel. 14.

Stamf. 22.
Crom. 100.

Britton 45.
Stamf. 24.

5. E. 4. 6.
Br. Parlia-
ment 55. If a man rauish a woman, who consenteth for feare of death or dures, yet this is rauishment against her will, for that consent ought to be voluntary and free.

11. H. 4.
Stamf. 44. All such as are present, abetting, aiding, or procuring another to commit rape, are principal felons.

Stamf. 24. It is a good plea, in an appeale of rape, to say that before the rauishment supposed, she was his concubine, as *M. Bracton* saierth.

Cromp. 47. And yet to rauish an harlot against her will, is felony; for *licet meretrix fuerit ante, certe tunc temporis non fuit, cum nequitia eius reclamando consentire noluit. Bract. li. 2.*

3. H. 7. 2.
P. Fel. 16. Also to take any maid, widdow, or wife (hauing lands, or goods, or being heire apparant to her ancestor) against her wil vnlawfully, is felony; and to receiue any so taken knowing thereof, or to procure and abet the same, is felony: And shall be all reputed as principals; and aswel the principals, as accessories before the offence, shall all loose the benefit of clergy. 39. El. ca. 9.

But this act doth not extend to any person taking any woman, only claiming her as his ward, or bond-woman.

4. & 5. P. & M. 2. The taking away of a maid vnder 16. yeares of age, without the consent of her parents or gouernours, or contracting mariage with her, or deflowring her, is no felony, but yet shall be punished with long imprisonment, without baile, or with grieuous fine.

7. 8. But vnlawfully & carnally to know and abuse any woman child vnder the age of ten yeres, is felony, although such child consents before. *Cromp.* 47. And the offender shall haue no benefit of Clergy.

13. aff. 6. Also to take away a mans wife with the goods of her husband, whether it be against her will, or against her husbands wil, seemeth to be felony, by the stat. of Westm. 2. cap. 34. the words thereof are *De mulieribus abductis cum bonis virorum suorum, habeat rex sectam de bonis sic asportatis.*

Br. Cor. 77.
Stamf. 94.
Cromp. 35. F. Cor. 455.
Stamf. 27. But if the wife take her husbands goods, and so goeth away voluntarily with another man, & with those goods: or deliuereth those goods to another man; these two last cases seeme not to be felony.

Accessaries.

3. H. 7. f. 10.
Stamf. 40.
Br. Treas. 19. IN high treason, there be no Accessaries, for all the aduisers, counsellors, persuaders, and assistants therein, be principalls, and as much as if they were actors or doers: yea all that shall aduise, counsell, persuade, command, procure, or hire another to do any treason or felony (they being indeed the very cause of the fact) may seeme as culpable, if not more, then the principall actor; and the rule is, *plus peccat auctor quam actor*: Examples also wee haue hereof in the booke of God, *Gen. 3.* The serpent the procurer of the first sinne, by Gods owne iudgement had a greater punishment, then the woman

In treason.

or man: Againe, 2. Sam. 12.9. David is told (from God) that he had killed *Nrias*, whereas he only commanded *Ioab* to kill him, &c. yet in case of felony our law is otherwise.

Note whatsoeuer offence doth make a man accessory in felony, the like offence maketh him a principall in high treason. Stamf. 40.

But yet it seemeth this is to be vnderstood of accessories before the treason; for receiuing, aiding, and comforting a traitor after the offence (knowing the same) was holden to be but misprision of treason, 12. E. 13. *El. Dyer* 296. And yet by some other authorities, the receiuing of Traitors after the offence, knowing thereof, is holden to be treason: see 3. H. 7. 10. *Br. Treason* 19. *Huffey* chiefe Iustice, and *Cromp.* 42. b. who alledgeth the booke called the exposition of the termes of the law. Dyer 296.

In cases of *Præmunire*, there may be Principall and Accessory, by some opinions, 44. E. 3. & 8. H. 4. 6. b. *Huls*, *Br. Præmunire*, 4. 6. *Tamen quare*, for these offences seeme more like a trespassse then a felony, &c. And vpon the stat. of 27. E. 3. the offenders shall forfeit nothing if they appeare at the first day: but if they appeare not at the first day, then (for their contumacy) they shall be out of the K. protection, and shall forfeit their lands & goods to the K. which are as a peine giuen by the stat. but is no attainder: also if the Principall appeare not, or happen to be dead, yet the other shall answere; and therefore it seemeth that they be all principals. *Br. ibid.* 4.

In petty treason there is a principall, and there be accessories, as there is in felonies.

In felony.

In felony, there be two sorts of accessories:

The one is accessory before the felony committed:

The other is accessory after the offence done.

But he that is present at the time of the felony committed (bee it in case of murder, robbery, burglary, or larceny) is a principall, if he were either a procurer, or mouer, or be aider, comforter, or consent thereto, although at that present he doth nothing: see before 172 *Plo.* 100. a. 11. H. 4. *Br. Coron.* 188.

If one being present at the killing or robbing of a man, doth nothing, yet would haue aided his companion, if there had bin need, he shall be adiudged a principall. Stamf. 40. b.

But if one be present by chance, & seeth when another is slain, or robbed, or when any other felony is committed, and doth not come in company with the felons, nor is of their confederacy, although he doth not make any resistance, or disturbe the felon, or leuy huy and cry, nor discovereth the same, but concealeth it, yet it is no felony in him, but misprision of felony, and finable. F. Cor. 395.
Stamf. 37.
40. b.
Cromp. 44.
14. H. 7. 31.

Also in some cases a man may be a principall, although he be not present at the time of the felony committed: as if *A.* knowing drinke

to

to be poisoned, perswades *B.* to drink it, and after *B.* (in the absence of *A.*) doth drinke it, & dyeth thereof, *A.* is here a principall murderer, *Co.* 4. 44. See other like cases of poisoning. *antea tit. Felony, Murder, et postea sub hoc tit. Accessories.*

Note that the accessory fact in felony, whether before or after, though it be another offence, and distinct from the principal fact, yet it is also felony.

Accessories before the felony, are such as shall wil, command, hire, procure, moue, conspire, counsel, abet, or consent to commit any petty treason, murder, robbery, rape, burglary, or larceny, but are not present thereat, yet all such are thereby felons, when the felony is committed. *Before the fact.*

But here note some differences are to be obserued, when the principal & chief offender, or actor doth not accomplish the fact altogether in the selfe same sort, as it was before hand agreed, & plotted betweene him & the accessory: and therefore if *A.* command *B.* to lay hold vpon *C.* and *B.* goeth & robbeth *C.* this is no felony in *A.* (if he be absent when the robbery is done) for this commandment might haue bin performed without any robbery.

F. Cor. 314. But if the commandment had bin to beat *C.* and the party commanded doth kill *C.* or beatech him so that he dyeth thereof, *A.* shall be accessory to his felony & murder; for it is hazard in beating a man, that he may dye thereof.

Plo. 475. *A.* commandeth *B.* to rob one, and in attempting this, another is killed, *A.* shall be accessory to this murder.

He that commandeth an euill or vnlawful act to be done, shall be adiudged accessory to all that shall insue vpon the same euill act, but not to any other distinct thing: As if

Plo. 475. *A.* commandeth *B.* to steale a horse, and he stealeth an ox: or to steale a white horse, and he stealeth a blacke: or to rob a man, by the high way, of his mony, & he robs him in his house of his plate: or to burn the house of *B.* & he burneth the house of *C.* these be other acts and felonies then *A.* commanded to be done, and therefore *A.* shall not be adiudged accessory to them.

But if *B.* shall commit the same felony which *A.* did command or counsel to be done, though he doth it at another time, or in another sort, than *A.* did command or counsel, yet here *A.* shall be accessory thereto.

Pia. 475. *Lan.* 183. As if *A.* doth counsel *B.* to kil *C.* by poison, & he killeth him with his dagger: or to kil *C.* by the high way, & he killeth him in his house: or to kill him one day, & he killeth him vpon another day, in these, and the like cases, *A.* shall be accessory to the murder.

A. counselleth *B.* to poyson *C.* and to that end *A.* buyeth poyson, and deliuereth it to *B.* who tempereth it in an apple, and deliuereth it

to

it to *C.* with intent to poyson him, and *C.* knowing nothing, giueth the apple to *E.* who eateth it, and dyeth thereof; here *A.* is not accessory to the murder of *E.* yet it is murder in *B.*

A. counselleth *B.* to kill *C.* and before he hath killed him, *A.* doth repent him, and countermands it, charging *B.* not to kill *C.* and yet after *B.* doth kill *C.* here *A.* shal not be adiudged accessory to the death of *C.* for the law adiudgeth no man accessory to a felony before the fact, but such as continue that mind at the time that the same felony is done and executed.

But if *A.* counselleth a woman to murder the child in her body: and after the child is borne, & then is murdered by the commandment of the woman, in the absence of *A.* yet he is accessory by his counselling it before the birth, & not countermanding it. *Dyer* 186.

A man foreknoweth of a felony intended to be done, & doth conceal it, & so suffereth it to be effected, this maketh him no accessory to the felony, except he consenteth thereto: but such concealment seemeth to be only misprision of felony, & finable: And yet the rule is, *Qui non prohibet, quod prohibere potest, consentit. Ideo quere.*

Note that in manslaughter, there can be no accessory before the fact; for manslaughter is vpon a soden falling out.

Note also that none shal haue his clergy, which maliciously commandeth, hireth, or counselleth any person to commit any pety treason, or wilful murder, or to do any robbery. 4. & 5. *P. & M. ca. 4.* See *Dyer* 183. 186. & *Co.* 11. 35.

Also none which is accessory before the fact, to any poysoning, robbing of a church, or felonious burning of any dwelling house, or barne with corne, shal haue any benefit of clergy, 23. *H. 8. ca. 1.* & 32. *H. 8. ca. 3.* & 4. & 5. *P. & M. ca. 4.* See *Co.* 11. *Poulters case.*

No horstealer, nor accessory thereto, either before or after (such felony done) shal haue any benefit of clergy. 2. *E. 6. c. 3.* et 31. *El.* 12.

After the fact.

Accessories after the offence, are they, who knowing that another hath committed a felony, do feloniously receiue or harbour him, or relieue, assist, comfort, or ayd him, whether it be before the attainder of the felon, or after his attainder.

As to comfort or relieue a felon (before he is attained) with money, meat, drinke, or lodging, knowing of the felony, maketh one accessory.

So to lend him a horse to go his way withall: Or otherwise to be a means of his escape.

But to relieue him being in prison, maketh not a man accessory: Also to ayde him by his good word, or suite, for his deliuerance, or to send a letter for his enlargement, this maketh not a man accessory to the felony.

A felon that goeth vnder baile, and stands bound to appeare for his

Dyer 186.

Lamb. 285

14. *H. 7.* 31.

Co. 44.

Stamf. 416

Stamf. 41.

Br. Cor. 103

Lamb. 286.

Cromp. 42.

his triall; to receiue, harbour, or relieue such a one, with money, or victual, breedeth no danger of being an accessory, because the felony in these last cases cannot be concealed, nor the trial hindered by it.

A felon getteth his pardon, such as shall receiue or relieue him after shall not be accompted accessory: But to receiue, or relieue him before his pardon obtained is felony: see *Pl. 476.* yet it seemeth vpon this pardon, such access before shalbe discharged.

F. Cor. 377.
Stamf. 96.
Dyer 355.

A felon is attained, by verdict, confession, or by vtlary, to receiue, harbour, or relieue such a one, by any person dwelling in the same county where the felon is attained, it maketh such receiuer or aider an accessory to the felony, although such receiuer &c. did not know of the felony; because by the attainder of the felon, he is a felon of record, wherof euery person dwelling in the same county is to take notice: yet *M. Bracton* requireth a more direct knowledge in the parties to make them accessory: for albeit a record (and especially the pronouncing of an vtlary) be so notorious, that euery man may easily come to know the same, yet were it an ouer great extremity, that euery man should (vpon the perill of his owne life) take certaine knowledge therof: which opinion of *M. Bractons*, *M. Lamberts* also holdeth to be very reasonable.

Lamb. 289.

F. Cor. 377.
Vi. Stamf. 41

But a felon attained (by verdict, confession, or vtlary) in one county, and another doth receiue, or ayd him in another county, this maketh such receiuer or ayder no accessory to the felony, vnlesse he did also know of the felony.

F. Cor. 383.
Stamf. 26.

If a feme couert shall relieue, or receiue, & keepe company with her husband, knowing him to be a felon, she is no accessory thereby: for a woman couert cannot be accessory in felony to her husband, for she ought to relieue him, & not to discover his counsell: But if she receiue &c. another felon, she is an accessory.

See *Stamf.* 43. c. such a matter.

A felon who fled to the house of his natural brother, and the brother shut the fore doore against the pursuers, and conueyed the felon out of his house at a backe doore, whereby he gat to the church, this brother was adiudged an accessory for it, for he was a meanes of the escape.

Quere, if a felon flyeth, and commeth to his friends house, & his friend doth shut the doore against him, and yet maketh the pursuers believe that he is in the house, wheras he escapeth, if this make not the friend an accessory.

5. H. 4. 1.
Br. Cor. 26.
See *Br.*
Escape 43.

A man hath a felon in his house, and (knowing of the felony) suffereth him to go his way, & so to escape, yet this is no felony, for that he had not arrested him of the felony before: neither can such an escape make him an accessory, except he were any means of the escape.

1. *H. 7. 6.*
Stamf. 43. c.

If one do rescue him that is arrested for felony, he is a principall felon, and not an accessory: see before *pag.* *Rescous.*

Recci-

Buying stolne goods.

Receiuing or buying stolon goods, knowing they were stolon, maketh not a man accessary to the felony, vnles he receiue also (or aydeth) the felon himselfe: yet M. *Crompton* maketh a *quare* therof, and alledgeth some cales to the contrary: see *Crompt. fol. 41. 42. 43.* Bnt herein

There seemes a difference between a buyer (being a stranger to the felon, and for valuable consideration shal buy such goods) and a receiuer or buyer, who is an adherent or companion to the felon, or that by couin shal receiue, or buy such goods. See the preamble of the stat. 2. *Ed. 6. ca. 24.*

A man buyeth stolon goods for 5. s. which are worth 20. s. this maketh the buyer an accessary, by the opinion of M. *Crompt. fol. 43.* for it may wel appeare by the price, that the seller came not truly by them and therefore it is safe to lay hold of such sellers, as shal sell any thing at any great vnder value.

Taking again goods stolne.

A man pursueth & taketh a felon that hath stolon his goods, & then taketh his goods againe, & suffereth the thiefe to escape, he is no accessary therby by some opinions; for he may *in initio agere ciuilitur,* or *criminaliter,* at his pleasure, as M. *Bract.* writeth, *Stamf. 2 Square towermen,* for M. *Stamf. f. 40.* sayth, If he takes his goods againe from the felon to fauour him, this is theftboot, (the punishment wherof in ancient time was of life & member; and by some it is holden to be felony at this day.) The like seemeth to be, if he takes his goods againe from the felon, and then fauouret him, and letteth him go.

But if the party robbed take mony &c. of the thiefe, to the end he shal fauour him, or shal not giue euidence against him, whereby the thiefe escapeth, now is hee an accessary to the felony of his owne goods, by good opinion; though some other seeme to take this for theftboot. and so to be punishable at this day, only by ranome and imprisonment.

If the party robbed, or if he that shal haue any goods stolne from him, after complaint by him made of the felony (to a Iust. of P. or to the constable) shal then take his goods againe, & wil not prosecute his matter against the felon any further, but will suffer him to escape, after he was once so charged, & perhaps arrested for the same, *quare* if this maketh not him an accessary, for that he did once *agere criminaliter,* by complaint made to the officer against the felon.

I thinke in such case, the Iu. of Peace shal do well (at least) to bind oue: both the one & the other to the quarter sessions, or to the gaole deliuerie.

But if vpon huy and cry, a man doe arrest a thiefe that hath stolne another mans goods, and do then take the goods from the felon, and so let him go, this maketh him an accessary to the felony, if not a principall felon.

Note

Note in all cases of an accessorie after the fact, it is requisite, that the fact (to which he is an accessory) be a felony at the very time in which he becommeth an accessory to it: For if *A.* giueth a mortal wound to *B.* vpon the first of March, and *C.* knowing thereof, receiueh &c. *A. 2.* or 3. daies together, and letteth him goe, and after *B.* dyeth of the wound within the yeare, yet this receipt &c. maketh *C.* no accessary, because the principall fact was no felony at the time either of the receipt, or of the letting him go.

By the stat. 2. *Ed. 6. c. 24.* accessaries may be to a felony done in another county: whereas before that stat the common law laid no hold of such accessories, for that those in another county, vpon the triall, could not haue conifance of the principall offence &c.

But now by the said stat. there shalbe a certificat from the *Castro Rotulorum* of the county where the principall shal bee attainted or conuicted &c. See *antea tit. Felony.*

Note that if an offence be made felony by stat. although the same stat. doth not expressly make mention of procurors, counsellors, abettors, consentors, and aidors, &c. yet they shalbe taken as accessories (within the compasse of the same stat.) euen in the same maner, as if it were felony at the common law.

A man may bee an accessory to an accessory, as if hee shall receiue, relieue, or comfort him who is accessorie to a felon, knowing the same.

Although the accessory shalbe punished, & shal haue iudgement of life and member, aswel as the principall which did the felony, yet the principall ought first to be attainted (by verdict, confession, or vt-lary) before the accessory can be charged or put to answere: and the acquittal of the principall, is the acquittal of the accessory; for *ubi non est principalis, non potest esse accessorius*: but yet the accessory shal be attached, & surely kept (and shalbe committed by the Iust. of P. &c.) vntill the principall be attached and attainted.

And if the principall be attainted, though erroneously, that shal not auaille the accessory, but he must answere &c. *Co. 9. 68. b. & 119.*

If the principall dye before he be attainted; or if the principall be found not guilty by verdict; or be found by verdict that he slew the other in his owne defence, or if after conviction, by verdict, confession, or vt-lary, and before iudgment, he hath his clergy, or getteth his pardon, the Accessory in all these cases shal be discharged: But it is not safe for the Iustice of Peace to discharge such an Accessorie out of Sessions.

A man killeth another *se defendendo,* or by misadventure, and it is so found vpon his triall, the accessorie shal be discharged, for that in these cases the principall shal not haue iudgment of death. *Es omne accessar. sequitur suum principale.* See *Br. Forf. 13.*

If

Rules concern-
ing felony.

If a man committeth felony in the time of one K. he may be charged and arraigned for it after, in the time of another King. 1. E. 6. Br. Cor. 178

If a man do commit murder, steale goods, or do any other felony in one county, and then flyeth into another county, & is taken there, and brought before a Ju. of P. there, he shall be (by the Ju.) imprisoned in the gaole of the county where he is taken; and after shall be removed by the K. writ into the gaole of the county where he committed the felony. But for those that do informe against such felons, the said Ju. shall bind such Informers ouer to appeare, and to giue euidence against such felons, at the next generall gaole deliuey to bee holden in that county where the triall of such murder, or felony shall bee: whither also the said Ju. must certifie such information taken by him 13. E. 4. 9

If a man committeth a robbery, or stealeth a horse, beast or other goods in one countie, and doth carrie, leade, or driue the goods into another county, it is felony in euery county whither hee doth carry or driue those goods; and the offendour may be indicted, or appealed of felony, or theft, and be arraigned, and haue his iudgement in any of those counties: but the offendour cannot bee appealed or indicted of robbery, but only in the county where the robbery was done, for it is not robbery in any other county; for robberie must be done to the person of a man. 4 H. 7. 5. 24. H. 8. Br. Cor. 171. Co. 7. a.

If a felon do steale another mans goods, and after another stealeth the same from him, the owner of the goods may charge the first or second felon, at his choice. 13. E. 4. 3. 4. H. 7. 5.

Also if a man shall deliuer cloth to a tailor to make a garment, if the cloth be stolne from the tailor, the offendour may be charged & indicted for stealing the same, either at the owners suit, or at the tailors. PR. 130.

Also an indictment may be, *Quod bona & catalla cuiusdam hominis igniti felonice cepit.* See here before 236. And it seemeth any man may in such case both informe the court, and by their direction may prefer an indictment against the felon, and giue euidence to the Enquest therein. Dyer 99.

And so it seemeth, if the owner be knowne, but will not charge the felon therewith, any other person (especially after proclamation made in the Court, that if any will informe for the King, hee shall be heard) may safely informe the court, prefer an indictment, and giue in euidence for the king, against the felon, because it is for the kings aduantage, to haue the forfeiture of the felons goods: yea it seemeth in the two former cases, that if the Iust. of Peace shall heare of any person that can informe any materiall thing against such a felon, or against any felon, the Iustice in his discretion may send for him, take his information, and may bind him to giue euidence against such felon. 35. H. 6. 15. Stamf. 163.

Also

Also if any robbery or theft be committed, and the party robbed or other owner of the goods, will not charge the felon therewith, yet it seemeth euery Iust. of P. may cause such felon (or any person suspected for such felony) to be apprehended, and may examine them thereof; and also may send as well for the partie robbed, &c. as for all such other persons as can informe any thing materiall concerning the said Felony, and may take their informations (vpon oath) and if vpon such Examination they shall finde cause, the said Iustice may commit the Offendors, and binde ouer the Informer. See *antea* in the other title of *Felony*.

Note also (for the better preuention, & apprehending of Felons) *Huy and cry.* that vpon all homicides, burglaries, robberies, & other felonies, and when men are put in great danger, huy & crie shall be leuied, & euery man shall follow the huy and cry, and whosoever doth not, shall bee attached to appeare before the Ju. of Gaole deliuey: it seemeth any Ju. of P. may bind them ouer, and that by the Commiss.

Yea vpon any felony committed, all men generally shall be ready (at the commandement of the Sheriffe, & at the cry of the country) to pursue and arrest felons, vpon paine to be grieuouly fined.

And such Huy and crie and pursuit shall be made from towne to towne, and from country to country: and shall be made by horsemen and footmen: and in case of robbery, if none of the Felons be taken within forty daies after the felony committed, then the whole Hundred where the robbery was done, shall answer for the robbery done, and the damages: but yet the inhabitants of any other Hundred wherin negligence, fault, or defect of pursuit and fresh suit, shall happen to be, shall answer and satisfie the one moitie, and halfe of all and euery such summes of money and damages. See more here before *tit. Huy and cry, and Robbery*.

And if a man be slaine in the day time, in a towne not walled, and murderer escape, the whole towne shall be amerced for this escape: But if it be in a cite or towne walled, then if the murder &c. were by day, or by night, they shall be amerced for the escape. *Fitz. Coron. 238 293. 299. & 302. Stamf. 33. l. 3. H. 7. 1. P. Coroners 13.*

And if a man be slaine in the day time, out of any towne, then the hundred shall be charged therewith, & for the insufficiency of the hundred, all the county shall be charged &c. *Stamf. 34. f.* yet see *Dyer 210 b.* that the towneship shall bee amerced for the escape, although the murder were committed in the fields of the towne, or in a lane, &c. And the Iust. of P. are to enquire of such escapes, and to certifie the same into the K. Bench. *P. Iustices 19.*

Also euery man is a sufficient Bailiffe and Officer to apprehend him that is pursued by huy & cry: and if he be taken with the thing supposed to bee stolten, though hee neither bee of euill name, nor a

stranger,

See Br. Det. 204.

3. Ed. 1. c. 9. P. Fel. 38. & Huy & cry 1.

3. Ed. 1. c. 9.

1. Ed. 1. c. 1. 27. Eliz. 1. 3. 28. E. 3. c. 11.

3. H. 7. ca. 1. Co. 7. 6. b.

PR. 156.

stranger, yet every man may commit as well such suspected person, as also such goods, to the towne where they bee apprehended, to answer to the King according to the Law; And the Constables of the Towne are to carry before some Iustice of Peace, as well such prisoners, as also the bringers, that the Iustice may take their Information against such prisoner, and may examine and commit such offender, or person so suspected.

But if a man do leuy Huey and Crie vpon another without cause, both the one and the other shall be attached and caried before a Iustice of P. to answer it, as disturbers of the peace, and to be bound to their good behaviour.

Note also that the K. Officer may breake open any mans house, to apprehend any felon, or any person that is suspected of felony, being in the said house. See hereof *antea tit. Forcible Entry*, 9. Ed. 4. 9. Co. 5. 92.

Also the Highwayes are to bee enlarged, and to bee cleansed of all Bulhes, Woods, and Trees, &c. whereby such offenders may lurke or escape. See *antea tit. Highwayes by Robbery*.

Watch.

And for the better detecting and apprehending of such offenders in great townes being walled, the gates are to be shut from the Sun setting, vntill the Sunne rising: and no man shall bee lodged in the suburbs, from nine of the clocke, vntill day, vnlesse his host will answer for him: And in all other townes warch shall be kept from the feast of the *Ascension*, vntill *Michaelmas*, from the Sunne setting, vntill the Sunne rising: And if any stranger do passe by them, he shall be arrested vntill the morning, &c. And for such arrests none shall be punished. And the Constables ought to see these Watches duly set and kept, and to make presentment to the Iu. of P. at their Sessions, of the defaults of watches, and of such as lodge strangers, for whom they will not answer: and the Iustice of Peace at their Sessions, shall punish such as be found in default. *P. Watch*. See *antea tit. Watch*, that every Iu. of P. may cause these watches to be duly kept.

The forfeiture for Felony.

The punishment of Felony it is fourefold; *scz.*

1. The offender shall lose his lite, and bee hanged betweene heauen and earth, as vnworthy of both. Co. 4. 114.

2. He shall lose his blood, as wel in regard of his Auncestry, as of his posterity; for his blood is corrupted, so as he hath neither Auncestor, heire, nor posteritie.

3. He shall forfeit his (Fee simple) lands: wherein the K. shall haue *Annun. diem. & vastum*, to the intent that the offenders wife & children shall be cast out thereof, his houses rased, his trees rooted vp, his meadowes plowed vp, & all his land wasted & destroyed; And after the yeare, day & wast, the lands shall go by eschete to the chiefe Lord of

of the Fee: (But yet Lord may fine with the King for all, and so haue the land presently) *quare* if the Lord may enter. See *Br. Reseif. 36*.

4. The offender shall forfeit and lose all his goods.

The King shall haue all the goods of felons which be condemned and which be fugitiue, wheresoeuer the said goods be found; *scz.* all their goods moucable and vn moucable, their corne growing, & the profits of their fee simple lands for a yeare and a day, and the issues and profits of their other lands, during their liues, and all their debts due to them by stat. recog. obligation, or simple contract, & money due vpon accounts: and the King, or he to whom the K. shall giue such debt, shall haue an action therfore in his owne name, and yet the King shall not pay such debts as the said felons did owe.

By the common law, after a felon be found guiltie before the Coroner: or that it be found before the Coroner, that he did flie for the felony, there the Coroner, Sheriffe, Vnder Sheriffe, or Escheator, &c. may (for the King) seise the goods of the felon, & preise them by an Enquest &c. before his attainder: for by such thing found before the Coroner, the goods of the felon are forfeited without further inquiry, or triall of the felon: and yet the officer may not in such case cary the felons goods away, but (after preisement as aforesaid) must leaue them in the custody of the felons neighbors where he dwelt, or in the custody of the town where the goods were to be answered to the K: and if he were indired of felony, yet his goods should not be remoued out of his house vntill hee were attainted, but the officer was to seise & preise them, & to take surety of the party that they should not be imbeziled; And if the party would not find surety, the officer was to deliuer the to the neighbors, & the said goods should be kept by his neighbors all the time of his imprisonment, & the felon must haue had reasonable maintenance of his goods for him & his family vntill he were conuicted & found guilty of the felony, and then that which did remaine was the Kings. See 25. E. 3. c. 14. *P. Indictment. 5*.

And now by the stat. made 1. R. 3. c. 3. it is ordained, that if any Sheriffe &c. or other person, do take or seise the goods of any person arrested and imprisoned, before the same person be conuicted, or attainted of felony, or that the same goods bee otherwise lawfully forfeited, he shall pay to the party grieved the double value of the goods so taken or seised &c. which stat. seemeth to bee but a confirmation of the common law, saith Mast. *Stamf. fo. 193*. saue that it giueth the party grieved a more ample recompense, and more speedy remedy, then the common law before did: so that before attainder, or conuiction, the goods of a felon that is in prison, ought not to bee seised, nor committed to the towne, nor taken out of the felons house, or possession: for a man attainted of felony, shall forfeit such goods as he hath at the time of the Attainder, and not at the time of the felony

2. Prero. 16. 17. Ed. 2.

Co. 3. 3. 8. P. Cor. 317. 334. 10. H. 6. 47. Dyer 30.

21. Aff. 96. Br. for. 23. 43. E. 3. 14. Br. for. 7. 7. H. 4. fo. vit. Stamf. 192.

P. Sherif. 24.

* Quere of such as flie, & 6. stat. 25. Ed. 3. P. Indict. 5.

Stamf. 193

ny committed; And a felon or Traitor after the Felony or Treason committed, and before attainder or conviction, may sell (*bona fide*) for his sustenance &c. his goods or chattels, bee they reall or personal: (but they may not disorderly sell, or waste their goods.) Therefore it seemeth, that the Officer may still take surety, that the goods be not imbezilled, and for want of sureties, may deliuer them to the towne. See *Br. forf. 44.*

Nay after attainder, if they shall grant their goods or lands, it shall bind all persons except the K. & Lord by escheat; But against them such graunt is voyd: And besides as to the K. or Lord by escheat, a man attainted of treason or felony, is absolutely and perpetually disabled by the corruption of his blood, so as none of his posterity can claime any inheritance in Fee simple as heire to him, or to any other ancestor paramount him. *Co. 1. 1. 1. b.*

After the conviction of a Felon (if the goods were in the Felon's possession at the time of his conviction) the towne presently stands charged therewith, & shall answer for them, though the goods were neuer seised by the officer, nor deliuered to the towne, (except they can shew what other person hath detained those goods, & that they could neuer haue possession of them; which exception is by the stat. of 31. E. 3. 3. *P. Escheat 3.*) So that it shall be safe for the towne to seise such goods (in whose hands soeuer they bee found) presently after the conviction of any felon: Yet *quare*, for by the opinion of *Priest*, none may seise any goods for the King, but an Officer who is accountable to the King. *39. H. 6. 1.*

Conviction. Conviction in Felony, is where a man (being indited of Felony) vpon his arraignment submitteth himselfe to be tried by the Country, and then is found guilty by the verdict of twelue other Iurors; Or shall confesse the offence vpon his triall; Or is outlawed for the same: Also Conviction in all other offences, (by the Common law) is where the offender is indited, or the offence presented by a Iury, whereto the offender pleadeth, *Not guilty*, and is found guilty by the verdict of twelue other Iurors, or by a second Iury &c. *Co. 11. 30.*

And yet (by diuers Statutes) you shall find that an offender may bee convicted (out of Court,) either vpon the view and Record of the Iustice of Peace; Or by the Confession of the Offender; Or vpon Examination of Witnesses before one or two Iustices of Peace, and that out of the Sessions. See here *antea titulo, Heare and Determine.*

And sometimes, Conviction may bee in the Sessions, vpon the Certificate, or Presentment of the Iustices of Peace. See *tit. Alehouses, and Highways.*

And sometimes by Confession, or Examination of Witnesses in court, without any verdict taken. See *Crom. 130. 131. Br. Confess. 32.*

And

And in some cases conviction shall be taken for attainder. See *Co. 11. 59. 60.*

Co. 11. 58. Stam. 133 & 135. b. The difference betweene attainder, and conviction, in case of felony, is; the person attainted hath iudgement of death giuen vpon him; The person convicted, before iudgement prayeth his Clergy, and hath it, &c. Or after verdict, confession, or outlary, the felon is said to be convicted, till iudgement be giuen.

And so a man is properly said to bee Indited, when the offence is first found by the great Enquest, or other Iury of Enquiry.

2. Convicted, when the offender is found guilty by a second Iury.
3. Attainted, when (after such conviction) Iudgement is giuen against the offender.

Examination of Felons, and evidence against them.

2 & 3. Ph. & M. 10. P. Iust. 108. **W**hen any person shall be brought before a Iust. of P. for Murder, Manslaughter, or any other felony (wherewith the Iust. of P. may deale) or for suspicion thereof; before the Iustice shall commit or send such offender to prison, he shall take

- 1 The examination of such offender:
- 2 The Information of such as bring him; *viz.* he shall take their examination, & information of the fact, and circumstances thereof; And so much thereof, as shall be materiall to proue the felony, he shall put in writing within two dayes after the said examination:
- 3 Also the same Iust. of P. shall binde all such by Recognizance, as doe declare any thing materiall to proue the felony, to appeare at the next generall Gaole deliury (to be holden where the triall of the said felony shall bee) to giue in evidence against such offenders. See *antea tit. Felony.*

4 And then the same Iustice shall make his *Mittimus*, to cary the offender to the Gaole.

1 & 2. Ph. & Mar. 13. P. Iust. 107. Or if such offender be baileable (and that there be two Iustices of P. present together, the one of them being of the *Quorum*) after such examination, and information taken, and put in writing, the said Iust. of Peace may baile such prisoner.

5 And the said Iust. or Iustices of P. shall certifie at the next generall Gaole deliury, such examination, information, recog. & bailement. And if any Iust. of Peace shall offend in any thing contrary to the true intent and meaning of either of these statutes of 1. & 2. and 2. *Phil. & M.* the Iustices of Gaole deliury in their discretions, shall fine every such Iustice of peace.

And yet for petty Larcenies, and small Felonies; the offenders may be tried at the quarter Sessions, and the Examinations and Informations may bee certified thither, and the Informers bound thither. See hereof *antea tit. Felony.*

The forme of the Recognizance. See *postea tit. Recognizances.*

The forme of the *Mittimus.* See *postea tit. Mittimus.*

The forme of the Bailement. See *postea tit. Bailements.*

If the offender vpon his examination before the Iustice of peace, shall confesse the matter, it shall not be amisse that the offender subscribes his name or marke vnder such confession made by him.

If the offender confesseth the Felony before the Iustice of peace, and notwithstanding he letteth him go, without committing or bailing of him, this seemeth to be a voluntary escape, and so felony in the Iustice. *Cromp. 39. 44.*

Also if any person shall be brought before a Iust. of P. and charged with any maner of homicide (other then that which shall be done in the orderly execution of Iudgment) as if it were done *se defendendo*, or by casualty (which are not felonies of death) or done by an infant, a lunatike, or the like, Yet it is the Iustices part, & safest for him to commit the offender to prison, or at least to ioyne with some other in the bailement of him (if the cause will suffer it) to the ende the party may be discharged by a lawfull triall. See *antea tit. Homicide.* Lamb. 119.

The like is to be done where any Felony is committed, and one brought before the Iustice of P. vpon suspicion thereof, though it shall appeare to the Iustice, that the prisoner is not guilty thereof: For it is not fit that a man once arrested and charged with felony (or suspicion thereof) should be deliuered vpon any mans discretion, without further triall.

The Iustices of Peace haue authoritie (by the words of the Statute) to binde by Recognizance all such as do declare any thing materiall to prooue the felony, to giue evidence against the offender; And yet the wife is not to be bound to giue evidence, nor to be examined against her husband; for by the lawes of God, & of this land, she ought not to discouer his counsell, or his offence in case of theft, (or other felony, as it seemeth.) See *Stamf. 26. b.* Nay, I haue knowen the Iudge of Assise greatly to disallow, that the wife should be examined, or bound to giue in any evidence against others in case of Theft, wherein her husband was a partie, and yet her evidence was pregnant and materiall to haue proued the felony against others that were parties to the same felony, and not directly against the husband. See *antea tit. Accessorie.* 1. & 2. Phil. & M. 13.

But for children, I finde in the booke of Discouery of Witches at Lancaster Assises, *Anno Dom. 1612.* that the sonne and daughter of *Elizab. Deuise*, a Witch, were not onely examined by the Iustices of P. against their said mother, and the said Examinations certified and openly read vpon the arraignment and triall; But the daughter also was commaunded, and did giue open evidence against her mother then prisoner at the Barre. E. 3. b. 4. a. G. 2. 3. 4.

I find

I find further in the said Booke of the discouery of Witches, that *By an Infant* two children, the one about 9. yeares of age, the other of 14, did vpon their oathes giue evidence against the prisoners vpon their arraignment. See the Booke, *f. 4. l. a. b. K. 4. ab.*

Accufation by an approver. See hereof *tit. Bailements.*

Two informe against another in matter of Felony, and they vary in their tales, (*viz.* in the day and place, when and where the Felony was committed) such information is not much to be credited: See the story of *Susanna.* *By persons discredited*

He that is examined, if part of that he speaketh be prooued to be false, he is not to be credited in the residue of his information; And therefore we shall find in *16. Ed. 4.* that a man who was produced as a witnes in the Chauncery, in his deposition hee was found to swear fallly in part, and thereupon his testimony was vtterly reiected. *Crom. 100.*

A man attainted of Periury, and the King pardons and restores him, &c. *quare* whether such a persons information shall be allowed against a prisoner; for the olde saying is, Once forsworne, cuer forlorne.

A man attainted of conspiracy or forgery, shall not be receiued to giue evidence, or to be a witness. See *Cromp. 127. b.*

But if one be brought before a Iu. of P. vpon suspicion of felony, although the informatiō against the prisoner shall be by such witnesses, yet it seemeth safest for the Iu. of P. to take their information for the King, and to binde them ouer to giue evidence, &c. and to commit the party suspected: And vpon the triall to informe the Iust. of Gaole deliuey, concerning the credit of those witnesses.

When a prisoner shall be brought before the Iustice of peace, for felony, or suspicion thereof, but they that bring him, will not, or cannot informe any materiall thing against the prisoner, yet it seemeth the Iust. of P. ought to commit the partie suspected (after his examination taken) and to binde ouer such as did first accuse the prisoner, or such as do bring him before the Iust. to giue in evidence, &c. And if after the said Iust. shall heare of any other persons that can informe any materiall thing against the prisoner (to proue the felony wherof he is suspected) the said Iust. may grant out his Warrant for such persons to come before him, and may also take their Information, &c. and may binde them to giue in evidence against the prisoner: for euery one shall be admitted to giue evidence for the King. *Stamf. 163* See *antea tit. Felonie.*

And it seemeth fit, that the parties griued, be bound not onely to giue in evidence, but also to preferre a Bill of Inditement against the prisoner: and the other persons may be bound to giue in evidence onely.

And for that men should be the readier and more willing to giue evidence *P. Re. Riur. 1*

evidence against felons, the statute made 21. H. 8. c. 11. hath enacted, That if any man hath any goods stolen from him, if the felon bee thereof indited, and after in any sort attainted, or found guiltie, by reason of evidence giuen by the partie robbed, or owner of the said goods, or by any other by his procurement, Then the partie robbed, (or owner of the goods) shall be restored to his said goods; though he neuer made any fresh suite: Before which statute the party robbed could haue no restitution, without suing of an appeale against the felon, and fresh suite made.

Restitution.

Also the Executors of the party robbed, shall haue Restitution by force of this Statute, viz. vpon evidence giuen by them, or by their procurement against the felon, whereby the felon is attainted, or found guiltie.

If a thiefe doe rob or steale goods from three men seuerally, and he be indited of the robbing or stealing from one of them, & arraigned therupon, in this case though the other two would giue evidence against the offender, yet shall not they haue Restitution of their goods, by the meaning of that statute; for the Felon is not attainted of any other felony, (sauing of that wherof he was indited: But if he be indited of all the three robberies or felonies seuerally, and arraigned vpon one of them, and found guilty by the evidence giuen by one of the parties robbed, &c. Yet shall hee be after arraigned vpon the other two Inditements, to the intent hee also may bee found guiltie, by the evidence of the other two persons robbed, and that so they may haue Restitution of their goods stolen, according to the meaning of the said statute.

And if a man doe steale goods at diuers times from seuerall men, and he is after attainted at the suit of one of them only, for the goods stolen from him, but is not attainted at the suit of the others; by this attainder, the felon shall forfeit to the King not only his own goods, but also the goods stolen from those other, at whose suit he was not attainted, though the felon had no property, but only a possession of those goods; And the property of the goods which remaineth in the right owner in this case is forfeited (by the owner) to the King, for default of the owners pursuing the felon.

Also if there be diuers of the Theeues, and but one of the principals attainted (as before) yet it seemeth, the party robbed shall haue Restitution.

But in these and the like cases of Restitution, if the felon hath sold the goods in a Faire, or Market ouert, and after be attainted of the felony (vpon evidence giuen by the partie robbed,) Here the owner shall not haue Restitution; For by Alienation in Faire or Market ouert the property of goods stolen, are altered, 12. H. 8. c. 6. Yet if hee that bought the goods in market were priuy to the felony, such

sale shall not alter the property, *quia particeps criminis*: See 33. H. 6. 7. Co. 3. 78. *Vide antea in. Horses.*

A man shall haue restitution of money stolen, &c. though it cannot be knowen. *Br. Restit. 22.*

But if a man hath a horse or goods stolen from him, & knoweth not by whom, or if he knoweth the felon, yet if the felon waiueth the goods, flieth, & escapeth; & the lord of the Mannor, &c. seifeth them, the party robbed shall haue no restitution, for that he cannot indite and attaint the felon: And yet if the felon had not the goods in his possession, and with him at the time when he fled (but had left them elsewhere) then are they no waiued goods nor forfeite, but that the owner may take them againe wheresoeuer he findeth them, without any restitution awarded, as it seemeth. *Co. 5. 109.*

Also in the aforesaid Booke of Discouery of Witches, I obserue one other thing, viz.

That Examinations taken by Iust. of P. in one countie, may be (by Examination) certified into another county, and there read and giuen in evidence against the prisoner. *T. 2. 3.*

The offender himselfe shall not be examined vpon oath; for by the common law, *Nullus tenetur seipsum prodere*; Neither was a mans fault to be wrung out of himselfe (no not by examination only) but to be proued by others, vntill the stat. of 2. & 3. P. & M. c. 10. gaue authoritie to the Iust. of P. to examine the felon himselfe.

But it seemeth conuenient, in cases of Felony especially, that the information (of the bringers, and others) which the Iust. of P. do take against the prisoner, be vpon Oath; otherwise vpon the triall of the prisoner, such Information, or Examination, taken by the Iustice of peace, shall not bee read or deliuered to the Iury, nor giuen in evidence against the prisoner vpon his triall: And so was the direction of Sir Edward Coke, late Lord chiefe Iustice (5. Jacobi, at Cambridge Summer Assises) vpon the triall of a Felon; For (said he) in case of trespasse to the value of two pence, no evidence shall be giuen to the Iury, but vpon oath, much lesse where the life of a man is in question. See *Lamb. pag. 210.* that he hath heard the opinions of other Iust. of Assise deliuered accordingly.

Also if the Informers be examined vpon oath, then though it happen they should die before the prisoner haue his triall, yet may their information be giuen in evidence, as a matter of good credit.

Also it is found by experience, that without oath, many informers will speake coldly against a felon before the face of the Iust. of P. yea and will also speake very sparingly and coldly, vpon their evidence giuen before the Iudges of Assise. I haue obserued in some, had they not bin vrged with their former information taken vpon oath: For the laboring (by the offender & his friends) to such as are to informe

and

and giue evidence (both before the matter commeth before the Iust. of P. and after) is now growen ouer common and vsuall.

Also M. Brooke (*tit. Examination 32.*) is of opinion, that euery examination ought to be vpon oath; And so also is the practise of the Iustices in the higher Courts at Westm. in all their examinations of Summoners, Viewers, Sheriffs, Clerks, and other Officers, &c.

And here let me admonish all such as are to informe or beare witness against a prisoner, or any offender, before a Iustice of Peace, or other Magistrate, That they be well aduised what they testifie vpon their oathes, knowing that in such cases, if either they should not speak the truth, or should conceal any part of the truth, they should offend against God, the magistrat, the innocent, the commonwealth, and their owne soules: *scz.* against

God, in despising of him, and belying the truth.

Magistrate, in deceiuing of him, and causing him to do iniustice.

Innocent, in spoiling him of his name, goods, or life.

Common-wealth, *scz.* if the party be nocent or guilty, & he cleares him by false witness.

His owne soule, for it is periury in him, (at least, in the presence of God, and good men.)

Whether Information, Evidence, or prooffe of Witnesses shall be taken against the King.

It seemeth iust and right, that the Iu. of P. who taketh information against a felon, or person suspected of felony, should take & certifie as wel such information, prooffe, & evidence, as goeth to the acquittal or clearing of the prisoner; as such as makes for the K. & against the prisoner; for such information, evidence or prooffe taken, and the certifying thereof by the Iu. of P. is only to informe the King and his Iust. of Gaole deliury, &c. of the truth of the matter.

And *Sir Ed. Cok.* (at Lent Assises at Bury, 5. *Jacobi*) aduised a Coroner that he ought to haue done accordingly, (as I haue heard.)

But *quare* if the Iustices of peace, or Coronor, may take vpon oath such information, evidence or prooffe, as maketh against the King: it seemeth no.

Vpon triall of felons before the Iust. of Gaole deliury, the said Iu. will often heare witnesses and evidence which goeth to the clearing and acquittal of the prisoner, yet they will not take it vpon oath; but doe leaue such testimony and evidence to the Iury, to giue credit, or to thinke thereof as they shall see and finde cause.

Popham chiefe Iustice (at Cambridge Assises *tempore Eli.*) committed one to prison, who, vpon the triall of a felon, called out, That he could giue evidence for the Queene, and when hee was sworne, hee gaue evidence to acquite the offender.

But

But by the stat. 31. *El. c. 4.* it was enacted, that such persons as shall be impeached for any offence made felony by that statute (being against imbezilling of armor, &c.) shall be admitted to make any lawfull prooffe that they can, by witness or otherwise, for their discharge and defence.

In 7. *H. 4.* we shall find that one of the Sericants as *amicus Curie*, & to informe the Court (that they should not erre) did shew his opinion to the benefit of a prisoner, vpon the insufficiency of the Indictment: the like is to be seene in *Brooks* case, 28. *Eliz. in Banco Regis. Co. 4. 39.*

Now vpon the examination of Felons, and other like offenders, these circumstances following are to be considered: *Causes of Suspicion.*

1. His name; *scz.* if he be not called by diuers names.

His parents, if they were wicked, and giuen to the same kind of fault.

His abilitie of body; *scz.* if strong and swift, or weak or sickly not likely to doe the act.

His nature, if ciuill or hasty, witty and subtil, a quarreller, pilferer, or bloody minded, &c.

His meanes; if he hath whereon to liue, or not.

His trade; for if a man liueth idly or vagrant (*nullam exercens artem nec laborem*) it is a good cause to arrest him vpon suspicion, if there haue bene any felony committed. 7. *Ed. 4. 20.*

2. Quality.

His company; if ruffians, suspected persons, or his being in company with any the offenders.

His course of life; *scz.* if a common alehouse-hanter, or ryottous in dyet, play, or apparell.

Whether he be of euill fame, or report.

Whether he hath committed the like offence before, or if he hath had a Pardon, or been acquitted for felony before; *Nam qui semel est malus, semper presumitur esse malus, in eodem genere mali.*

If he hath any blood about him.

If any of the goods stollen, be in his possession.

The change of his countenance, his blushing; looking downewards, silence, trembling.

3. Markes
or
Signes.

His answers doubtfull, or repugnant.

If he offered agreement or composition.

The measure of his foot, or horsefoot.

The bleeding of the dead body in his presence.

If, being charged with the felony, or called theefe, he

saieth nothing. *F. Cor. 24.*

If he fled; *facient suorum, qui Indictum fugit.*

Place;

- 4. The fact { Place; *scz.* if conuenient for such act, as in a house, in a Wood, Dale, &c.
Time; the yeare, day, houre, early or late.
Where the offender was at the time of the fact, and where the day or night before; his businesse, and company there, and witness to prouall these.
Manner; if willingly, by chance, or necessitie.
If former malice.
- 5. The cause { If to his benefite, or what hope of gaine.
If for the eschuing of any hurt, or danger.
- 6. The persons. { *Agens*; if Principall or Accessary, Enfant, Lunatique, &c.
Patiens; if against the King, Common-wealth, Magistrate, Mr. &c.

A felon brought before a Iust. of P. accuseth others, it is sufficient cause for the Iust. to grant out his Warrant for the rest. *Vide pag. 285.*

A man going to execution, accuseth another of felony, it is sufficient cause to arrest him. F. Cor. 112.

Fama.

Communis vox & fama, that he did the offence, is sufficient cause of suspicion: *scz.* where such a felony is done, otherwise not. Br. faux. imp. p. 16.

But yet for the better conceiuing what may breed or giue iust cause of suspicion, marke some of Mast. *Bractons* Rules.

Oritur suspitio ex fama; Fama vero qua a suspitione inducit, oriri debet apud bonos & graves, (non quidem malevolos & maledicos, sed providas & fide dignas personas) idq. non semel, sed sepius: vane autem voces populis non sunt audienda. And therefore where the common prouerbe is, *Vox populis est vox Dei*, it should be, *Vox populis Dei, est vox Dei.* Stamf. 97.

Si furtum in manu alicuius inueniatur, vel sub potestate alicuius, tunc ille in cuius domo vel potestate res furtiva inuenta fuerit, tenebitur, (nisi Warrantum inuenerit, qui eum inde defendere possit,) for as another saith, Cum adsunt testimonia rerum, quid opus est verbis. Stamf. 29.

Si quis noctu cubauerit, in domo solus cum aliquo qui interfectus sit, vel si duo aut plures ibi fuere, & hutesum non leuauerit, nec plagam a latronibus vel interfectoris in defensione facienda accipere, nec ostendunt quis de se vel de alijs hominem interfecerit, his casibus mortem dedecere non possunt. Stamf. 179.

Si quis in domum suam notum vel ignotum acceperit qui rorvus ingreditur, visus est, vero postea nunquam nisi mortuus, dominus domus si tunc domi sit, vel alij de familia qui tunc interfuerunt penam capitalem subibunt nisi forte per patriam fuerint liberati. Ibid.

Sunt etiam quedam presumptiones ita violentae, ut probatione non admittunt in contrarium; ut si quis cu cullello cruentato captus sit super mortuum, vel fugiendo a mortuo, vel mortem conficitur; quibus casibus non admittitur mortem dedecere, nec alio opus est probatione. Stamf. 97. & 179.

And

And yet in cases of felony &c. the confession of the offender, vpon his examination before the Iu. of P. shall be no conviction of the offender, except he shal after* confesse the same againe vpon his triall or arraignment, or be found guilty by verdict of 12. men, &c.

*Co. 11. 30 a vide.

Also in cases of secret murders, and in cases of poysoning, witchcraft, and the like secret offences, where open and euident proofes are feldome to be had, there (it seemeth) halfe proofs are to be allowed, and are good causes of suspicion.

3 E. 4. 4. 5. H. 7. 4. Br. Ex. imp. 4. 16.

Note (by the Common Law) that in an action of false imprisonment brought against the Constable (or other person that shall arrest another vpon suspicion of felony) it is no plea for them to say that the plaintife was suspected of felony: but hee must alledge that there was such a felony committed, & that the plaintif was suspected for the same; for suspicion only without a felony committed, is no cause to arrest another.

17. E. 4. 5. 21. H. 7. 29.

Also the defendand must alledge some speciall matter (in fact) to proue that he who was arrested, was suspected of felony (as to say, that the party arrested, is a man of euil fame, &c.) otherwise euery man may arrest one another.

7. E. 4. 20. Br. Ex. imp. 16. 25.

Also the defendand must plead that he himselfe had a suspicion of the plaintife: for if the constable (or other person that shall arrest one that is suspected) doth not suspect him himselfe, it seemeth hee may not arrest him, vpon his owne authority: And yet by the opinions of *Keble, Yauisor, and Townsend*, aswell the Constable, as others in his ayde, may arrest one that is suspected of felony, vpon the suspicion, and complaint (made to the Constable) of the party robbed, *2. H. 7. 15. 16. Br. Faux. impris. 14. yet alij contra ibid. sc.* that the suspicion can extend to none other, but only to him that hath the suspicion, & *Br. 14. H. 8. 16. a.* accordeth: *tamen quare*, for if felons may not be arrested or staied, but only by those that shal suspect them, and that others may not ayd and assist the party, that shall suspect another to haue robbed him; many felons shal escape, and felons shall go often vnpunished.

But now by the stat. *7. Jac. 5.* The Constable, &c. in the former cases, may plead the general issue (Not guilty) and giue the said special matters in euidence.

Also if the Constable or other person, shall arrest another vpon suspicion of felony, by vertue of a Warrant from a Iust. of P. such Warrant shall excuse him, it being giuen in euidence, &c. *Vide postea III. WARRANTS.*

Bb

Baylement.



Baylement and Mainprise.



Baylement, Mainprise, or Repleuin, is the saving, or deliery of a man, out of prison, before that hee hath satisfied the law, *sc.* by finding sureties to answer, and be iustified by the law.

And to this purpose these three termes (Baylement, Mainprise, and Repleuin) be indifferently v-
led in our statutes, and bookes.

He that is bayled, is taken or kept out of prison, and deliuered (as it were) into the hands of his sureties, who are reputed his gardeins, and who may keepe him with them, and may in prison him by some opinions: see 22. H. 6. Br. Surety 8. & Mainp. 89. Stamf. 65. F. Mainp. 12

If the Mainperners or sureties, do at any time, or in any case, doubt that their prisoner, or the party by them bayled, will flie, they may take him, and bring him before the Iust. of P. and vpon their prayer the said Iu. of P. may & ought to discharge such sureties, & to commit the party to prison, except he shall find new sureties, &c. Crom. 157.

So if a prisoner be bayled by insufficient persons, the Iu. of P. (*ex officio*) may cause him to find better sureties, and may commit him (as it seemeth) til he shall so do; for the stat. of Westm. 1. ca. 15. requirerh that such as be bayled, be let out by sufficient sureties. P. Mainp. 2. *Vide antea tit. Surety for the Peace.*

And although the number of such sureties, their sufficiency, & the sum wherein they shall be bound, resteth (in some sort) in the discretion of the Iust. yet it is safe for them, to take 2. sureties (at the least) & those to bee subsidy men, especially if the prisoner be in for felony, or suspicion therof: for at Cambridge Assises *ann. dom. 1613.* Iudge Warberton threatned to haue set xl. li. vpon two Iu. of P. who had bayled a prisoner (that was committed for suspicion of felony and appeared not) for that the sureties were not subsidy men.

Quare, if the Iustices of P. may not examine vpon their oathes, the sureties concerning their sufficiency, or whether they be subsidy men *vide pag. 142.*

Now baylement, by the Iustices of P. (in case of felony, or for any other matter) is alwaies vpon a certain summe of money, (as vpon xl. li. &c.) the which summe the sureties &c. shall forf. to the K. if the prisoner appeareth not at his day. Stamf. 77. 21. H. 7. 20.

Also

Also the baylement in felony, is, *Ad standum rectum de latrocinio predicto secundum legem &c.* which seemeth to imply that they which haue taken him to baile, shall not only cause him to appeare, but also to answer to the felony. *Stamf. 77. d.*

And in this busines of baylement (being a matter of much weight) it behoueth the Iustices of P. to be very circumspect, as well for feare of wrong, by denying it to him that is baileable, as also for feare of danger to the seruice it selfe, by yeelding it where it is not grantable, and for feare of danger to themselves in both cases:

For whosoever do detaine prisoners who are baileable, after they haue offered sufficient sureties, shall be grieuouly amerced to the K. and he that doth take any reward for the deliuerance of such, shall be amerced to the K. and pay double to the prisoner. 3. E. 1. 15. P. Mainp. 6. Sec 23. H. 6. ca. 10. P. Sherf. 11

So on the other side, if one who by the law, is not baileable, shall be let to mainprise, this shall be adiudged a negligent escape in him or them that do let him to mainprise: and for such an escape or offence they shall be fined, and punished as followeth;

If the Sherife, constable, or any bailife of fee who hath the keeping of Prisoners, shall baile any person which is not baileable, and be therof attainted, they shall loose their fee and office for euer: and if the vndersherife, constable, or bailife of such as haue fee for keeping of prisoners, do it contrary to their masters wil: or any other bailife being not of fee; they shall haue three yerres imprisonment, & make fine at the K. pleasure. 3. E. 1. 15. P. Mainp. 3. 4

Note, that the Sherifes, and other Officers which doe let to baile any persons forbidden (by the statute 3. Ed. 1. cap. 15.) to be bayled shall be punished by the Iustices of Gaole deliery, according to the forme of the same statute: or else by the said Iustices they may be put to their fine, as for an escape punishable at the common law. 25. Ed. 3. 39. 27. E. 3. P. Mainp. 4.

Note also, that the Sherife or constable might at the common law haue bayled a suspect of felony (because they were conseruators of the peace) but now that power seemeth to be transferred to the Iustices of P. only.

If any Iustices of P. do let to baile or mainprise any person, who (for any offence by him committed) is declared not to be baileable, or forbidden to be bayled by the afore said statute of 3. Edm. 1. the said Iustices of Peace so offending shall pay such fines, as shall be assessed by the Iustices of gaole deliery where the offence shall be committed. *Fitz. 151. j.* 1. & 2. P. & M. ca. 13. P. Iust. 108. P. Mainp. 4. By the Iustices.

But the Iustices of P. and Coroners, within London and Middlesex, and in all other Cities, Boroughes, and Townes corporate haue authority to let to baile felons, and prisoners, as they haue formerly accustomed. *P. Iust. 107.* 1. & 2. P. & M.

Bb 2

If

If the Sherife, Iust. of P. or other officer, shall baile one that is not baileable, such bailement being against law, *quare* if the recognif. or bond taken vpon such bailement (for the apparance of the prisoner) be not void. See the opinion of *Moile* 37. H. 6. 1. and of the court there, that such a bond taken by the sherife is void.

See Co. 10.
100. b.

Now to shew further the authority of the Iustices of Peace, in this behalfe.

The manner.

No person arrested for manslaughter or felony, or suspicion thereof (being baileable by the law) shall be let to baile or mainprife, by any Iu. of P. but in open sessions, or by two Iu. of P. at the least, whereof one to be of the *quorum*, and the same Iustices to be present together, at the time of the said bailement.

1. R. 2. P. &
M. ca. 13.
P. Iust. 107.

And this bailement the said Iustices shall certifie in writing (subscribed with their hands) at the next general gaole deliury &c. *Vide antea tit. Examination of Felons.*

Ibid.

Also before the bailement of such prisoner, the same Iustices, or one of them, shall take the examination of the prisoner, and information of them that bring him, of the fact and circumstances thereof, and so much thereof as shall bee material to proue the felony, shall put in writing, before they make the bailement: which examination, information and bailement, they shall certifie at the next general gaole deliury, *ut supra.*

Ibid.

But if any Iu. of P. hath taken the examination of a felon, and information against him, & after hath sent him to the gaole: now vpon bailement of him by other Iust. they neede not to take any new examination of the prisoner, or information against him; but vnder their recog. (or together therewith) to certifie by what Iu. of P. the felon was committed, to the end that at his hands those examinations and informations may be required, if he haue not certified them.

By the opinion of *M. Crompton*, a prisoner (taken for felony) before his commitment, ought to be examined and bailed by two Iust. of P. being together (as before); but after that the prisoner is examined, and once committed, then he may bee bailed by any one Iust. of P. *quare* thereof.

Cromp. 156

Mittimus
the forme.

The Iust. of P. which shall send any prisoner to the Goale, ought to shew in their *Mittimus* the cause of the commitment, to the end it may appeare whether such prisoner be baileable, or no.

And if the Iustices of P. shall commit one to the gaole, with these words in the *Mittimus*, *sc.* without Baile or Mainprife (shewing a certaine cause in their *Mittimus*) yet if such a prisoner be baileable by law, other Iustices of P. may baile him; yet *quare*, seeing their authoritie is equall: but if the prisoner were committed without baile or mainprife, and without shewing cause in the *Mittimus*, then other Iustices of Peace cannot (or at least shall not do well) to baile him, without

Crom. 153.

See pag. seq

without making the other Iu. which committed him, priuy thereto; for hee might committed for such cause, as that he is not baileable (as for Treason, &c.)

Note, where a man is baileable, yet when he commeth before the Iust. he must offer surety to the Iustices, otherwise they may commit him to prison. *Br. Peace* 7.

Next it followeth that I shew what persons bee baileable, and what not:

It appeareth by the stat. of West 1. ca. 15. that in these foure cases following, a man was not baileable at the common law. *Br. Mainp. 47. F. N. B. 66. c.* *Persons not baileable.*

1 First, no person taken for the death of a man, *sc.* for murder, or any other homicide, was baileable by the common law:

And yet the Iustices of the K. Bench do vse to baile them, yea although it be for murder, *Br. Mainp. 60. 63. 78. 47.*

Also the stat. 1. & 2. P. & M. ca. 13. seemeth to admit that for manslaughter, and all other homicides (except murder onely) the slayer may be bailed by the Iustices of P. which also I take to be the common practise at this day: but let the Iustices of P. be sparing and well aduised herein, *viz.* that the offence be but manslaughter, and not murder.

Also it seemeth the Iustices of P. cannot baile him that hath committed manslaughter; if either he hath confessed the offence vpon his examination, (*vide postea tit. Bailement.*)

Or that he be taken with the manner:

Or that it be apparantly knowne that hee killed the other. *Vide pag. sequent.*

He that hath dangerously hurt another may goe vnder baile &c. *Vide pag. 28.*

2 Secondly, no person taken by the K. commandment, was baileable by the common law: but this must be intended of the K. commandment by his owne mouth, or by his priuy councill, which are incorporate to him. See *Stamf. 72. a. Br. Mainp. 37. 47.*

Stam. 73.

3 Thirdly, no person taken by the commaundement of the Kings Iustices, was baileable by the Common Law: but this must bee intended of their absolute commaundement; as if the Iustice commaunds one to prison, without shewing cause why he doth so command; or for misdemeanor done in his presence; or for some other cause which lyeth in the discretion of the Iu. (more then in his ordinary power, &c.)

See pag.
preced.

4 Fourthly, Trespassers in the Forest, were not baileable by the common law: but that was remedied by the statutes. 1. Ed. 3. c. 2. and 7. R. 2. ca. 4. *F. N. B. 67. c.*

P. Iust. 107.

But now for that by the statute 1. & 2. P. & M. ca. 13. it is provided *By Statute.*

that no Iust. or Iustices of P. shal let to baile any person contrary to the foresaid stat. of West. 1. (made 3. Ed. 1.) c. 15. And so the said stat. of Westm. 1. is now as a line whereby the Iustices of P. are to guide themselves in cases of baylement: I wil shew here what persons are baileable by that stat. of West. 1. and what not.

By this stat. of Westm. 1. no prisoner shall be let to baile, which is taken in any of these twelue Cases following,

- 1 Such as haue abiured the realm, shal not be bailed.
- 2 Nor any approuer or appellor, (for that he confesseth the felony, and himselfe guilty, before he can burthen or accuse another, as coadiutor or helper with him in doing the same.)
- 3 Nor he which is appealed by an approuer, so long as the approuer doth liue; except he be of good name; or that the approuer doth waie his appeale: see *Stamf. 74.*
- 4 Nor he which is taken for burning of a house &c. feloniously. *Vide antea Felony by the Common Law.*
- 5 Nor any excommunicate person, taking (at the Bish. request, se. vpon his certificat) by the writ of *Excom. Capiendo, F. N. B. 66. e.*
- 6 Nor any felon taken with the manner, or taken for a manifest offence.
- 7 Nor a theefe openly defamed, and knowne.
- 8 Nor he which is outlawed: and yet in some cases such as be outlawed, may be bailed, by the court, &c. see *Stamf. 74.*
- 9 Nor he which hath broken the K. prison. *Vide antea tit. Felony by Statute.*
- 10 Nor he which is taken for treason, touching the K. himselfe.
- 11 Nor he which is taken for falsifying the K. mony.
- 12 Nor he which counterfeiteth the K. seale. *Br. Mainp. 59.*

But by the same stat. of West. 1. such persons are baileable, which be taken in any of these six cases following.

First, he that is taken (or indicted) for light suspicion of felony, is baileable: see *Lamb. 3. f. N. Br. 249. g. 250. c. 251. f.*
He that is taken vpon suspicion of burglary, robbery, or theft, if he be not of euil fame, nor that there be any strong presumption against him, it seemeth he is baileable.

A man had stolne certaine Hogges, and (for that hee was of euill fame) he was committed without bayle: yet if he could haue brought prooffe or witness that he bought them, he should haue bin bailed.

A man is arrested for suspicion of felony, and brought before the Iu. if it shal appeare that there is no such felony committed, the party may be set at liberty without baile: But if there be a felony committed, though the prisoner can cleere himselfe, yet the Iust. must either commit him, or bayle him. *Vide antea tit. Felony by Statute.*

Secondly,

1 Person suspect. Persons baileable.

3. Ed. 1. 15. P. Mainp. 1. F. N. B. 66. e.

Stam. 244. b Lamb. 337.

Fitz. 250. d Br. Mainp. 97.

Westm. 1. 15 P. Mainp. 2.

Stamf. 74. e.

16. E. 4. 5. Br. Main. 74.

Crom. 154.

Secondly, he that is taken (or indicted) for petty Larceny (that amounteth not about the value of 12. d.) if hee were not guilty of some Larceny before, he is baileable.

Thirdly, such as be indicted of Larceny (generally, as it seemeth) they shall be set at liberty vpon sufficient surety.

And yet they shall not be bayled, if they be not also of good fame: but if they be of good fame they are to be bayled, although they be indicted (before sherifes, bailifes, or before any other Iustices that haue authority to heare and determine felony:) yet *quare*, if the Iustices of Peace out of their sessions may safely bayle such persons, for being indicted, they are more then vehemently suspected, &c. *vide pag. sequent.*

One that was indicted before the Coroner, that he had killed another *Se defendendo*, was (by the Iustices of Gaole deliuey) bailed till the next Assises, to purchase his pardon. *26. El. Cromp. 153. See antea tit. Misadventure.*

One that was indicted before the sherife, for stealing of a Horse (which seemeth to haue bin in his torne) may be bailed by the sherif (if he be of good fame) as it seemeth by the writ. *F. N. B. 249. g.*

Also one that was indicted of burglary, as principal, pleaded not guilty, & was after bailed. *29. lib. ass. Fitz. Mainp. 9. See infra.*

Another that was indicted of robbery, was bayled. *41. lib. ass. 30. Br. Mainp. 61.*

But such as are attainted or conuicted of felony, are not baileable; for although it doth not appeare by any wordes of the said Statute of Westm. 1. that it doth prohibite the baylement of such as be attainted by verdict, yet it is to be intended, that the stat. doth aswel prohibite the baylement of those attainted by verdict, as it doth of them who be attainted by Outlawrie: and therefore if a prisoner after hee hath pleaded, Not guiltie, be attainted by Verdict, that he killed a man *Se defendendo*, or by misfortune, yet he shall not be bayled: *Quare. & vide antea tit. Felonies by Casualtie, & Stamf. 15. c. Fitz. N. Br. 246. e.*

And if a man that is arraigned of Homicide, doth pleade Not guilty, and is found guilty, and doth pray his Clergie, & is reprimed without iudgement, he is not bayleable; for being conuicted of the felony, he is more now then vehemently suspected: and the intendment of law in cases of baylement, is, that it resteth indifferent whether he be guiltie or not, vntill triall, &c.

The same reason seemeth to hold, if a man be found guilty of homicide, before the Coroner: yet see *22. Ass. p. 94. Br. Cor. 90.* that such are baileable as are found (before the Coroner) but suspitious.

Also a man conuicted of Felony, remaineth in prison, and after obtaineth the K. pardon, the Iust. of Gaole deliuey may bayle him, till

P. Mainp. 1. Fitz. 250. e.

P. Mainp. 2.

Stamf. 74. Fitz. 249. & 250. c. Br. Main. 97.

Stamf. 74. d F. Cor. 297. 354.

25. E. 3. 42.

Dyer 179. See Br. Mainp. 94.

2 Petty Larceny.

3 Persons indicted.

Persons attainted, or conuict.

till the next gaole deliury, that hee may then come with his pardon and plead it, 2. E. 6. Br. Mainp. 94.

4 Accessaries.

4 Those that be charged with the receipt of theues, or felons: or of commaundement, or force, or of ayde (in felony done) bee baileable. P. Mainp. 2. Stamf. 71.

And it seemeth that abbetters, consenters, and procurers, and all other accessaries to felonies, are within the equity of this stat. and are bayleable: yea, accessaries (as well in case of the death of a man, as in case of other felonies) are bayleable (if they be of good fame) vntill the principall be conuict or attaind: but after the principall is attaind, the accessary shall not be bayled, but kept in prison: and yet if (after the attainder of the principall) the accessary shall plead Not guilty, or other plea, it seemeth he shall be bayled. See more in Br. Mainp. 6. 9. 22. 54. 64. & 97.

Stamf. 71. c. Fitz. 250. m. Br. Main. 18. 58.

40. E. 3. f. 18. Stamf. 91. a. Br. Main. 58.

If a man be accessory to two, and the one principall is attaind, though the other be not, yet the accessary shall not be bayled.

Stamf. 71. F. Cor. 100.

In felony, if the principal die in prison; or be attaind of another felony, the accessary shall be bayled, F. Cor. 378. Br. Mainp. 91.

Principals.

Also the said stat. of Westm. 1. cap. 15. doth no more restraine the principals (to be bayled) then the accessaries, in those cases where the same stat. doth not prohibite to let to Mauprise: and therefore if a man be indicted of Burglary as principall, yet he may be bayled, Stamf. 74. Br. 56.

Stamf. 74. Br. Main. 58. F. Mainp. 9.

Also the principall in an appell of Robbery, may bee bayled: And so may he be bayled, vpon an Indictment of Robbery. Br. 61. 75. & 97.

Stamf. 74.

But the principall in the death of a man, is not bayleable, either by the common law, or by the stat. of West. 1. yet see hereof before in this title, that the Iustices of the K. Bench, do vse to baile them: Also see there for what homicides the Iustices of P. may bayle one that is a principall.

Stamf. 71. Br. 56. 58. 97.

5 Trespasse.

5 Fift; Those that be charged with (or guilty of) any Trespasse, that toucheth not losse of life, nor member, be baileable by the sta. of Westminster 1. 15. But yet let the Iustice of Peace haue a care that bayle be not prohibited, by any other latter statute (in such cases of Trespasse.)

West. 1. 15. P. Mainp. 2.

If any person be committed to prison, by proces from the Sessions made vpon an Indictment vpon any penall stat. (not prohibiting baile) he may be bayled (out of the sessions) by two Iust. of P. the one being of the quorum.

Fitz. 250. g. Lamb. 337. Br. 97.

Or he may haue a Writ out of the Chauncery (directed to the Iustices of Peace, or to the sherife) to take surety of him for his appearance, before the Iustices at their Sessions, &c. Or he may haue a Certiorari to remoue the record into the Kings Bench, and a Habeas Corpus

Corpus to remoue the body thither also. Fitz. 250. g. h. i. & 251. c.

Crom. 197. 234.

If proces from the sessions, shall go forth vpon any indictment of trespas, &c. it seemeth that any one I. of P. may take baile of the party, to appeare at the day &c. to answer to the indictment: and the same Iu. may thereupon make his Superseas de cap. indictas. (and so of the Exigent;) for otherwise besides the mischief of imprisonment, the party may be outlawed before the sessions: see some presidents therein, postea tit. Presidents.

Note, that the Iustices of Peace are not to baile any prisoner, except the prisoner be committed for that cause, wherof the said Iustices of peace be competent Iudges, &c. such causes as they may heare and determine.

Lamb. 337. Crom. 112.

And therefore if a man be taken vpon Proces of rebellion, issuing out of the Chancery, or Star-Chamber, the Iustices of P. are not to baile them: And M. Cromp. reporteth of two Iu. of P. who were fined for bailing one in such a case.

See here 278.

If a man be arrested by force of any proces; writ, bill, or warrant, in any action personal, the Iustices of P. are not to baile him.

Persons condemned in any of the K. Courts, and by vertue thereof committed to prison: And persons being in execution vpon any stat. or recog. &c. at the suit of any person, the Iu. of P. are not to baile any such.

Execution. P. Mainp. 2. Fitz. 250. d.

6 Sixtly, he that is appealed by an Approver, (being no common theefe, nor defamed, after the death of the Approver, is baileable by the said stat. of Westm. 1.

Stam. 144. a.

Note, that a man cannot become an Approver, before Iu. of P. neuertheless it seemeth both reasonable & seruiceable, that if a felon will become an Approver, that is, will confesse his felony, & also accuse others (that were coadiutors with him in doing the same felony, or in other felonies) before a Iu. of P. that such Iust. may take his confession, & commit him to the gaole, and may also graunt out his Warrants for the apprehending of the others that are so accused.

Againe the stat. of 23. H. 6. c. 10. taketh away baile from all such as be in prison, by condemnation, execution, Capias vilagatu, excommunication, surety for the P. or by the special commandment of any Iu. prohibiting that such be not bayled, either by the sherife, or other officer or minister,

There be diuers other stat. which do take away baile from the offenders thereof, and that not only vpon their solemne conuiction after publick hearing, trial, & iudgement, but also vpon the record of one or two Iust. of P. or by priuate examination & confession of the offender, or prooffe of witnesses, or such other priuate trial, had before the Iust. of P. out of their sessions; most of which I haue here set downe, leauing the rest to the readers better search.

Where

Where baylement is taken away by Statute.

Where baile
is taken away

NO person, being imprisoned or taken for any of the offences or causes hereunder mentioned, shall be bailed or let to mainprise, otherwise then as hereafter followeth, *scz.*

Such as have abiured the realme shall not be bailed, *Westminster 1. cap. 15.*

Accomprants found in arrerages before Auditors, shall be imprisoned (without baile) vntill they haue satisfied their Master all arrerages. *13. E. 1. c. 11.*

Alehouse-keeper without licences, shall be committed to prison for 3. daies without baile: And before his deliuey shal enter recog. with two sureties, that he shall not keepe any common Ale-house &c. *vide antea tit. Alehouses. P. 4.*

Alehouse-keeper prohibited by two Iust. of P. and notwithstanding continueth his selling &c. he shal be committed for three daies as aforesaid, *ibid.*

Alehouse-keepers, Inne-keepers, and victuallers, which shal suffer townesmen to continue drinking in their houses, contrary to the statute of 1. *Iac. ca. 9.* *See antea tit. Aleh.*

Or which shall sel lesse then one full ale quart of their best beere or ale for a 1. d. and of the smal two quarts for 1. d.

Such offenders not hauing sufficient whereby to bee distrained for the forfeiture, shal be committed to prison vntill they haue paid the penalty.

Aliens conueying bowes, or arrowes, into any parts beyond the seas without licence, shall be committed vntill they haue made fine (by the discretion of the Iustices of P. in their sessions) & giuen surety for the payment therof. *33. H. 8. c. 9. P. Arch. 6.*

Appellors, or Approuers, shal not be bailed. *Westm. 1. ca. 15.*

Hic 273.

Nor he which is appealed, by an Approuer. *ibid.*

Armour; persons going or riding armed contrary to the stat. of Northampton, and being thereof conuict, shall be imprisoned vntill they haue paid such fine as shall be therfore imposed vpon them: *See postea sub hoc tit.*

Arrest; if any person shall procure one to be arrested in another mans name, he not knowing therof, or without his consent; such offender being conuict thereof, shall suffer sixe moneths imprisonment without baile: And before his deliuey shall pay to the party so arrested, treble costs, dammages, and expences, and also shall pay vnto the person in whose name he procureth such arrest, x. li. for euery such offence. *8. E. 1. c. 2. P. Damna. 7.*

Bastard; the mother, or reputed father of a bastard child, that shal not performe the Iustices order, after notice thereof, shall be imprisoned

ned vntill they shal put in sureties according to the stat. See before *Where baile is taken away tit. Bastardy, P. Bast. 1.*

The mother of a bastard child, committed to the house of correction, for her first offence shall there remaine for one whole yere, and for her second offence for one whole year; and further vntill she can put in good sureties for her good behauiour, not to offend so againe. *See ibid.*

Breakers of prison, are not baileable. *Westm. 1. 15.*

Bridges: Surueyors and Collectors, appointed for the repairing of bridges, if they refuse to accompr of the mony by them receiued, they shall be imprisoned vntill they haue truly accompted. *22. H. 8. ca. 5. P. Bridges 4.*

Burners of houses feloniously, are not baileable. *West. 1. ca. 15.*

Constables and Churchwardens, neglecting to leuy the forfeitures, for abuses in alehouses &c. and not hauing sufficient whereby to be distrained for the forfeiture, they shall bee committed to prison vntill they haue paid the forfeiture. *See antea tit. Alehouses, 1. Iac. cap. 9.*

Constables neglecting to whip trespassers in corne, woods, or orchards &c. (at the Iustices commandement) shall be imprisoned vntill they haue caused the offender to be whipped. *See tit. Trespasse.*

See 13. H. 6. cap. 10.

Persons condemned in any of the K. courts, and by vertue thereof committed to prison, they shall not be bayled vntill they haue agreed with the plaintife, *1. R. 2. c. 12. 2. H. 5. c. 2. Fitz. N. B. 121. a.*

Coniurers, *vide Witches.*

Counterfeiters of the kings seale, or mony, are not baileable. *West. 1. cap. 15.*

Cloth; Refusers to be overseers of cloth, shall bee imprisoned vntill they haue paid the forf. *See antea tit. Cloth.*

Deare; persons committed to prison for committing any offence prohibited by the stat. *5. E. 1. c. 21.* concerning vnlawfull hunting or killing of deare, shall remaine there three moneths, and further vntill they shall find sufficient sureties for their good behauiour for seuen yeres &c. *See hic postea Hunting.*

Dyers, vsing Logwood, and being therof conuict, they shall remaine in prison without baile, vntill they haue satisfied the forf. *23. E. 1. c. 9. P. Dying 1. & 39. E. 1. c. 11.*

Also such offence (of vsing Logwood) being found by the examination of any Iu. of P. if the offender shall refuse to be bound (by the said Iust.) to appeare at the next gaole deliuey, or quarter sessions &c. Then the said Iust. of P. may commit such offender to the gaole, there to remain vntill such offender shall be bound accordingly: *See antea tit. Dying 39. E. 1. c. 11.*

Excommunicate persons, taking by a writ *de Excommunicato capi-endo;*

Where baile is taken away ends; or yeelding their bodies to the sherife or other officer, vpon any writ of *Capias* awarded, and proclamation thereupon made, according to the stat. of 5. *Eliz.* 23. provided for the due execution of the said writ of *Excom. capiendo*, such persons shal not be bailed. West. 1. 15. 5. El. 23. Sec 23. H. 6. cap. 10.

Execution; such persons as are in execution, vpon any statute or recognifance, or vpon indictment giuen in the Kings Court, at the suit of any person, they shall not be bailed vntill they have agreed with the plaintife. 1. *R. 2. ca. 12. 23. H. 6. ca. 10. Fitz. Na. Br. fol. 93. c. 121. a.*

Fesants, See Partridges.

Felons, taken for the death of a man, are not baileable: And yet if it be not murder, it seemeth they may be bailed. See *hic antea*, But

2 Felons taken with the maner, are not baileable. Westminster 1. *cap. 15.*

3 Nor if it be apparantly knowne that they did the felony. *ibid.*

4 Nor if they confesse the felony vpon their examination before the Iu. of P. *Cromp. 152. b.*

5 Nor if he be a theefe openly knowne, Westminster. 1. 15.

6 Nor if he be of euill fame by credible report, *Br. Mainp. 75.*

Yet in these former cases of felony, if the theft be not about the value of twelue pence, (it seemeth) the Iustices of Peace may bayle the prisoner, it being no felony of death.

7 Nor he which is conuict, or attaint of felony, is not baileable. See before *sub hoc tit.*

Fish; destroyers of ponds, pooles, or moates, wherein any fish are: Or vnlawfully to fish in any seuerall pond, poole, or moate, to the intent to take, kill, or destroy any fish there; euery such offender being thereof lawfully conuict, shall haue three moneths imprisonment, and then shall find sufficient sureties for their good behaviour for seuen yeares after, or else shall remaine in prison without baile, vntill they shall haue found sureties accordingly. 5. El. c. 21. P. Fish. 7.

2 Gageors, Packers or Searchers of Fish, that shall take any extortion, for doing their office, shall haue forty daies imprisonment, without baile. 11. H. 7. c. 23. P. Fish. 12.

3 Eaters of flesh vpon any fish day, shall forfeit and pay for euery time 20. s. or else suffer one moneths imprisonment without baile (after any lawfull conuiction in that behalfe,) 5. *Eliz.* 5. 35. El. c. 7. P. Fish. 11.

Forcible Entrie, or Detainer; persons conuict thereof shal not be bailed, vntill they haue payed their fine, or haue found sureties by recognog for payment thereof. See *antea tit. Forcible Entrie.*

Forstallers, Regrators, & Engrossers, being thereof conuict, shall be imprisoned for 2. months without baile. 5. *Ed. 6. ca. 14. P. 4.*

Forgers of any deed, writing sealed, will, or court roll.

2 And the assenters thereto.

3 And

3. And the publishers thereof, knowing the same &c. Where baile is taken away
5. *Eliz. c. 14. P. 1. 2.* Euery of the offenders aforesaid (in cases of forgery) being thereof conuict, shall suffer perpetuall imprisonment during their liues, where any mans estate of inheritance, freehold or coppihold, shall be defeated, charged, or molested therby: Otherwise the offenders shall suffer one yeares imprisonment without bayle.

1. *J. 27.* *Fowle*; destroyers of any feasant, partridge, pigeon, or housedoue, (or of any hearne, mallard, ducke, teale, or such other fowle:) Or to shoote at any such fowle, and the offence prooued before any two Iustices of peace: Euery such offender shall be committed for three moneths without bayle, vnlesse the offender shall forthwith pay to the vse of the poore there, xx. s. for euery such fowle so destroyed, &c. See *antea tit. Partridges.*

Fraudulent Conueyances, gifts, bonds, or suites, &c.

1. The parties thereto:

13. *Eliz. c. 5. P. 1. 2.* 2. The Defenders or Iustificers thereof, or putters thereof in vre, knowing the same:

3. And those which shall assigne ouer any lands, leases, or goods so to them conueyed, (knowing the same)

Euery person being of any of these last offences lawfully conuict, shall suffer imprisonment one halfe yeare without bayle. See more *Stat. 14. Eliz. 11. & 27. Eliz. cap. 4.*

Games vnlawfull;

33. *H. 8. 9.* 1. The maintainers of houses, or places, for any vnlawful game:

2. Players in common houses or places (at any such game:)

3. Players (elsewhere) at any vnlawfull game:

Euery Iust. of P. seeing or finding any such offence, may imprison the offenders till they find sureties by Recogn. no more to offend in the premises &c. See *antea tit. Games vnlawfull.*

Gaoles; Collectors, or Surueyors for Gaoles (in certain Shires) refusing to make account, shall be committed to prison, there to remaine vntill they haue made a true account: 23. *H. 8. cap. 2. 5. Eliz. cap. 24. & 13. Eliz. cap. 25.* But these stat. are herein now expired.

Gunnes; such persons as shall shoot in, keep, carry, or vse any Gun, dag, crossbow, or stonebow, contrary to the stat. of 33. *H. 8. c. 6.* (vpon proofe thereof made before any Iust. of P.) shall be imprisoned vntill they haue paid x. li. for euery such offence. See *antea tit. Gunnes.*

Hares; euery person which shall shoot at, kill, or destroy, with any gunne, or bowe, any Hare:

2. Or shall trace, or course any Hare in the snow:

3. Or shall take or destroy any Hare, with cordes, or any other engine:

Any of these last offences being prooued before any two Iust. of P. The offender shall be committed for three moneths without baile, vnlesse

vnlesse the offender shall forthwith pay to the vse of the poore there, xx.s. for euery hare so destroyed or taken. See *antea tit. Partridges.*

Hatters, which shall take about two apprentices:

2. Or which shall take an apprentice for lesse then 7. yeares.

The offenders in either of the former cases, shall suffer one moneths imprisonment without baile, 8. *Eliz. c. 11. P. Hatts. 3.*

Hawkes; takers (vnlawfully) of any Hawks, or of their eggs, out of another mans ground, & being therof lawfully conuicted, shall haue three moneths imprisonment, and then shall finde sureties for their good Behavior for 7. yeres after; or else shall remaine in prison without baile, vntill they finde sureties accordingly. 5. Eliz. 27. P. Hawks 1. See 11. H. 7 cap. 17. lic postea Partridges.

Hawkes; betweene the first day of Iuly, & the 32. of August; the offence being proued before any two Iu. of P. the offenders shall be committed to the common gaole for one moneth without baile, vnlesse they pay forthwith xl. s. for euery such hawking, & xx. s. for euery Feasant, or Partridge that they shall so kill, or take. 7. *Ia. 11. See ante tit. Partridges.*

Highwayes; Bailiffes and high Constables, which shall not pay the forfeitures by the collected, shall be imprisoned vntill they haue paid the same. See before *tit. Highwayes. 2. Ph. & M. cap. 3. P. 11.*

Hony; see *Waxe.*

Hunting; If any lay man, not hauing in lands 40. s. *per ann.* Or if any Priest or Clerke, not hauing x. li. *living per annum*, shall keepe any hound, greyhound, or other dogg for to hunt, or any ferrets, hayes, nets, or other engins, to take or destroy Deere, Hare, Conies, or other Gentlemens game, and shall be therof conuicted, euery such offender shall be imprisoned for one whole yeare. 13. *R. 2. c. 13. P. 1.*

If any person shall keepe any greyhound for Deere or Hare, not hauing sufficient liuing, & shall be thereof conuicted before any two Iu. of P. he shall be committed for three moneths without baile, vnlesse he forthwith pay xl. s. for hauing such greyhound. See before *tit. Partridges. 1. Ia. ca. 27.*

Hunters, or killers of any deere or conies (in the night or day time) in any parke or warren, or in any other inclosed grounds, and being therof lawfully conuicted, euery such offender shall suffer 3. moneths imprisonment, and finde sufficient sureties for his good Behavior for the space of 7. yeres after, or else continue still in prison without baile vntill they shall finde sureties accordingly. 5. *Eliz. cap. 21. 3. Ia. ca. 13 P. Forrefts 9. & 7. Ia. 13.*

The Stat. of *Westm. 1. c. 20.* prouideth that trespassers in parks and ponds, being therof attainted, shall yeeld to the party wronged great damages, and shall haue three yeres imprisonment, make fine at the Kings pleasure, and finde good sureties not to commit the like trespassse afterwards, or for want of such sureties shall abiure the realme,

or

or be outlawed. See *Fitz. 67. d. & Dyer 238.*

The Stat. 19. *H. 7. 11.* ordeineth, that if any person hauing no park &c. of his own, shall keep any deere hayes, or buckstals: or if any person shall stalk at any deere, without licence, the offenders being therof conuicted, shall be committed to prison, till they haue found suretie for the payment of the forfeiture of the statute.

King; speakers of false Newes, which may cause discord betweene the King and his people &c.

2. And speakers of false newes, or lyes, of any the Peeres, or great Officers of the Realme:

The offenders in either of the former cases, shall be imprisoned vntill they haue brought him into the court, who was first author of the tale. 3. *E. 1. c. 33. 2. R. 2. c. 5. P. Newes 1. See Dyer 155. & 285.*

3. No person committed by the King, or Counsels commandement, shall be bayled. See *antea sub hoc tit.*

4. No person committed by the speciall commandement of any of the K. Iust. shall be bayled. *P. Mairp. 1. & 23. H. 6. c. 10. See ibid.*

5. So in all cases, where a stat. ordeineth, that an offender shall be imprisoned at the kings wil or pleasure, there the prisoner cannot be bayled or deliuered, vntill the K. hath signified his pleasure of him: (as if one be imprisoned for going or riding armed contrary to the stat. of *Northampton*, made *An. 2. E. 3. c. 3.*) 24. *E. 3. f. 3. Br. Contempts. 6.*

And in such cases, the prisoner is to redeem his libertie with some portion of money, as he can best agree with the K. or his Iust. for the same: And so it seemeth the Iu. before whom such an offender shall be conuict, may aslesse such fine or ranome, according to their discretions, and vpon payment thereof may bayle the Prisoner; for the King therin signifieth his pleasure, by the mouthes of his Iust. See the first title of *Forcible Entry.*

Laborers, and *Artificers* departing from their worke, before it be finished, shall haue one moneths imprisonment without bayle. 5. *Eliz. cap. 4. P. Labor. 10.*

2. Seruants departing before their terme be ended (vnlesse it be for some cause to be allowed by some Iust. of P.)

3. Seruants departing at the end of their terme, without one quarters warning giuen before two lawfull witnesses:

4. Persons (compellable to serue) that vpon request made, shall refuse to serue for the wages rated & appointed by Proclamation &c.

5. Persons (compellable to serue) that hath promised, or couenanted to serue, and doe not serue accordingly:

5. *Eliz. 4. P. Lab. 6.*

Euery of these foure last recited offenders (vpon prooue of the offence before any two Iust. of P. &c. shall be committed to ward, there to remaine without baile, vntill he shall be bound (to the party offended) to serue and continue with him according to the statute.

6. Persons refusing to be bound apprentices (according to the stat.) ^{P. Lab. 24.} vpon complaint therof made to any Iust. of P. he may commit such offenders to ward, who shall there remaine vntill they wil be bound to serue according to the stat. *5. Eliz. 4.*
7. Women (of the age of 12. yerres, & vnder 40. and vnmarried) that shall refuse to serue, they shall be committed to ward, there to remaine, vntill they shall be bound to serue according to the stat. *5. Eliz. 4.*
8. Masters giuing wages, and seruants (workmen, or laborers) taking wages (or other commoditie) contrary to the rates assessed by Proclamation &c. euery such M. shall haue ten daies imprisonment without baile: And euery such seruant, workman, or labourer, shall haue 21. dayes imprisonment without bayle. *5. Eli. 4. P. Lab. 4.*
9. Masters, reteining or hiring a seruant for lesse time then for one whole yeare &c. such Mast. shall haue ten dayes imprisonment without baile: But *quare*, whether this extendeth to seruants in husbandry, or only to seruants, to artificers and tradesmen. *P. Lab. 1.*
10. Masters reteining a seruant that is departed out of seruice, without shewing a testimoniall according to the stat. it seemeth such Ma. shall haue ten dayes imprisonment without baile. See *P. Lab. 4. 7. 8.*
11. Masters taking apprentices contrary to the stat. it seemeth by the generall words of the statute, that such Mast. shall haue ten dayes imprisonment without bayle. See *P. Lab. 4. 15, 16, 17, &c.*
- Lineries*; such persons as at their proper costes, shall buy, or weare any lineries, clothes, or hats, to haue maintenance, & be thereof convicted, shall haue one whole yeares imprisonment without bayle. *3. H. 6. 41. P. Luer. 2.*
- Mauling*; If any person shall disobey the restraint of mauling, or any other order made in Seif. touching the same, & be thereof convicted (before any two Iu. of P.) he shall be committed to the gaole for 3. daies (without baile) and after there to remaine vntill he shall become bound in 40. li. to performe and obey such order or restraint. See *antea titulo, Maul.*
- If any person shall buy any Barley to mault, after such restraint, he shall be imprisoned as aforesaid. *ibid.*
- Money*; persons taken for falsifying the Kings money, shall not be bayled. *Westm. 1. cap. 15.*
- Musters*; persons absenting themselves from Musters, (being commaunded to muster before any hauing authority for the same, and hauing no lawfull impediment:)
2. And persons (being commaunded to muster as aforesaid) that shall not bring with them their best furniture and armor, which they haue for their owne person.
- The offenders in either of the former cases, shall for euery such offence suffer ten daies impris. without baile, vntill they agree with 2. of the said Commiss. to pay to the K. vsf. 40. s. for a time for euery such offence. *P. Capitaines. 12.*

Newes;

- Newes*: see before King.
- Oath*; refusers to take the oath of Allegiance, (being lawfully tendered to them) shall be committed to the common Gaole, there to remaine without baile, vntill the next Assises, or quarter Sessions. See before *tit. Oath, & Recusants.*
- Partridges*; if any person shall shoote at, kill, or destroy (with any gun, or bowe) any partridge, feasant, or other fowle &c.
2. Or shall take, kill, or destroy any Partridge, Feasant, or Pigeon, with setting dogges and netts, or with any manner of netts, engines, or instruments:
 3. Or shall take out of their nests, or willingly destroy in the nest, the eggs of any partridge, feasant, or swanne:
 4. Or shall haue or keep any setting dog, or net, to take partridges or feasants, (except they haue sufficiency of estate &c.
- Euery of these foure last recited offenders (vpon prooffe of the offence before any two Iust. of P.) shall be committed to the common gaole, there to remaine for three moneths without baile, vnlesse the offender shall forthwith pay xx. s. for euery such fowle and egge so taken or destroyed; And 40. s. for hauing such setting dogge, or net. See *tit. Partridges.*
5. Hawkers at Partridge, or Feasant, in Iuly or August, (vpon prooffe of the offence before any two Iustices of P.) Euery such offender shall be committed to the common gaole, there to remaine for one moneth without bayle, vnlesse the offender shall forthwith pay 40. s. for euery such hawking, and 20. s. for euery feasant or partridge so killed or taken: see *ibid.*
6. Persons convicted according to the stat. of 23. *Eli. 10.* for destroying or taking of feasants or partridges in the night time, shall haue one moneths imprisonment without baile, vnlesse they pay the penalty of that stat. within ten daies, And further to become bound with good sureties, for the space of 2. yeares, not to offend so againe.
7. Persons convicted according to the stat. of 11. *H. 7. cap. 17.* for taking the egges of any hawke, or swan, out of their nests, shall be imprisoned for a yere & a day, and fine at the K. will: see *Hawkes.*
- Periury*; Persons committing periury, by his or their deposition, in any court of record, or court Baron, being thereof lawfully convicted, shall haue sixe moneths imprisonment without baile. *P. Per. 1. 2.*
2. So of procurers of such Periury; they being thereof lawfully convicted, and not hauing to pay the penalty of the stat. they shall haue one yeres imprisonment without baile.
- Plague*; refusers to pay their rates, for the relief of persons infected with the plague, & not hauing wheron to be distrained for such their rates, they shall be committed to the gaole there to remain without bail

Where Bayle
is taken away

vntill they shall satisfie the same, and the arrerages. *See tit. Plague.*
 Poore; refusers to pay their rates towards the reliefe of their poore, 43. Eliz. 2. P. 2. 4.
 setting them on worke, or putting out of poore children to bee Apprentices, and not hauing wheron to bee distreined for such their rates, they shall be committed to the gaole, there to remaine without baile, vntill they shall pay the same, and the arrerages.

2. Overseers (of the poore) refusing to make their account, or refusing to pay (to the new overseers) such arrerages, sums of money, or stock, as shall remaine in their hands vpon their account made; they shall be committed to the gaole, vntill they haue performed the same. *See antea tit. Poore.*

3. Overseers, negligent (otherwise) in their office, shall forfeit for euery default xx.s. And not hauing wheron to be distreined for such forfeiture, they shall be committed to the gaole, there to remain without bayle, vntill the said forfeiture shall be paid. *See ibidem.*

4. The grandfather, or grandchild, or other parents or children, refusing to relieue one the other, in such maner as shall be assessed by the Iust. of P. at their Seff. shall forfeit for such default xx.s. for euery moneth; and not hauing wheron to be distreined for such forf. they shall be imprisoned as aforesaid, vntill the said forf. shall be paid. *See ib.*

5. Refusers to pay their rates towards the reliefe of the prisoners in the K. Bench, & Marshalsey; and not hauing wheron to be distreined for such rates, they shall be imprisoned without baile, vntill they shall pay the same. *See antea tit. Stocke of the Shire.*

Prayers; such as offend against the stat. 1. Eliz. c. 2. concerning Vniformity of Common prayer, & seruice in the church, and betherof lawfully conuicted (by verdict of 12 men, or by their own confessio, or by the notorious euidence of the fact) they shall be committed without bayle; see the stat. 1. El. 2. for in some cases the offender shall suffer sixe moneths imprisonment, in other cases one whole yeares imprisonment, and in other cases imprisonment during life.

Preachers; disturbers of Preachers in the time of their Sermon, and their ayders and procurers:

2. Such as shall disturbe the arresting of any such offender:

3. Such as shall rescue any such offender, being apprehended:

Euery such offender (being thereof conuict before any two Iu. of P.) shall be committed to the gaole, there to remain without baile for three moneths, and further till the next Quarter sessions &c.

Prison; breakers thereof, shall not be bailed. *Westm. 1. ca. 15.*

Prophefiers, to the intent to make disturbance within the K. dominions: Euery such offender being thereof lawfully conuict, for his first offence shall suffer one yeeres imprisonment without baile; And for his second offence shall suffer imprisonment without bayle during his life. *P. Prophef. 1.*

Purueyors

2. & 3. Ph. &
M. c. 15.
P. Purv. 32.

Purueyors, taking purueyance within five miles of either Vniversity of Cambridge, or Oxford, without licence &c. and being thereof conuict, they shall suffer three moneths imprisonment without baile. *See antea tit. Purueyors.*

23. H. 6. c. 14
P. Purv. 1.

Purueyor, (or other Officer) of any Nobleman &c. taking any thing of any subiect against his will, such offenders shall be committed to prison without baile, vntill they shall redeliuer the goods so taken, or the value thereof. *See ibid.*

35. Eliz.

Recufants; persons suspected to bee Iesuits, Seminaries, or Massing priests, & being examined therof (by any hauing lawful authority in that behalfe) if they shall refuse to answer directly therto, they shall be imprisoned without baile, vntill they shall make direct answer therein. 35. Eliz. cap. 2.

3. Ja. 4.

2. Persons suspected, if they shall refuse to answer the Iu. of P. vpon oath, whether they be Recufants or no; they shall be committed to the common gaole, there to remaine without baile, vntill the next Assises, or quarter Sessions. *See antea tit. Recufants.*

3. Popish Recufants, refusing to take the oath of Allegiance (being lawfully tendred them) they shall be imprisoned vntill the next Assises, or quarter Sessions, as aforesaid. *See ibid.*

7. Ja. 6.

4. Euery other person of the age of 18. yeeres, refusing to take the oath of allegiance, shall be committed vntill the next Assises, or quarter sessions, as aforesaid. *See antea tit. Oath.*

Ibid.

5. A woman Recufant conuicted, & not conforming her selfe, being therfore committed to prison, shall there remaine without baile, vntill she shall conforme herselfe &c. *See antea tit. Recufants.*

3. Ja. 4.
7. Ja. 6.

6. A woman couert, refusing in the open Assises, or at the quarter Seff. of the peace, to take the oath of Allegiance, she shall be committed to the common gaole without baile, vntill she will take the said oath.

1. Ja. 4.

7. If any woman, or child vnder the age of xxj. yeeres, shall passe ouer the sea without lawfull licence, the Mast. of any ship permitting the same, shall suffer imprisonment by 12. moneths, without bayle.

8. Recufants refusing to declare what armor &c. they haue: or if they or any other person shall hinder or disturbe the deliuey of such armour, to any person lawfully authorised to seise the same; Euery such offender shall haue 3. moneths imprif. without baile. 3. Ja. ca. 5.

P. Recuf. 18
35. Eliz. 1.

9. Recufants and Sectaries, which shall impugne the Kings authority in causes Ecclesiasticall:

10. Or that shall perswade others thereto; or from comming to Church to that end and purpose:

11. Or shall meet at any conuenticles, vnder colour of any exercise of religion (contrary to his Majesties lawes:)

12. Or shall perswade any other to meet at any such Conuenticles or meetings:

Euery

Where Baile
is taken away

Where Bayle
is taken away

Every person which shall be lawfully convicted of any of these last 4. offences, shall be committed to prison, there to remaine without baile, vntill they conforme themselves to come to Church, & make open submission and declaration of their said conformity.

13. Persons absent from Church vpon any Sunday, and not ha-^{3. Ia. 4.} uing whereon to be distreined for the forf. shall be committed vntill ^{P. 50.} payment be made thereof. See *antea tit. Recusants.*

*Ryotter*s, attainted of great Ryots, shall haue one yeares imprison-^{2. H. 5. 8.} ment without bayle. *P. Ryots* 11.

All persons convicted (by the view of the Iu. or vpon the enquiry, or otherwise) of any Ryot, shall be committed vntill they haue paid their fine. See before *tit. Ryots.*

Rogues incorrigible, committed to the gaole, or house of correction, ^{39. Eliz. 4.} shall remaine there vntill the next quarter Seff. See *antea tit. Rogues.*

Servants: see *Labourers.*

Schoolemaster, that is a Recusant:

2. Or that is not allowed by the Ordinary; and being of either of the said offences convicted, shall be imprisoned for one whole yeare ^{23. Eliz. 17.} without bayle. ^{P. Recus. 2.}

Sheriffes, not making their election of Knights for the parliament in their full county, between the houres of 8. & 11. in the forenoone: ^{8. H. 6. 7.} ^{23. H. 6. 15.} ^{P. Parl. 4.}

2. Or returning Knights for the Parliament, contrary to the stat. And being of either of the said offences attained before the Iust of Assise, they shall be imprisoned for one whole yere without bayle.

Soldiers, who haue purloined their horses, or harneis, shall be committed without baile, vntill he hath satisfied the party grieved, his ex-^{2. Ed. 6. 2.} ecutors or administ. for such horse or harneis: see before *tit. Soldier.*

Stock of the shire; refusers to pay their rates therto, and not hauing whereon to be distreined &c. shall be committed, till they haue paid it. *Vide antea tit. Stocke.* ^{43. Eliz. 2.}

Tithes; the defendant in a suit for tithes, that disobeyeth the Iudges sentence, shall be committed without baile vntill he shall find sufficient sureties by recog. &c. to obey & perform that sentence. *Vid. tit. Tithes.* ^{27. H. 8. 20.} ^{32. H. 8. 7.}

Transportation; the Master or Mariners transporting any Corne, beere, herting, whitage, or wood, without Licence:

2. The owners of such things, transporting more thē they are licēsed. ^{P. Corne. 1.}

3. The Mariners carying such things into any ship to be transported. ^{2. 3.} Every such offender shall be imprif. one whole yere without baile: ^{1. & 2. Ph. & M. c. 5.} & yet see *antea tit. Transpor.* that euery man may transport corn without licence or dāger, as it seemes, it being at the prises ther mentionēd.

4. The Master, or Mariners, transporting, or shipping to that in-^{18. Eliz. 8.} tent, any leather, tallow, or raw hides, and being thereof convicted, ^{P. Leather. 50.} shall haue one yeares imprisonment without baile.

5. Transporters of liue sheepe:

6. And

8. Eliz. 3.
P. Incepe. 1.

6. And euery person that shall bring, deliuer, send, receiue, take, or procure any liue sheepe to be conueyed out of any the kings domi-^{Where Baile is taken away} nions, their ayders, procurers, and comforters.

The offenders in either of the former cases, being thereof cōuicted, shall for the first offence suffer one whole yeres imprif. without baile.

1. Ia. 4.

7. The Mr. of any ship, permitting any woman, or children vnder 21. yeares of age to passe ouer the seas without licence, shall suffer 12. moneths imprisonment without baile.

8. Aliens transporting Bowes, or Arrowes: see *Aliens.* *Treason*; persons committed for any treason touching the K. they are not bayleable. *Westminst. 1. cap. 15.*

Counterfeiters of money, or of the Kings Seale, are not bayleable. *Westm. 1. cap. 15.* *Br. Mainpr. 59.*

Vagabonds: see before *Rogues.*

Wilawed persons, taken for the same, are not bayleable. *Westminst. 1. cap. 15.* & 23. *H. 6. cap. 10.*

23. Eliz. 8.
P. Waxe 7.

Waxe, and vessels of Hony; if any person shall counterfeit any the marks thereof, or shall mark them with any other mans mark, & shall be thereof convicted, he shall suffer 3. moneths imprif. without bayle.

P. Iust. of P.
92.

P. Weights
13.

Weights, falsifiers, or counterfeiters thereof, such offenders (after they be indicted thereof) shall be taken & imprisoned without bail, vntill they be acquitted or attainted: & if they be attainted, they shall remaine in prison vntill they haue made fine & ranome, according to the Iust. discretion. *9. H. 5. 8. Parl. 2. Quare*, whether this stat. be now in force.

Witches, Coniurers, Sorcerers, and such others, which shall take vpon them to hurt any person in body, though it be not effected:

2. Or shall take vpon them to tell of any treasure, or goods (lost, or stollen) where it may be found:

3. Or shall take vpon them to prouoke any person to loue:

4. Or shall hurt any cattell or goods thereby.

Every such offender being of any the said offences lawfully con-^{1. Ia. 22.} uicted, shall haue one whole yeares imprisonment without bayle. ^{P. Coniur. 2.}

4. Ph. & M.
cap. 8.

P. Women
7.

Women, taking of women (vnmarrid, & vnder the age of 16. yeres) out of the possession of their parents or other person, hauing lawfully the keeping &c. of them, and against their wils; The offender being thereof conuict, shall be two yeres imprisoned without baile, &c.

P. Women
8.

2. Taking away & deflouring such maid or womā child, as aforesaid 3. Contracting marriage with such a maid, against the will of, or vnk-^{knowing of or to,} the father of such maid (if he be liuing) or against the will &c. of the mother, hauing the custody and gouernance of such child.

The offenders in these two last cases, being thereof lawfully con- uicted, shall haue two yeres imprisonment without bayle, &c.

See more concerning Women, *antea Recusants.*

Recogni-



Recognisance.



Recognisance is a bond of Record, testifying the Recognisor to owe a certaine summe of money to some other: and the acknowledging of the same is to remaine of record; and none can take it but only a Iudge or Officer of record.

And these recog. in some cases, the Iust. of P. are enabled to take, by the expresse words of certaine statutes: but in other cases (as for the peace, and good behauiour, and the like) it is rather in congruittie, then by any expresse authoritie giuen them either by their commission, or by statute.

Note wherefoeuer any Stat. giueth them power to take a bond of Crom. 197. any man, or to binde ouer any man, or to take sureties for any matter or cause, it seemeth they may take a Recog: yea wherefoeuer they haue authoritie giuen them, to cause a man to doe a thing, there it seemeth they haue (in congruittie) power giuen them to binde the partie by Recog. to performe, or doe it: and if the partie shall refuse so to be bound, that then the Iust. may send him to the goale; for it is a rule in law, *Concesso uno aliquo, etiam id concedi videtur, sine quo prius concessum haberi nequit;* But yet inquire of this last case, for there is also another rule, *In generali concessione non venient ea, qua quis non esset verisimiliter in specie concessurus.* See Fitz. 82

I will here set downe onely some particulars where the Iust. of P. (out of their Sessions) may take a recognisance.

One Iustice of P. may take a Recog. for the peace.

Also one Iust. of P. may take a Recog. for the good Behauiour (by the Commission :) And these the Iust. of P. may take, either vpon discretion, or vpon complaint made to him, or vpon a *Supplicauit* deliuered to him.

One Iust. of P. may bind by recog. such as doe declare any thing against a felon, to appeare at the Assises, or Sessions, there to giue euidence against the offender: and so in diuers other offences.

One Iust. of P. may binde by Recog. such as keepe any common houses or places for vnlawfull games, that they keepe the same no longer. See *antea tit. Games, &c.*

And also such as play at vnlawfull games contrary to the stat. of 33. H. 8. cap. 9. that they vse the same no more.

One Iust. of P. may bind ouer persons suspected to vse Logwood in dying; and such as can discover the same. See *antea tit. Dying.*

One Iustice may binde by Recog. takers of Partridges &c. and hawkers

hawkers in corne, to appeare at next Sessions to answer their said offences. See *antea tit. Partridges.*

One Iust. of P. may bind by Recog. any person convicted for taking or destroying any feafants, partridges, fowle, or hare, that they offend not thereafter in any the particulars any more.

Also they vse (by way of preuention) to bind trannellers for larks, that they shall destroy no partridges &c. *quare* of this, how it is warranted. See *postea tit. Warrants.*

I haue knowen sundry Proclamations, authorising & commaunding the Iust. of P. (at or before the beginning of the Lent time) to conuent and call before them, all Tauerers, Inholders, Alehouse-keepers, keepers of Ordinary tables, & other Victuallers within the precinct & rule of the said Iust. And to take bonds (by Recog.) with sufficient sureties of euery of them, and in good summes of money, to the K. Ma. vse, that they shall not dresse any flesh in their houses in the Lent time for any respect, nor to suffer it to be eaten there.

One Iustice of Peace may binde by Recog. the Master that shall misuse his Apprentice &c. to appeare at the next Sessions, &c. See *antea tit. Apprentices.*

Two Iustices &c. may take Recog. of Alehouse-keepers for keeping good orders &c. See here 25.

They may binde by Recog. an Alehouse-keeper (committed for victualing without licence) that he shall keepe no more an Alehouse. See *antea tit. Alehouses.*

Two Iustices &c. may baile prisoners, which must be done by recogn. See here *tit. Bailement.*

They may binde the Ouerseers of cloth by Recog. to see the stat. obserued. See hereof *antea tit. Cloth.*

Also two Iust. of P. may bind by Recog. the defendant in a suite of tythes, to obey the sentence of the Iudge. See *antea tit. Tythes.*

Whether the Iustices of Peace may binde an offender against a penall statute, to appeare and answer his fault at the Sessions. See hereof *postea tit. Warrants.*

Note that euery obligation and recog. taken by Iust. of P. must be made to the King, and shall be made by these words, *Domino Regi*, vpon paine of imprisonment, of any person that shall take it otherwise. And all such bonds or Recog. shall be in the nature of a statute Staple, to all intents. See hereof *postea tit. Recognisances.*

A Iust. of P. can take no Recog. but only for such matters as concerne his office. See hereof *tit. Suretie for the Peace antea.*

Note also, that a Recog. taken by a Iust. of P. is a matter of record, presently, so soone as it is taken and acknowledged, although it be not made vp, but only entred into his book: nay although it be not entred, as it seemeth. See *Stamf. 77. a. & Br. Record. 58.* such a matter.

If a Iustice of peace shall take a recognisance where hee hath no authoritie, it seemeth voyd. See *hic* 135.

And these Recognisances taken by the Iust. of peace are to be certified by them at their next Quarter sessions: except Recog. taken of such as shall informe against felons, and vpon baylement of felons, which by statute they are appointed to certifye at their next generall goale deliuey. See hereafter *tit. Felony*.

For the formes of Recog. See hereafter *tit. Recognisances*.

Warrants.



By Parol.

Ow concerning the Precepts, or Warrants, made by the Iustices of peace.

The Iustice of P. (seeing that he is a Iudge of Record) Lamb. 87. his precept or commaundement, by word of mouth (in some cases) is as strong as his precept in writing.

And therefore the Iust. of P. vpon a ryot done in his presence, may commaund the ryotters to be arrested, and cause them to find sureties for their good behauiour.

So vpon an affray, assault, threatning, or other breach of the peace done in his presence, the Iust. of P. may command by word, the officer being present, or his own seruant, to arrest such offenders to find sureties for the peace. See before *tit. Surety for the Peace*.

And where the Iu. of P. commaundeth one being present, to arrest another that is also in his presence, though that commaundement be by word onely, it is good, and it is reputed as an arrest made by the Iust. himselfe, he being present when the arrest is made. 14. H. 7. 8. 9.

But the Iust. of P. cannot command by word, to arrest another being out of their presence: neither may one in the presence of the Iu. arrest another vpon his command by parol, but it must be by a precept or warrant in writing, by the greater opinion of the Iustices. 14. H. 7. 8. Br. Peace 7.

And yet in case of riotors the Iust. of P. may by word command his seruants to arrest them, in the absence of the Iust. by the opinions of *Fineux* and *Tremale* Iustices. See hereof *antea tit. Ryots*. 14. H. 7. 9. 10.

By writing.

Next, their warrant or precept by writing, ought to be vnder their hand and seale, or vnder their hand at least.

The forme.

And if it bee for the peace, or good behauiour, or the like, where sureties are to be found or required, There the Warrant ought to containe the speciall cause and matter, whereupon it is graunted, to the intent that the party (vpon whom it is to bee serued) may provide his sureties ready, and take them with him to the Iust. of peace, to be bound for him: But if the Warrant bee for treason, murder, or felony, or other capitall offence, or for great conspiracies, rebellious assemblies,

assemblies, or the like, it needs not containe any speciall cause, but there the warrant of the Iu. of P. may be, to bring the party before him to make answer to such things or matters generally, as shall be objected against him, on the K. maiesties behalfe, and this is now the common vsage by the report of *M. Crompton*. Cromp. 148

And I once receiued a warrant, brought me by one *Thomas Evans* (a pursuant or messenger of his maiesties chamber) vnder the hand of the right honourable *Tho. Lord Ellesmere* late L. Chancelour of Engl. for the apprehending of one *James Malin*, for a matter of contempt; and the said warrant was in generall words, *se. to* answer to such matters as were to be objected against him, without any speciall cause therein mentioned. An. do. 1607

Also I saw another warr. granted vnder the hand of *Poph.* chief Iu. to bring one *Edmonds* (of Barnewell by Cambr.) before him, to answer to such matters as he had to object against him, on the K. Maiesties behalfe, without any speciall cause or matter therein set downe. 3. Jac.

Againe the warrant of the Iu. of P. is the better, if it beare date of the place where it was made, and it must expresse the yeare and day when it was made. 14. H. 8. 16. Lamb. 90.

A I. of P. who is dwelling out of the county, granteth his warrant to be serued within the county, the officer cannot cary the party out of the county to the Iu. of P. who made the warrant, but must carry him before some other Iust. within the county. Plo 37.

Quere whether such a warrant be good or no.

First, for that a Iu. of P. hath no authority, but in the county where he is a Iustice, and in commission. See *antea tit. Iustice of Peace*, pag. 21, 22. And.

Againe, for that the date of the place seemeth to be materiall by the booke 14. H. 8. aforesaid.

The Iu. of P. may make his warrant, to bring the party before himselfe, & then the officer needs not to cary the party before any other Iu. And yet vpon a warrant for the P. granted *ex officio*, the vsual manner is otherwise. See *antea tit. Surety for the Peace*. Br. Peace 9. Co. 5. 99.

Also the Iustice of Peace may in some cases make his warrant, to attache the offendour to be at the next sessions of the Peace there to answer his said offence &c. See *antea tit. Counterfeisers, & postea Warrants*.

A Iu. of P. (*ex officio*, by the first *Assig.* in the commission) may grant his warrant to arrest or attach one that hath broken the P. or committed other misdemeanour against the P. to find sureties for the P. or good behauiour. For what cause.

Also the Iustices of Peace in diuers cases (as the case shal require) do vse to grant their warrant against a man for his neglect, or other default, as for refusing to pay country or towne rates, and the like.

And such warrant may be either to attach the offender to be at the next Sess. there to answer &c. or else to bring the offender before the said Ju. or any other Ju. &c. who finding cause, may bind such an offender to appeare at the next sess. to answer the said default.

Also where soeuer any stat. doth giue authority to the Iustices of P. to cause another person to do a thing, there it seemeth, they haue power giuen them (of congruity) to grant their warrant to bring such person before them, that so they may take order therein. (*tamen quare*) see *antea tit. Recognisance.*

But I find it much controuerted, whether a Ju. of Peace may grant a warrant to attach persons suspected of felony; or against offenders vpon a penall statute, vnlesse such persons, or offenders, be first thereof indicted; for that the Ju. of P. as he is a Iudge of record, so it is said, he must haue a record, whereupon he doth award his process, or precept.

For the first, some hold that the Ju. of P. may grant his warrant to attach persons suspected of felony, for that it seemeth by the first *Assignamus*, in the commission, and by the stat. of 5. *Ed.* 3. 14. that any one Ju. of P. may cause the constables to arrest and imprison offenders suspected of felony &c. And how shall the Ju. of P. cause this to be done but by his warrant or commandment.

Againe if a felony be done, there is doubt but that euery priuate man without a warrant may arrest whom soeuer he suspecteth of it, being a man of euill fame &c. see hereof *posseat tit. Arrest.* But if the offender being pursued shall resist. *quare* who shall be ayding to a priuate man, whose goods are stolne, and who suspecteth another to haue stolne them, either to search for his goods, or to apprehend the party suspected, if the Ju. of P. (by his warrant) shall not commaund the Constable to ayd him therein. If it be objected that the constable may do all this of his own authority (vpon request to him made by the party robbed) bee it * true; yet we find by common experience, that the constables without the Ju. warrant therein, are for the most part, both very fearefull, and also remisse herein, as neither knowing their own authority, nor the danger.

Besides, this is no new thing, for there is such a president in the old booke of Iustices of P. (*impress.* 1561. fo. 41. a.) yea it is the common practise at this day, and it seemeth to be very seruiceable.

And yet by the opinion of the court 14. H. 8. a Iust. of P. cannot make a warrant to arrest a felon, vnles he be indicted of felony, (or that the Ju. him selfe hath suspicion of the felon) But if the constable, or other officer, shall serue such a warrant, he shall iustifie the same, though the Ju. did erre in the awarding therof. See 24. *Ed.* 3. 9.

Next for the Iustices of peace to binde ouer, or to graunt a warrant against offenders vpon any penall statute, to appeare at the sessions,

14. H. 8. 16.
Br. Peace 6.
See Br.
Com. 3.

* See *antea*
tit. Examination,
& 2.
H. 7. 15. 16.
pro & con.
112.

Lamb. 193.

14. H. 8. 16.
Br. Peace 6.
B. F. Imprif.
8. & 9.
Co. 10. 76.

Lamb. 197.
Crom. 197.
The incon-
uenience
thereof.
See Lamb.
192.
sessions, to answer to their offence or fault, though such statute be within the power of the Ju. of P. yet such warrant, or binding ouer of such offenders, seemeth not warranted, vnlesse it be specially so appointed in the stat. As it is by the statutes of 5. *El.* ca. 4. 23. *El.* 10. 39. *Eliz.* 11. 33. *Hen.* 8. 1. See *antea tit. Counterfeiters, Dying, Labourers, Partridges, and Sacraments.*

But such offenders ought first to be indicted, and therupon process from the sessions is to bee awarded against them vntill they come in &c.

Crom. 218.
Lamb. 191.
And yet there be sundry presidents of attachmets, made from one Ju. of P. against labourers & seruants, that shall refuse to serue, or that shall depart out of their seruice &c. contrarie to the statutes, to be before the Iustices at their sessions, to answer to their said defaults:

Ra. 232. d.
But these seeme also to bee warranted, and so appointed by the stat. of Labourers made *anno* 25. *E.* 3. ca. 6. see the statute.

It is vsuall, by way of preuention, to bind by recognisance, such as do trannell for larkes, that they shall destroy no partridges; as also to bind by recognisance butchers, and all victuallers, that they shall not kill, nor dresse any flesh in Lent time, contrary to the lawes: And for these purposes the Iustices of P. do grant out their warrants to conuient the said persons before them: for victuallers (*sc.* Tauerners, Inholders, Alehouse-keepers, keepers of ordinary tables, and other victuallers) I haue knowne sundry proclamations to warrant the Iustices of P. therein: But for the other, what law or warrant there be for it, I know not, vntill the offender bee conuicted, see *hic tit. Partridges:* Yet see *antea tit. Heare by Determine, by Baylement,* where the Iustices may in some cases, grant their warrants against offenders vpon penall statutes.

14. H. 8. 16.
Br. Peace 6.
The Ju. of P. may direct his precept or warrant to the Sheriff, bay-
life, constable, or other officer; or to any other indifferent person by
name, though he be no officer, yea to any person that he shall thinke
meet: but yet the safest way is to direct it to the Constables, or to
some other sworne officers. *Towhom directed,*

Cromp. 147
A warrant directed, by the Ju. of P. to the Constable, or other sworne officer, and to a stranger, who is no officer, and the warrant is made *coniunctim & diuisim*, and is deliuered to a stranger who executeth it, all this is good.

Lamb. 61.
A warrant directed by the Iust. of P. to two men iointly, to arrest another &c. yet any one of them alone may do it.

A warrant directed by the Ju. of P. to the Sheriff, he may, by word, command his vnder Sheriff, bailife, or other sworne or knowne officer to serue it, without any precept by writing.

But if the Sheriff will commaund another man (that is no such knowne officer) to serue it, hee must deliuer him a precept in writing,

cing, otherwise a writ of false imprisonment will lye for the arrest.

A warrant directed by the Ju. of P. to the Sherifs bailife, or to the constable, or to the Ju. seruant, or to an estranger, to arrest one &c. such person (to whom that warrant is made) must serue it himselfe; for these can commaund none other to do it, neither by word, nor writing, nor make any deputy.

*The officers
duetic.*

The officer to whom any warrant shall be directed and deliuered, ought with all speed and secrecy, to seeke & find out the party, and then to execute his said warrant.

A sworne and knowne officer, be he sherife, vnder sherife, baylife or constable &c. needs not to shew his warrant to a man, when hee commeth to serue it vpon him, although he demandeth it: But if the Ju. will direct his warrant to his seruant, or to another (who is no sworne officer) to serue it, they must shew their warrant to the party, if he demand it, or otherwise the party may make resistance, & needs not to obey it.

But a sworne and knowne officer, if he will not shew his warrant to the party, yet he ought (vpon the arrest) to declare the contents of his warrant &c.

And an officer giueth sufficient notice what he is, when hee saith to the party, I arrest you in the K. name &c. And in such case the party at his perill ought to obey him though he knoweth him not to be an officer: and if he haue no lawfull warrant, the party grieved may haue his action of false imprisonment against him.

If an officer do arrest a man for the peace, or the like, before that he hath any warrant, & then afterwards doth procure a warrant (or a warrant commeth after to him) to arrest the party for the same cause, yet the first arrest was wrongfull, and the officer is subiect to an action of false imprisonment: see the stat. 43. *Elc. 6.*

Where there be two or three knowne by the name of *J. S.* of *D.* yeoman, and vpon a warrant (or other processe) granted out against one of them, another of them is arrested, an Action of false imprisonment will not lye against the officer for this; for the officer is not bound at his perill, to take notice, which of them is the offender, &c. And perhaps no particuler offence is mentioned in the Warrant, *Tamen vide L. 5. E. 4. fo. 51. & 84. pro & contra.*

Where a warrant is granted out against *J. N.* the sonne of *W. N.* and the officer thereupon arresteth *J. N.* the sonne of *T. N.* although in truth he be the same person that offended, and against whom the complaint was made, yet this arrest is tortious, and the officer subiect to an Action of false imprisonment. See the like matter, 10. E. 4. fol. 12.

The officer, vpon any warrant from a Iustice of peace, for the peace, or good behauiour, or in any other case where the King is a party

8. E. 4. 14.
14. H. 7. 9. b
20. H. 7. 13.
21. H. 7. 24.
Co. 9. 69.

Co. 6. 54. &
9. 08.

Co. 9. 69.

Dyer 244.
F. Bar. 248.
Lamb. 93.

party, may by force breake open a mans house, to arrest the offender &c. See hereof *antea*, in the former title *Forcible Entries*.

See Crom.
214. 2.

Co. 3. 44. 52

If an officer, or other person, hath arrested a man by vertue of his warrant, which he hath from a Ju. of P. and then taketh his promise that he wil come againe to him such a day to go to the Iust. with him according to his warrant (and so letteth the party go) who comes not againe at the day appointed, it seemeth the officer cannot after, arrest or take him againe by force of his former warrant, for that this was by the consent of the officer: But if the party arrested had escaped (of his owne wrong) without the consent of the officer, now vpon fresh suit, the officer may take him againe, although he were out of view, or that he shall flie into another towne or county: see more *postea tit. Imprisonment.*

Where an officer hath receiued a warrant, hee is bound to pursue the effect of his warrant, or otherwise his warrant wil not excuse him of that which he hath done. See *antea tit. Surety for the peace.*

11. H. 7. 39.

If an officer hauing a lawfull warrant to arrest another, shall be resisted, or assaulted by the party, or by any other person, then may that officer iustifie the beating or hurting of such persons: And others (vpon his prayer) may, and ought to aide the officer.

14. H. 8. 16.
Br. F. Imp. 8
Lamb. 67. 94.

If a Iustice of Peace shall make any warrant for a matter wherein he hath iurisdiction, although it be beyond his authority, yet is it not disputable by the constable, or other such officer, but must be obeyed and executed by the officer: as if the Iust. of peace shall make his warrant to arrest one for the peace, or good behauiour &c. without cause, the officer shall not be punished for executing this: But if a Iust. of P. shall make his warrant, to do a thing out of his iurisdiction, or in a cause whereof the Iust. of P. is no Iudge, if the officer shall execute such a warrant, here he is punishable; for the officer is not bound to obey him, who is not Iudge of the cause, no more then a meere stranger: And so note that the officer is bound to take notice of the authority and iurisdiction of the Iudge. See such a matter 22. *ass. 64. Pl. 394. b.*

Co. 10. 76.
Crom. 147.

Cromp. 149

If any man shall abuse the Ju. of P. his warrant, as by casting of it into the dirt, or treading it vnder his feet &c. it seemeth he may be bound to his good behauiour therefore, & may also be indicted and fined therefore, for it is the K. procces.

When any person commeth before the Ju. of P. by force of any warrant for the peace, good behauiour, or for a ryot, or the like, the party must offer sureties, or else the Ju. may commit him: see *antea tit. Surety for the Peace.*

If a Iustice of peace shall grant his warrant to one to apprehend another for murder, robbery, or felony, it shall be safe for the Iustice, vpon the deliery of his said warrant, to take (vpon oath) the examination

mination of the said party that requireth the warrant, or at least to bind him over by recog. to give evidence at the next gaole delivry &c. against the offender; least that afterwards when the offendour shall be brought (by the officer) before the Ju. vpon his said warrant, or else happen to yeeld himselfe to the said Iust. then the party that procured the warrant bee gone: For by credible report I am informed, that one hauing procured a warrant from a Iust. of P. in Suff. against another for a robbery done vpon the high-way, & the Ju. vpon the delivry of his warrant, not hauing bound ouer the complainant to give evidence, nor taken his examination as afore said, that at the next assises & gaole delivry, the party charged with the robbery, came and offred himselfe to the said Ju. of P. who immediatly acquainted sir *Tho. Flemming* (then Lord chief Ju. & Iudge of Ass. there) with the whole matter, But the said Iudge much blamed the said Ju. of P. for not hauing bound ouer the said complainant at the first when he granted him the warrant, and charged the said Ju. of P. at his perill, presently to send for the party complainant, to come to giue evidence &c. And further directed the said Ju. of P. presently to bind ouer the party charged with good sureties, for his attendance and apparance.

Arrest, and Imprisonment.

What.

AN arrest is the apprehending, and first restraining of a mans person, depriving it of his owne wil and liberty; and may be called the beginning of imprisonment.

Imprisonment, is where a man is arrested against his will, and is restrained of his liberty, by putting him into the gaole, cage, or stocks, or into some house, or otherwise by keeping him in the high street, or open field, so as he cannot freely go at liberty when & whither he would.

If the Constable, or other officer (vpon a warrant receiued from a Ju. of P.) shall come vnto the party, and require, or charge, or command him to go, or come before the Ju. &c. this is no arrest, or imprisonment: and vpon a warrant for the P. the officer ought first to require the party to go before the Iust. before he may arrest him: see hereof *antea tit. Surety for the Peace.*

But this arrest (being in execution of the commandment of some court, or of some officer of Iust.) is expressed in their writs, precepts, or warrants, by these words, or the like, *sc. Capias, Attachias, &c.* to attach, arrest, take, bring, or conuey, or cause to be attached, arrested, &c. All which words do imply the taking, and laying hold of the person.

To

To this arrest, all lay persons (vnder the degree of barons, or peeres *What person:* of the realme) be subiect, and that by warrant from the Iustices of P. as you may see here before, *tit. Surety for the Peace.*

But the Iustices of P. are not to grant their warrants for the P. or the like, against any Noble man: And yet if a *Capias*, or attachment shall be awarded against a baron or peere of the realme, from the K. Iustices at West. for a contempt, or in case of debt or trespas, the officer without any offence of law, may execute the same, for that the officer is not to dispute the authority of the court.

See P. Arrest 1.

Ecclesiasticall persons also may be arrested, and that by a warrant from the Iustices of Peace in some cases. See hereof *tit. Surety for the Peace.*

A woman couert may be imprisoned by the Iust. of P. for a force, or a ryot committed by her: see *antea tit. Forcible Entry, & Ryots.*

But otherwise of infants, in such cases (as it seemeth:) see *ibid.*

Yet if an infant cannot find sureties for the P. being demanded against him, he shall be committed vntil he hath found sureties: see *antea.*

An infant shall suffer no imprisonment, nor other corporal pain, by statute, except that an infant be expressed by name, in the statute. *Br. impris. 101.*

Co. 9. 56.

The liberty of a man is a thing specially fauoured by the common law of this land: And therefore if any of the K. subiects shall imprison another without sufficient warrant of him, or his law, the party griued may haue his action, & shall recouer damages against the other, and the K. also shall haue a fine of him: For imprisonment of another, without offence of the law, is one of the K. royall prerogatiues, and only annexed to the crowne. *For what cause, and by whom.*

P. Accusat. 1. E. 3. c. 9.

Also by the stat. of *Magna Charta*, made 9. H. 3. ca. 29. No freeman shall be taken, or imprisoned &c. but by the lawful iudgement of his equals, (*sc.* by the verdict of a Iury of 12. good and lawfull men) or by the law of the realme.

Co. 10. 74.

And by this statute of *Magna Charta*, Euery arrest or imprisonment, and euery oppression against the law of the land, is forbidden; and if any Iudge, Officer, or other person, against the law, shall vsurpe any Iurisdiction, and by colour thereof, shall arrest, imprison, or oppress any man, it is punishable by this statute: see *Co. 10. 75.*

Note, that all Iurisdiction ought to be either by Charter, or by Prescription. *Co. 11. 99.*

Also by the statutes of 25. Ed. 3. cap. 4. & 42. Ed. 3. cap. 3. No person shall be taken, nor put to answer, vnlesse it be by Indictment or Presentment (of a Iury) before Iustices, or matter of Record, or by due processe made by writ originall at the common law. See *P. Accusation 1. & 42. Ass. 5.*

A

A Commission to arrest or take a man (and his goods) was holden to be against law, for that this ought to be, either vpon indictment, or suit of the party, or other due proces of law, *Br. Commiss. 15. 16. & Faux Imprif. 9.*

Neither shall any man commit another to prison, except he be a Judge of Record. *Co. 10. 103.*

And yet for Misdemeanors done against the Kings Peace, the offendours as well by the Common Law, as by diuers statutes, may be arrested and imprisoned, by the Officers of Justice, and sometimes by priuate persons (as hereunder followeth,) without either Presentment, or Processe &c. And these being by the Law of the Realm, are warranted by the aforesaid statute of *Magna Charta*, As

Every priuate man may arrest another, whom he knoweth to haue committed a robbery, manslaughter, or other felony, and may deliuer him to the Constable of the towne where such an offender is apprehended; Or (in the Constables absence may imprison and set him in the stocks; and if there be no stocks there, it seemeth he may carry the offendour to the next towne, and deliuer him to the Constable there: see *9. Ed. 4. 28.*

Also when a felony is committed, every man may arrest suspicious persons that be of euill fame, &c. and if such person shall make resistance, the other may iustifie to beat him.

But for the arresting of such suspicious persons, note, that there must be some felony committed in deed.

Also the party that shall arrest such suspected person, must haue a suspicion of him him selfe, and for the same felony, or otherwise suspicion generally is no cause to arrest another. See *antea titulo Examination.*

So that when any felony is done, Every man that shall suspect another to bee guilty thereof may arrest him. See *5. H. 7. 4. b. Br. Faux Imprisonment 16.*

Also when a felony is committed, the Common voice and fame that I. S. did the felony, is sufficient cause for any man to suspect him, and to arrest him. *Ibid.*

Also Huy and Cry after I. S. for felony, seemeth to be sufficient cause to arrest him, though there be no felony committed. *Ibid.*

Also huy & cry is sufficient cause to arrest any suspicious person.

So when a felony is done, to be in company of the offendours, is sufficient cause to arrest him.

So to liue idly and vagrant. *Br. Faux Imprif. 22. See ansea.*

Also every man may arrest such as apparantly goe about to commit any felony, and may imprison them.

Also, vpon Huy and Cry, for goods stolne (scilicet for a horse or bullockes, &c. of such a colour &c.) If A. be taken driuing or leading

See Co. 3. 12. 2.

10. E. 4. 17.

9. Ed. 4. 28.

9. Ed. 4. 28. Neoham.

29. Ed. 3. 39. 1. H. 7. 4.

ding &c. such a horse, or such bullocke, or hauing such other stolen goods about him, though he be a man of good name and credit, yet every man may apprehend and stay A. hereupon, and may deliuer him to the constables, by them to be set in the stockes, or safely kept, vntill they can carry him before a Iu. of P. that so he may be deliuered by course of law.

10. H. 7. 28. If any man shall be dangerously hurt in an affray, (or otherwise) every man may arrest and imprison the offender &c. what every priuate man may further do in an affray: see before, *tit. Affray.*

Every man knowing of any that keepeth, or vseth any gun, &c. contrary to the stat. may arrest them, & bring them to the next Iu. of P. &c. see *antea tit. Guns.*

Night-walkers, being strangers, or suspected persons, watchmen may arrest them, and may stay them till the morning, &c. see hereof *tit. Watch, ansea.* Yea, every man may arrest such Night-walkers, for it is for the good of the Common wealth. *4. H. 7. 18. Br. Faux Imprisonment 15.*

The sherife, bailifes, constables, and other the K. officers may arrest and imprison offendours, in all cases where a priuate person may (and without any writ or warrant.) *By officers.*

Where a constable may arrest one &c. see hereof, *antea tit. Conservators of peace, Affray, Forcible Entry, & Examination.*

A constable being informed of a lewd man and woman that are together in incontinency, may take with him so many of his neighbours as he wil, to arrest the said man and woman to find sureties for their good behauiour. *1. H. 7. 7. 13. H. 7. 10.*

The Iu. of P. may arrest and imprison offendours in all cases where a priuate person or a constable may.

The Iu. of P. (vpon his own motion & discretion, or vpon complaint) may also grant out his warrant, for the arresting (or conuenticing before him) of all such persons, as shall breake, or goe about to breake the P. or as he shal suspect to be inclined to breake the P. and may commit them to prison, if they shall refuse to find, or cannot find sureties for to keepe the peace.

The Iustice of peace (in diuers cases) may in like sort grant out his warrant for the good behauiour, against offendours (as you may see before) and may commit them to prison for not finding sureties accordingly.

And these things the Iu. of P. may do by force of the commission, and of the statutes *18. Ed. 3. c. 2. & 34. Ed. 3. c. 1.*

If one commeth before the Iu. of Peace, vpon his warrant for the peace, good behauiour, or for a Ryot or the like, the Iustice needeth not to demand surety of him, but may commit him, if he do not offer it. *Br. Peace 7.*

Also the Iustices of P. vpon their own view &c. of the offence, may imprison the offenders against diuers penall lawes; as namely such as keep common alehouses without licence: Offenders for vnlawfull games, ryotters, such as shall make any forcible Entries, or holdings of possessions, &c. see for these before vnder their particular titles.

There be diuers other offences, which by the statutes are committed to the Iu. of P. (out of their Iess.) to heare & determ. And of which the offenders shall be conuicted, somtimes vpon their own confession before the Iu. & somtimes vpon examination & profe of witnesses: In all which cases the said Iust. of P. may conuent the said offenders before them (by their proces or warrant) and after such examination and conuiction, they may imprison, or otherwise punish the offenders, according as they are limited by the said statutes: see before *tit. Heare & determine.*

Wherefoeuer the Iu. of P. hath power, or authority giuen him by any stat. to bind ouer any man, or to cause a man to do any thing; If such person (being in his presence) shall refuse to be bound, or to doe such thing, it seemeth such Iu. may send such perso to the gaole, there to remain til he shall perform the same: see hereof *antea tit. Recogn.*

In what cases the K. officer may breake open a mans house, for to arrest an offender: see hereof *tit. Forcible Entrie.*

All men being required, ought to assist the K. officers, to pursue and arrest offenders against the peace, &c.

Resist.

If the party against whom any lawfull warrant is graunted, shall make resistance, or shall make an assault vpon the officer, The officer may iustifie the beating and hurting of him, and may also imprison him in the stocks for the same. But if the party resisteth or flyeth, before he be arrested, the officer cannot iustifie the beating of him. *2. E. 4. 6. 21. H. 7. 39.*

Imprisonment, the place.

None shall be imprisoned by any Iu. of P. but only in the common gaole, by the stat. of *5. H. 4. c. 23. H. 8. ca. 2.*

And therefore Iustices of P. cannot commit felons to any of the Counters in London, nor to other prisons which bee no common gaoles; nor make a gaole of their owne houses.

And yet Iustices of P. may commit to the stocks some offenders against certain penall statutes; As townesmen tipling in alehouses, &c. see hereof *antea tit. Alehouses.*

Persons refusing to worke in Hay and Haruest time: see *antea tit. Labourers.*

And in some cases the Iu. may commit an offender to safe custody by his discretion. *Vide antea tit. Preachers.*

The Iherife or gaoler may imprison a felon, or other prisoner in their own house, or in the common gaole at their pleasure. *Lamb. 136. Crom. 169.*

The

20. Ed. 4. 6.
21. Ed. 4. 55.
3. H. 4. 9.

The constable (or other such officer) cannot imprison any man in his house (as it seemeth) but in the stocks; and that not aboue such a reasonable time, as hee may prouide conuenient aide safely to conuey the Prisoner to the Iustice, or gaole.

If a man commit felony in one county, and be arrested for the same in another county, he shall be imprisoned in that county where he is taken. *Vide antea tit. Felony.*

17. E. 4. 8.

The Constable or other Officer pursuing a felon into another County, takes him there; the felon shall be committed to the gaole of the county where he is taken: For the officer being out of his county, hath no more authority then a priuate man. *Vide antea tit. Accessaries & Felony.*

Also if the constable (or other officer) shall see an affray, and hee comming to arrest them, the affrayors do fly into another countie, the officer (as euery other priuate person) may pursue them into the other county, and may stay or arrest them there; but the officer cannot bring them out of that county, but must carry the affrayors before some I. of P. of the same county where they were taken &c. But if the affray be in one town, & the affrayors do fly into a franchise or liberty within the same county, the officer may pursue them, & take them out of the franchise, by fresh suit. *Vide antea tit. Affray.*

See 2. E. 4. 6
Br. Trespass 296

But if the Constable hath arrested one vpon a warrant from a Iu. of P. & after the arrest the party escapeth (of his own wrong) & flyeth into another county, the constable may pursue and take him in the other county by fresh suit, & bring him before the Iu. of P. vpon whose warrant he was first arrested, as it seemeth: see *Crom. 172. 173 & antea tit. Felony by Statute.*

If a prisoner that is taken in execution shall make an escape of his owne wrong, and shall flye out of sight, and into another countie where the Iherife hath no power, yet the Iherife &c. vpon fresh suite, may take him againe in any other County, and he shall bee still said to be in execution: yea without fresh suit, the Iherife &c. may take him againe, and keep him vntill he hath agreed with him, otherwise if the escape were by the consent of the Iherife, &c. *Co. 3. 52. Br. Escape 4. 12.*

3 Jac. ca. 10.
P. Prison 7. 8

Now for the conueying of prisoners to the gaole, it must bee at the proper charge of the prisoners, if they haue meanes or abilitie thereto, otherwise it must bee at the charge of the towne where they are taken.

10. H. 4. 7.

And if a man be arrested for felony, and the constable shall carie him to the gaole, and the gaoler will not receiue him, the Constable must bring him backe to the towne where hee was taken, And that towne shall bee charged with the keeping of him vntill the next Gaole delincrie, by the opinion of the Booke 10. H. 4. Or the Constable.

Constable, or other party that arrested him, may in such case keepe the prisoner in his own house as it seemeth: see 11.E.4.Br.Faux Imprif. 25 fine.

But the gaoler denying to receiue a felon by the deliuey of any constable or township, or taking any thing for receiuing such, shall be punished for the same by the Iustices of gaole deliuey.

The time.

When a stat.doeth appoint imprisonment, but limits no time when the offender shalbe imprisoned, then he is to be imprisoned presently; as in case of a force, the Iu.of P.vpon view therof,ought to commit the offenders presently.

Also when a statute doth appoint imprisonment, but limits no time how long, there the prisoner must remaine at the discretion of the Court.

Where a stat.doeth ordain, that an offender shal be imprisoned at the K.pleasure. Vide antea tit. Bailement.

Where a stat.ordaineth that a prisoner shal not be deliuered without the Kings speciall commaundement, and that vpon a fine to be made to the King; who may assesse the same fine, and deliuer him: see 18.H.8.1.

But imprisonment to be inflicted by the Iu.of P.almost in all cases, except for felony or higher offences, is but to retaine the party, vntil he hath made fine to the K. for his contempt or offence: And therefore if he shal offer to pay his fine, or shal find sureties by recog. to pay it, he ought to be deliuered presently, 2.Mar.1.

The manner.

Now for the maner of imprisonment, it seemeth generally in all cases where a man is committed to prison (be it for felony, or vpon an execution, or but for a trespassse, or other offence) euery gaoler ought to keepe such his prisoner, *in salua et arcta custodia; Salua scz.* that he ought to be imprisoned so surely, as that he cannot escape; *Arcta*, in respect that he ought to be kept close, without conference with others, or intelligence of things abroad.

And therefore if the gaoler shall licence his prisoner to goe abroad for a time, and then to come againe; Or to go abroad with a keeper, though he come againe, yet these are escapes: And if the prisoner were in for felony, this is fineable in the gaoler at the least, if it be not felony; And if the prisoner were in vpon an execution, this is so penall to the officer, as that he shall be charged for the debt; And if the prisoner were in but for a trespass, yet the officer is fineable; for imprisonment was ordained for a punishment of offenders, and in terror of all others, *ut pœna ad paucos, metus ad omnes perueniat. Vide antea tit. Felony by statute.*

Also (by the law) those which are in execution, ought not to goe at liberty within the prison, nor abroad with their keeper, 24.H.8 much lesse in cases of felony, or of higher offences.

Also

Co.Ibid. P.Accopt.2. Also by the statute of Westminster, 2.cap.11. Accomptants, and such as are in execution, the Sheriffe or Gaoler may put irons or fetters vpon them: and yet if the Gaoler shal imprison a man so straitly, by putting him in the stockes, or putting more yrons vpon him then is needfull, or keepeth his victuall from him, whereby the prisoner becommeth decrepit, lamed, or otherwise diseased, he shall haue an action of the Case against the Gaoler.

Fitz.93.h.

Also the Constable or other such officer, that shal imprison in the stockes, any offender, for felony or suspition thereof, may locke the stockes, and if need be, may also put yrons on him as it seemeth; And when hee conueyeth him to the Gaole, or to the Iustice, may pinion him, or otherwise make him sure, so that he cannot escape.

Kir.69.

It seemeth by Britton fol. 17. that by the common Law (before the statute of Westminster 2.) None should haue yrons put on them, but such offenders as were taken for felony, or trespassers in Parkes. But the wordes of the statute of Westminster, 2.cap.11. are generall, *quod Carceri mancipentur in ferris*, which word, *Carceri*, seemeth to signifie any persons imprisoned for any cause, (or any persons worthy of the prison,) and is not to be restrained to Accomptants onely. See Cok.3.44.

7.12.4.

Also by the statute 7.Jacobi Regis, All Rogues, Vagabonds, sturdy beggers, and other idle and disorderly persons, sent to the house of Correction, may (by the Master of such house) bee punished by putting fetters, or giues vpon them.

Posse Comitatus.



Lamb. 309.

Here the Iust.of P.Sheriffe, or other Officer, is enabled to take the power of the County, it seemeth, they may commaund, and ought to haue the ayd and attendance of all Knights, Gentlemen, Yeomen, Husbandmen, Laborers, tradesmen, seruants, and apprentices, and of all other such persons, being aboute the age of 15. yeares, and that are able to trauell.

But women, Ecclesiasticall persons, and such as bee decrepit or diseased of any continuall infirmite, shall not be compelled to attend them.

And in such cases, it is referred to the discretion of the Iustices of Peace (or Sheriffe, &c.) what number they will haue to attend vpon them, and how and after what manner they shall be armed, weaponed, or otherwise furnished.

But it is not iustifiable for the Iust.of P, Sheriffe, or other officer, to assemble *Posse Comitatus*, or raise a power or assembly of people (vpon their owne heads) without iust cause. Vide antea tit. Ryots.

E e

What

What persons may take Posse Comitatus, and in what cases.

Any Justice of P. or Sheriffe, may take (of that County where he is a Justice, or Sheriffe) any number that they shall think meet, to pursue, apprehend, arrest, and imprison traytors, murderers, robbers and other felons; or such as doe breake, or go about to breake, or disturbe the K. peace; and every man (being required) ought to assist and ayd them. *Vide antea. Forcible Entry, and Felony.*

The Iust. of P. (and the Sheriffe, or Vnderheriffe) may take *Posse Comitatus*, for the suppressing of ryots; & all sorts of persons (being able and required) ought to assist them therein. *Vide antea tit. Ryots.*

Yea any one Iust. of P. may take the power and ayd of the County, to suppress Ryotters, and needs not to tarry for the coming of another Justice, or of the Sheriffe. 14.H.7.8.

Also in cases of Forcible Entrie, any Justice of Peace may take *Posse Comitatus*, to remove such persons as by his view, or by Inquisition taken before him, shall be found to have made any forcible entrie (into other mens possessions) or to deteine them with force. *Vide antea tit. Forcible Entry.*

Also the Sheriffe, or other Officer, vpon any lawfull Warrant, for the apprehending of any Popish Recufant &c. may take *Posse Comitatus*, &c. See the Stat. 3. Ja. ca. 4. P. Recuf. 51.

The Sheriffe, Vnderheriffe, or Bailiffe &c. (if need be) may by the common Law, take the power of the County (what number they shall thinke good) to execute the K. Processe or Writ; be it a Writ of Execution, *Repleuin*, *Estrangement*, *Capias*, or other Writ, it being the K. commandment. (See also the Stat. *Westm. 1. 17. Westm. 2. 39.*) And such as shall not assist them therein (being required) shall pay a fine to the King. 3.H.7.10. Co. 4. 115. P. Dist. 4. P. Retors. Br. Fine. p. 37. Br. Ryots. 2-3.

The Sheriffes Bailiffe, to execute a Repleuy, tooke with him three hundred men armed (*modo guerino, sc.*) with Brigandines, Jacks, and Gunnes, and it was holden lawfull: for the Sheriffes Officer hath power to take assistance, as well as the Sheriffe himselfe, for that all is one office, and one authoritie. 3.H.7.1. Br. Tresp. 166.

A man demaunds the P. in the Chancery against a great Lord, and hath a *Supplicavit* directed to the Sheriffe; there, if need shall bee, the Sheriffe may take *Posse Comitatus*, to ayd him to arrest such a Lord, &c. *Vide antea tit. Suretie for the Peace.*

So it seemeth, if a *Supplicavit* be directed to a Iu. of P. the Iust. of P. or the Officer to whom the Iust. of P. shall make his Warrant in this behalfe, (vpon resistance made) may (if need be) take *Posse Comitatus* to ayd him to arrest the party: *Quia quando aliquid mandatur mandatur et omne per quod pervenitur ad illud. Co. 5. 115.*

But every Sheriffe is enabled besides by his Writ of Assistance, where-

whereby he hath commandment (vnder the great seale) to all Archbishops, Dukes, Earles, Barons, and all other the Kings subiects, within the same County, to be aiding to him in whatsoever belongeth to his office, &c.

The Sheriffe may take *Posse Comitatus*, to apprehend felons, &c. Or disturbers of the peace. *Vide antea tit. Forcible Entry.*

So hee may take *Posse Comitatus* to execute the Precept of the Justice of Peace. *Ibidem.*

3.H.7.10. 13.H.7.10. Br. Tresp. 434. The Constable (of a towne) vpon a felony committed, or vpon any affray, or the like, may take the ayd of his neighbors, or other persons being present, to apprehend the felons, or to cause the peace to be kept, and to carry the offenders before the Justice, &c.

38.E.3.8. One hath hurt another, whereby hee is in perill of death, the Constable may take power or ayd, to arrest him, &c.

So may the Constable take ayd, for the executing of the Justices Warrant directed to him.

Ca. 11. 82. 27.H.7.39. Every man may assemble his friends and neighbours, to defend his person, &c. (being in his house) against violence, &c. but not to goe abroad with him to a Fayre or Market, &c. *Vide antea titulo Forcible Entrie.*



Certaine advices to the Iustices of Peace.

I Thought it not amisse here shortly to admonish the Iustices of Peace againe, of some few things mentioned before for their better memory:

1. First, that they exercise not the office of a Justice of Peace, before they have taken the oath of their Office, and the Oath of Supremacy. *Vide antea tit. Iustices of Peace.*

See Cromp fol. 68. 2. That they execute not this their Office in their owne case, but to cause the offender to bee conuicted before some other Justice; *quia iniquum est aliquem sui rei esse Iudicem. Co. 8. 118.* And some late Statutes have taken speciall care to prevent this, as you may see *hic tit. Trespasse, &c.*

And yet if the Justice shall deale in his owne case, it seemeth good and iustifiable in diuers cases; as, when a Justice of P. shall be assaulted, or (in the doing of his office especially) shall be abused to his face, and no other Justice of Peace present with him, then it seemeth hee may commit such an offender, vntill he shall finde sureties for the Peace, or good Behavior (as the case shall require.) And the said Justice in such case may himselfe bind the offender, and take his surety: but if

any other Iust. of P. shalbe present, it were better to desire his ayde.

3. That they be carefull for the execution of the stat. of Ryots.
Vide antea tit. Ryots.

If vpon their Enquiry of a Ryot, the truth cannot bee found, by reason of any maintenance, &c. that they certifie the same within one moneth. *Ibidem.*

4. That vpon a forcible Entry, they make no Restitution, without Enquire. *Vide antea tit. Forcible Entry.*

5. That vpon notice of any Treason, or of any Seminaries, &c. or of any *Agnus Dei*, &c. offered, they discover the same to some of the Priue Councill. *Vide tit. Treason.*

6. That they bee circumspect in bayling of prisoners; *viz.* that they neither deny it to such as are bayleable, nor yeeld it where it is not grauntable. *Vide hic Baylement.*

7. If any felony be committed, and one is brought before the Iu. of P. vpon suspicion for the same, though it shall appeare to the Iust. that the prisoner is not guiltie of that offence, or that it is not felony of death, yet he may not set him at liberty, but so as he may come to his triall. *Vide antea tit. Felony by Stat. and Evidence against Felons.*

8. That all Recog. taken by them, be in the Kings name.

9. That all Recognifances taken by them, bee certified at their next Quarter Sessions, or Gaole deliuey, according as the case shall require.

10. That they meet at every Easter Sessions at the least, *vide 5. Eliz. ca. 4. P. Iust. 67.* And yet their presence and attendance at euery generall Sessions is very requisite.

11. That their examinations taken concerning the mis-entring of Plaints in County Courts; or the defaults of gathering the Shire Amerciaments, be certified into the Exchequer &c. *Vide antea tit. Sheriffs.*

12. That such offences as the Surueyors of High-ways shall present to them, they againe present at their next Quarter Sessions. *Vide antea tit. High-ways.*

13. That the Oathes taken by them vpon the submission of any Recusant, be certified at their next Quarter Sessions. *Vide antea tit. Recusants.*

14. Also that they do iustice & giue remedy to euery party grieued, in any thing that lieth within their power, to heare, determine, or execute; and that without respect of persons, & according to the lawes and statutes of this realme. *Vide antea tit. Iustices of Peace.*

Note, that all these former matters are penall to the Iustices of P., if they shall offend in any of them, and therefore it is likely they will be the more careful therein. But there are certaine other things principally tending to the publike good, & lately commended from his Maiesty, (by the Iudges of Assise) to the care of the Iustices of Peace;

in

in all which the Iust. of P. are to imploy also their speciall care and diligence: and they are shortly these ten articles following:

1. Ale-houses; the abuses there to be reformed; and such as be vnlicensed, to be suppressed.

2. High-ways, and Bridges to be amended.

3. Hue and Crie, and fresh suite, to be duely made, and pursued after Robbers, and other Felons.

4. Laborers: *scz.* idle persons meet to serue, to bee compelled to goe to seruice.

5. Poore: their children to be placed Apprentices; such as are able of body, to be holden or set to worke.

6. Recusants: first Popish Recusants (especially such as haue bin reconciled to the Pope, or drawn to the Popish Religion, since the Gunpowder Treason, for these are by his Maiesty accounted most dangerous;) that these be certified into the Kings Bench; and further to bee dealt withall (by the Iust. of P.) according to the feuerall Stat. in that behalfe made.

Also negligent Recusants, which shall not resort euery Sunday to Church; that such be punished according to the statute: for the first meanes to bring men to God, is to bring them to Church.

7. Rogues and Vagabonds, to be duely punished.

8. Howles of correction, to be maintained.

9. Watch to be duely kept.

10. Weights and Measures, the abuses therein to be reformed.

Further, the Iust. of P. are to be carefull that they suffer not the K. to bee disaduantaged, where it lyeth lawfully in their power to prevent it, *vide Lamb. 521.*

Also that they remeber, how that they exercise not the iudgements of men only, but of God himselfe (whose power they do participate and who is alwayes present with them) and therefore must take heed that in all their actions they set God continually before their eyes.

But forasmuch as most of the busines of the Iust. of P. (out of Sessions) consisteth in the execution of diuers stat. committed to their charge, which stat. cannot bee so sufficiently abridged, but that they will come short of the substance and body thereof; therefore it shall be safest for the Iu. of P. not to rely ouermuch vpon these short collections thereof, but to haue an eye to the Abridgment of statutes, or rather to the booke of Stat. at large, and thereby to take their further and better directions for their whole proceedings: for (as *Sir Edw. Coke* obserueth) Abridgments are of good and necessary vse to serue as Tables, but not to ground an opinion, (much lesse to proceed iudicially) vpon them: *Idco*, saith he, *satius est petere fontes quam scari riuulos. Cok. 10. 117. b.*

And lastly, for the better encouragement of Iustices of Peace,

Ec 3

Con-

Constables, and other Officers, who (by causelesse suits commenced by contentious persons against them for executing their Offices) haue lately bin discouraged from doing their offices (with that courage, care and diligence, which is required at their hands,) Now for their ease in pleading, they are by the stat. 7. *Jacobi*, allowed to pleade the generall issue of Not guilty, and to giue the special matter in euidence, and for their wrongfull vexation, double costes.

Warrants and Presidents.



He Warrants of the Iustices of Peace, may be styled and made after diuers manners, As

- 1 First, in the name of the King; and yet the *Teste* may be vnder the name of the Iustice (or Iustices) of Peace, that grant them out:
- 2 Or they may bee styled and made onely in the names of the Iustices:
- 3 Or they may bee made without any such style, and onely vnder the *Teste* of the Iustices of Peace; or onely subscribed by the Iustice, as followeth.

In the Kings Maiesties name.

Cantebr. **J**AMES by the grace of God, &c. To our Sheriffe of our County The Style. of Cambridge, the high Constables of the Hundred of Radfield, the petie Constables of the Towne of Balsham, and to all and singular our Bayliffes, and other Ministers in the said Countie, aswel within Liberties as without, Greeting. Forasmuch as A. B. of &c. hath come before Sir *Edward Peyton* Knight and Baronet, one of our Iustices of peace within the said Countie, and hath &c. (concluding it in the Iustices name, as thus) Witnesse the said *Edward Peyton*, at *Ille-* The Teste. ham, the day of December, &c.

Note, that wheresoeuer the Warrant is made in the K. name, (as before) there it seemeth the Warrant ought to be directed to all Ministers, aswel within Liberties as without, for that the King is made a party: and so it may be done in all other warrants (especially for felony, or for the peace, or the good behavior, &c.) because it is the seruice of the K. & no liberty or franchise shalbe allowed or hold place against the K. *Br. franch. 31.* yet see *hic 21.* that the Iust. of P. may not intermedle in any city, town or liberty, which haue their proper Iust.

Or thus, in the name of the Iustice himselfe.

Cantebr. **M**yles Sandys, Knight & Baronet, one of the Iustices of the peace of our Soueraigne Lord the K. within the said Countie; To
the

the Sheriffe of the said Countie, to the (Bayliffe or) Constables of the Hundred of &c. to the petie Constables of the towne of F. within the said Hundred, and to all other the faithful Ministers and Officers of our said Soueraigne Lord within the said County, and to euery of them, Greeting. Forasmuch as &c. Giuen vnder my hand and seale at the day of December, &c.

Or else they may be directed to the petie Constables only, thus;

To the Constables of (the towne of) W. and to either of them.

Forasmuch as A. B. of, &c. hath come before me, &c. Giuen vnder my hand and seale at the day of, &c. Cantebr.

Myles Sandys.

A Warrant for the Peace.

JAMES by the grace of God, &c. To our Sheriffe, &c. For as Cantebr. much as A. B. of &c. Yeoman, hath personally come before Sir *Oliuer Cromwell*, Knight, one of our Iustices of the Peace within the said Countie, and hath taken a Corporall Oath, that hee is affrayd that one C. D. of in the said Countie, Yeoman, will * beate, wound, maime, or kill him, or burne his houfes; and hath therewithall prayed Suretie of the Peace against the said C. D. Therefore we commaund and charge you ioyntly and seuerally, that (immediatly vpon the receipt hereof) you cause the said C. D. to come before the said Sir *Oliuer Cromwell*, or some other of our Iustices of the same Countie, to finde sufficient suretie and mainprise, as well for his appearance at the next Quarter Sessions of our Peace to be holden at C. in the said Countie; as also for our peace to be kept towards vs, and all our liege people, and chiefly towards the said A. B. that is to say, that hee the said C. D. shall not doe, nor by any meanes procure or cause to be done, any of the said euills, to any of our said people, and especially to the said A. B. And if the said C. D. shall refuse thus to doe, that then immediatly (without expecting of any further Warrant) you him safely conuey, or cause him to be safely conueyed to our next prison in the said County, there to remaine vntill he shall willingly doe the same: (so that he may be before our said Iustices, at the said next generall Sessions of the Peace to be holden at Cambridge aforesaid, then and there to answer vnto vs for his contempt in this behalfe.) And see that you certifie your doings in the premisses to our said Iust. at the said Sessions, bringing then thither this precept with you. Witnesse the said *Oliuer Cromwel*, at aforesaid, the fourth day of August, &c.

*Any one of these causes is sufficient.

Or

Or thus, in the name of the Iust. himselfe, Mutatis, mutandis.

Cantabr. **T** *Hom as Iermy*, Knight, one of the Iustices of the Peace of our So-^{For the} ueraigne Lord the King, within the said County, to the Sheriffe, ^{Peace.} &c. Greeting. For as much as A. B. &c. hath personally come before mee, and hath taken a corporall oath, &c. These shall be therefore on the behalfe, and in the name of our said Soueraigne Lord, to commaund you ioyntly &c. that you cause the said C. to come before mee, or some other of his Maiesties said Iustices of the Peace, in the said Countie &c. Giuen vnder my scale at aforesaid, &c.

To the Constables of, &c. and to either of them.

Cantabr. **F** *Or* as much as *Ba*: the wife of *W. A.* of your said towne, Laborer, ^{For the} hath required suretie of the Peace against *T. B.* of your said town ^{Peace.} Butcher, and witchall hath taken her corporall oath before mee, that she requireth the same not for any priuate malice, hatred, or euill wil, but simply that she is afraid of her life, or the hurting or maiming of her body, or the burning of her houses; These are therefore to will and require you, and in his Maiesties name to charge and command you, that immediatly vpon the sight hereof, you or one of you, ^{* See before} require the said *T. B.* to come before mee, or some other of the Kings ^{the Arrest.} Maiesties Iustices within the said Countie, to finde sufficient sureties as well for his appearance at the next generall Quarter Sessions of the peace to be holden for this County, as also that the said *T. B.* shall in the meane time keepe the K. Maiesties peace, as well towards his said Maiestie, as towards all his liege people, and especially towards the said *Ba*: And if he shall refuse so to doe, that then immediatly you do conuey the said *T. B.* or cause him to bee conueyed vnto the Kings Maiesties Gaole at the Castle of Cambridge, there to remaine vntill he shall willingly do the same. And see that you certifie your doings in the premisses to the Iust. at the said Sessions; and haue you there this Warrant. Dated at, &c.

A Warrant for the Peace vpon a Supplicauit.

Cantabr. **I** *ohn Cotton* Knight, one of the Iustices of the Peace of our Soueraigne Lord the Kings Maiesty within the countie of Cambridge, To the Sheriffe of the said county, the high Constables of the Hundred of R. the petie Constables of the town of B. and to all and singular the Kings Maiesties Bailiffes, and other Ministers, as well within Liberties as without in the said county, & to euery of them, Greeting. Know ye, that I haue receiued the Commandement (or Writ) of our said Soueraigne Lord (in these wordes, reciting the whole Writ of *Supplicauit*; or onely reciting the effect of the *Supplicauit*, thus,

thus, to compel *A. B.* of &c. to finde sufficient suretie for his Maiesties Peace, by him to be kept towards &c.) And therfore on the behalfe of our said Soueraigne Lord, I commaund and charge you ioyntly and seuerally, that immediatly vpon the receipt heereof, you cause the said *A. B.* to come before me at my house in Cheueley, to finde sufficient surety and mainprife for the peace, to be kept towards our said Soueraigne Lord, and all his liege people, & especially towards the said *C. D.* And if the said *A. B.* shall refuse thus to doe, that then you him safely conuey or cause to bee safely conueyed, to his Maiesties gaole at the castle of Cambridge (or to the next gaole of his Maiesty in the said County) there to remaine, vntill that he shall willingly do the same; so that he may be before the Iust. of the P. of our said Soueraigne Lord within the said Countie, at the next generall Sessions of the peace, to be holden for the said Countie, there to answer to our said soueraigne Lord for his contempt in this behalfe. And see that you certifie your doings in the premisses, to the said Iust. at the said sessions, bringing then thither this Precept with you. Yecouen at Cheueley aforesaid vnder my hand and seale, the fourth day of &c.

The Returne of this Writ, and Certificat of the Iust. doings herein: see here before, in the title of *Suretie for the Peace.*

A Warrant for the Good Behaviour.

Cantabr. **F** *Or* as much as *A. B.* of your said Towne, is not of good name ^{* Any one of these is sufficient.} or fame, nor of honest conuersation (but * an euill doer, a Rytter, Barretter, and perturber of the peace of our said Soueraigne Lord) as wee are giuen to vnderstand by the complaint of sundrie credible persons. Therefore on the behalfe of our said Soueraigne Lord we commaund you, and euery of you, that immediatly &c. you cause the said *A. B.* to come before vs, or some other of our fellow Iustices, to finde sufficient suretie and mainprife, as well for his good Abearing towards our said Soueraigne Lord, and all his liege people, vntill the next Quarter Sessions of the Peace to be holden in the said Countie, as also for his appearance then and there. And if hee shall refuse so to doe, That then &c. (as in the Warrant for the Peace.)

Or thus.

Cantabr. **F** *Or* as much as we haue bene credibly informed that *S. W.* of your Towne, &c. is a man of euill behaiour, one that daily mooueth discord, strife, and dissention among his neighbors, and a common perturber of his Maiesties peace. These are therefore in the Kings Maiesties name to command you, &c.

Another

Another Warrant for the good Behaviour.

Cantabr. Johannes Peyton Miles, & Willielmus Woodhoufe, Miles, Iusticia-
 rii Domini Regis nunc ad pacem in comitat' prad' conseruand' assignat',
 vic' Com' prad'. Necnon omnibus & singulis Balliuis, Constabular', cete-
 risq' dicti Domini Regis ministris tam infra libertates quam extra in eodē
 com', salutem. Quia dat' est nobis intelligi per relationem & Testimonium
 multorum fide dignorum com' pradict', quod A. B. de C. in com' pradict'
 gener', & R. A. de eadem Ycoman', non sunt honor' nominis & fama, nec ^{Sunt male}
 conuersationis honesta, sed mala dispositionis, harratores, & pacis dicti do- ^{same, &}
 mini Regis perturbatores, ita quod verisimilis sit murdrum, homicidium, ^{mali gestu,}
 lites, discordias, & alia grauamina, & damna inter legios dicti dom' regis, ^{is sufficient}
 de corporibus suis, pr' atextu pr' amissorum in dies oriri: Ideo ex parte dicti ^{lib. Intr. 385}
 Dom' regis, vobis & cuilibet vestrum precipimus, quod non omittas pro-
 pter aliquam libertatem in com' pradict', quon' attachiatis seu vnus vestrum
 attachiat pr' asatos A. B. & R. A. Ita quod habeat' eos coram nobis seu alijs
 sociorum nostrorum Iusticiarij dicti domini Regis ad pacem &c. quam cito
 capi possunt, (vel coram Iusticiarij dicti Dom' Regis ad pacem in comitatu
 prad' conseruand' ad proximam generalem Sessionem pacis in eodem com'
 tenend') ad inueniend' tunc coram nobis (vel dictis Iusticiarijs) sufficienti
 securitatem de se bene gerend' erga dictum Dominum Regem, & cunctum
 populum suum, iuxta formam Statuti inde edit' & prouis. sub certa pena
 eis per nos (vel per pr' asat. Iusticiarij) tunc imponend', Et hoc nullatenus
 omittatis periculo incumbente. Et habeas coram nobis, vel dictis Iusticiarij
 apud Sessiones pradict' as hoc Præceptum. Testibus nobis pradictis I. P.
 & W. W. ultimo die Iunij. Anno regni dicti Domini nostri Iacobi Dei
 gracia Anglia, &c.

A generall Warrant for Misdemeanor.

To the Constables of, &c.

Cantabr. These are to will and require you, and in his Maiesties Name
 straitly to charge and commaund you, and either of you, That
 immediatly vpon the sight heereof (or vpon Munday next by eight
 of the clocke in the forenoone) you bring I. H. of your said Towne,
 Butcher, before me, to answer vnto such matters of misdemeanor, as
 on his Maiesties behalfe shalbe obiected against him: And heereof
 faile ye not at your perill. Dated at &c.

Another for Misdemeanor.

Cantabr. These are to will and require you, &c. That immediatly vpon
 the sight heereof, you attach the bodies of A. B. and C. D. &c.
 (or of all and euery the persons heereunder named) And to bring
 them forthwith before me, to answer vnto such matters of misde-
 meanor,

meanor, as on his Maiesties behalfe shall be obiected against them.
 And hereof faile ye not at your perils. Dated &c.

To attach one for Felony.

Forasmuch as complaint hath been made vnto me, by C. D. that *Cantabr.*
 of late hee hath had certaine goods feloniously taken from him;
 And that hee hath in suspition one R. G. of your said town: These
 are therefore to will and require you, &c. presently vpon the receipt
 hereof, to attach the body of the said R. G. and thereupon to bring
 him before me, to answer vnto the premisses. And hereof faile ye
 not at your perils. Dated &c.

Another.

These are to will and require you, &c. presently vpon the receipt *Cantabr.*
 hereof, to attach the body of A. B. and to bring him before me,
 to answer vnto such matters of suspition of felony, as on his Maie-
 sties behalfe shal be obiected against him: And hereof faile you not
 at your perils. Dated, &c.

To search for stollen goods.

Whereas complaint hath bene made vnto me, by N. O. that of *Cantabr.*
 late he hath had feloniously taken from him certaine goods,
 and that he hath in suspition diuers lewd and euill disposed persons
 within your parish; These are to will &c. that immediatly vpon the
 receipt thereof, you make diligent search in all and euery such sus-
 pected houses, and places within your parish, as you and this complai-
 nant shall thinke conuenient; And if vpon your said search you find
 any of the said goods, or other iust cause of suspition, that then you
 bring all such suspected persons as you shall so finde, before mee, to
 answer vnto the premisses. And hereof faile you not, &c.

To binde men to giue in Euidence.

These are in the Kings Maiesties name to charge and command *Cantabr.*
 you, &c. That presently vpon the sight hereof, you or some
 of you, doe cause to come before mee (or some other of his Maie-
 sties Iustices of Peace of this Countie) the persons heereunder na-
 med, to the ende that they and euery of them may bee bound to
 make their personall appearance at the next generall Gaole deliue-
 ric to be holden for this Countie, then and there to testify their and
 euerie of their knowledges, concerning certaine felonious actes
 committed by one A. B. now a prisoner in the Castle of C. &c. And
 heereof faile you not, &c.

A War-

A Warrant for one who hath dangerously hurt another.

Cantabr.

FOR as much as I am credibly informed, that I. B. of your towne, Blacksmith, hath now lately dangerously hurt one T. G. of your said towne Husbandman, by a blow which he hath given the said T. on the face, and another on the backe, so as the said T. is in danger of death thereby; These are therefore in the Kings Maiesties name straightly to charge and commaund you, That immediately vpon the sight heereof, you or one of you, doe bring the said I. B. before mee, or some other his Maiesties Iustices of the Peace of this County) to finde sufficient sureties, as well for his appearance before the Kings Maiesties Iustices, at the next generall Gaole deliuerie to be holden for this Countie, then and there to answeere vnto the premisses; As also that hee the said I. B. shall in the meane time keepe the Kings Maiesties peace towards his said Maiestie, and all his liege people, and especially towards the said T. G. And hereof faile you not at your perils. Dated &c.

For the repused father of a Bastard child.

Cantabr.

WHEREAS complaint hath bene made vnto me, by K. I. of your said towne singlewoman, that shee is (gotten) with child by one T. S. also of your said Towne Butcher; These are therefore to will and require you, and in his Maiesties name to charge and commaund you, and either of you, that presently vpon the receite hereof, you attach the body of the said T. S. and thereupon to bring him before mee, (or some other of his Maiesties Iust. of the peace for this County) to finde sufficient sureties, as well for his appearance, at the next generall Sessions of the Peace to be holden for this County, as also for his good behauiour towards his Maiestie, and all his liege people in the meane time: And hereof faile you not, as you will answeere the contrary at your perils. Dated &c.

A Warrant for Ouerseers to giue up their Account.

To the high Constables of the Hundred of &c.

Cantabr.

THESE are in the K. Maiesties name to charge and commaund you forthwith to giue warning to the Churchwardens, and other the Ouerseers of the poore of euery parish within your Hundred, that they personally do appeare before vs at Newmarket, at the signe of the Greyhound there vpon Tuesday the _____ of _____ next comming, by nine of the clocke in the forenoone of the same day, to yeeld vp, and to make a true & perfit account in writing, subscribed with their names or marks, of all such sums of money as they haue receiued, or rated and cessed and not receiued, for and towards the reliefe of the poore of their seuerall Parishes, and also of such stocke

* See what they be in the title, Poore.

stock (to set their poore on work) as is in their hands, or in the hands of any their said poore to worke, & of all* other things concerning their said office; And hereof that they faile not at their & euery of their perils. And further we require you, that you giue warning to the petty constables of euery towne within your said hundred, that they or one of them be also the & there present before vs, to inform and certifie vs of the names of such other persons as are meet & fitting to be ouerseers of the poore within their seuerall towns for this yeare next insuing. And hereof faile yee not &c.

And this warrant must be vnder the hands and seales of two Iustices at the least, the one of the *quorum. Videtis. Poore.*

A warrant to new Ouerseers to take their charge.

BY vertue of the stat. made in the three and fortieth yeare of the Raigne of our late soueraigne Lady queene *Elizabeth*, (intituled, An acte for the reliefe of the poore) These are to will and require you, whose names are hereunder written, that you together with the Church-wardens of your parish for the time being, doe (according to the same stat.) take order from time to time, for this yere to come, for the setting to worke of the poore within your parish; And for the raising of a conuenient stocke of some Ware, or Stuffle, in your towne to that purpose; And for the providing of necessary reliefe for such as bee lame and impotent amongst you; And for the placing as apprentices such children whose parents are not able to maintaine them. And hereof see that you faile not at your perills. Dated &c.

This warrant must also bee vnder the hands and seales of two Iustices. *Vide antea tit. Poore.*

A warrant to distraine such as refuse to pay their Rates for the poore.

To the Church-wardens, and other the Ouerseers for the poore within the parish of W. and to euery of them.

FORASMUCH as wee are credibly informed, that the persons hereunder named, doe refuse to contribute or pay the summes of money hereunder mentioned (vpon their heads) being assessed and rated vpon them seuerally, for and towards the necessarie reliefe of the poore of your said towne, according to the forme of the statute in that behalfe lately provided; These are therefore in his Maiesties name to charge and commaund you and euery of you, forth with to leuie all and euery the said seuerall summes of mony vnpaid, and all the arrearages thereof, of all and euery the said persons so refusing, by distresse and sale of the offenders goods, you rendring to

Cantabr.

the parties the ouerplus that shall remaine vpon the sale of the said goods; And this shall be your sufficient warrant therein. Dated &c. *Vide antea tit. Poore.*

Another.

To the Churchwardens, &c.

Canabr.

These are in his Maiesties name to charge and command you and euery of you, presently to demand of all and euery the persons hereunder named, all and euery the seuerall summes of money hereunder seuerally written, or set vpon their heades, being assessed and rated vpon them for and towards the necessary reliefe of the poore of your said towne, according to the forme of the statute in that behalfe lately provided: And if they or any of them shall refuse to pay the said seuerall summes of money so rated vpon them, That then presently you leuy the same by distresse, and sale of the offenders goods, rendring to the parties the ouerplus that shall remaine vpon the sale of their said goods. And this shall be your sufficient warrant therein. Dated &c.

These two last Warrants must also be vnder the hands and scales of two Iustices, &c.

A warrant for a generall search for Rogues.

To the High-Constables of the Hundred of &c.

Canabr.

These are in the Kings maiesties name to charge and command you, that you together with the petty Constables of the seuerall townes, parishes, and hamlets within your Hundred (taking sufficient assistance out of the said towns) do make a generall priuy search within euery of the said seuerall townes, parishes, and hamlets vpon at night next comming, for the finding out and apprehending of all rogues, vagabonds, and wandring & idle persons, in or about their said seuerall townes, parishes or hamlets; and that such as shall be found and apprehended, you do cause them to be brought before vs the next day vnto L. by nine of the clock, there to be by vs* dealt withall according to the late statute in that behalfe provided. At which time and place we further require you, together with the said petty Constables to appeare before vs, and there to giue an account and reckoning vpon Oath, in writing, and vnder the hands of the Minister of euery seuerall parish within your hundred, what Rogues, Vagabonds, wandring and disordred persons haue bin there apprehended, as well in the same search, as also since the last assembly and meeting that made was for this purpose, being vpon or about the day of last past. And hereof sayle you not, &c.

* What the Iust. shall do with them, see infra the title Rogues,

Note

See the title of Rogues.

Note, that all Rogues which shall be brought before the Iustices vpon such search (after examination of their idle life, taken by the Iustices) are either to be whipped by the Constables of the Towne, where the Iu. sit (as it seemeth:) Or else from thence are to be sent to the house of correction, and to be conueyed thither by the Constables that brought them, and yet at the charge of the hundred; which seruices imposed vpon the Constables, are some cause of their neglect of this seruice: And therefore I haue set downe another course and president perhaps no lesse seruiceable, which also may be performed and done euery moneth, or euery meeting of the Iustices, if neede shall so require: or if the Iustices cannot, or shall not meete, yet, it seemeth, such warrant may be granted out by any one Iu. of P. as followeth.

These are in the K. Maiesties name, to charge and command you, that you together with the petty Constables of the seueral townes, parishes, and hamlets within your hundred (taking sufficient assistance out of the said towns) do make a generall priuy search within euery of the said seueral townes, parishes, and hamlets, vpon at night next comming, for the finding out, and apprehending of all rogues, vagabonds, and wandring and idle persons in or about their said seuerall townes, and that such as shall be found and apprehended, you do cause them to be punished in euery seueral towne or parish where they shall be so apprehended, by the petty Constables of euery seuerall parish respectiuecly; and by them also further to be conueyed according to the stat. And if any of the said rogues shall appeare to be dangerous or incorrigible, that then you cause such to be brought before me, or any other of his maiesties Iust. of P. of this diuision, to be further dealt withal according to the stat. in such cases provided, dated &c.

Afterwards any one of these Iust. may take the examination of, or profe against such dangerous rogne, and finding cause, may then ioine with any other Iu. of P. of that limit, being of the *quoru*, and commit such rogne to to the house of correction, or gaole, although the said two Iu. shall not meet together about it.

39. El. 3.
1. Jac. 7.
P. V. g. 4.

A warrant for a fugitiue seruant.

West. 573.

Iohannes Cutts miles, vnus Iusticiar' domini regis etc. Balliuus hundred de B. & T. H. Constabular' de M. in comitat' praed' salui. Quia E. L. reseruit in serui' I. T. de M. praedict' sibi seruiend' (secundum formam et effectum de statuti seruientibus editi) a seruitio praedict' I. T. sine causa rationabili, et licentia ipsius I. T. recessit (ut dicitur) Ideo ex parte domini regis vobis et cuiilibet vestrum praecipio, quod praes. E. L. ad praesat. I. T. magistrum suum de seruiend' deliberari faciat, Et si hoc recusauerit, tunc

E f 2

Canabr.

eum gaolacastri Cantabr. duci faciatis, quousq; &c. Ita qd' eum habeatis coram me et socijs meis, Iustic' dicti dom' regis in com' praed', ad proxim. sess. pacis ibid. tenend' ad faciend' et recipiend' ea qua ei tunc & ibid. in hac parte objicientur. Sigill' meo sigillat' dat' apud.

Another for the same.

Cantabr.

Symeon Steward miles, unus Iustic' &c. vic' com' praed', Necnon I. B. Crom. 238.
constabular' vill. de B. Et R. N. ballivo itineranti in eodem com' et coru' cuilibet salu'. Ex parte dicti dom' regis vobis et cuilibet vestrum mando, qd' attach, seu unus vestrum attach. W. R. de B. praedict' Laborer, ita qd' eum habeatis, seu unus vestr' habeat, coram me et socijs meis Iustic' dicti dom' regis ad pacem in com' praed' conservand', Necnon &c. assign' ad proxim. generalem sessionem pacis in com' praed' tenend', ad respondend' tam dicto dom' regi, quā R. C. de &c. yeoman, quare in servitio ipsius R. apud T. in com' praed' nuper retentus, ab eodem servitio ante finem termini inter eos concordat', sine causationabili et licent' ipsius R. recessit, in dicti domini regis nunc contemptum, et ipsius R. grave dampn', et contra formam statuti inde nuper editi et provis'. Et habeatis seu unus vestrum habeat, ibi tunc hoc praeceptum, Teste &c.

A warrant for one refusing to serve.

Cantabr.

Rogerus Millifent miles, unus Iustic' &c. R. L. ballivo de S. in comit. Crom. 238.
praed' salu'. Ex parte dicti dom' regis tibi mando qd' attachias R. A. de S. praed'. Laborer, Ita qd' eum habeas coram me vel socijs meis Iustic' dicti dom' regis ad pacem in com' praed' conservand'. (Necnon ad diversa feloniam, transgr. & alia melefacta in eodem com. audiend', & termin. assign.) ad prox. generalem sess. pacis in com' praed' tenend', ad respondend'. tam dicto dom' regi, quam B. C. de A. &c. yeoman, quare ipse praed' R. A. licet in servitio congruo pro statu suo, per praef. B. C. suis sapius requisitus ei servire, ipsum tamen B. C. servire penitus recusavit, in contemptu dicti dom' regis, et ipsius B. C. grave dampnum, & contra formam statuti de servitibus nuper editi & provis'. Et habeas ibi tunc hoc mandat', Teste &c.

And yet see the stat. 5. El. ca. 4. whereby the departure of a servant, and refusing to serve &c. are referred to two Justices of P. by them to be first examined, & then the offenders to be committed if they be faulty therein, see *antea tit. Labourers, & Warrants.*

A Warrant for the suppressing of an Alehouse.

Cantabr.

John Cage Knight, and Edward Hinde Knight, two of the Kings Maiesties Iustices of the Peace within the said County of Cambridge. To the constables of B. and to either of them greeting: Whereas we are credibly informed that R. D. of your towne victu-

aller,

aller, is himselfe a man of euill behaiour, and besides doth suffer euill rule and disorder to be kept in his house, contrary to the lawes and statutes of this Realme: These are therefore in his maiesties name to will and commaund you forthwith to repaire to the house of the said R. D. and to charge him to surcease from keeping any longer any alehouse or tipling house, and from common selling of Ale or Beere at his perill, and withall that you cause his signe to bee pulled downe; hereof sayle you not, as you and either of you will answer to the contrarie at your perill. Given vnder our hands and seales at B. the day of and in the yeare of the raigne of our most gracious soueraigne Lord James &c.

A warrant to leuy money forfeited by Alehouse haunters.

Richard S. George Knight, one of the Kings Maiesties Iustices of the Peace within the said countie of Cambridge, to the Constables and Churchwardens of the parish of W. and to euery of them greeting:

FOrasmuch as it hath bene duely proued before me, according Cantabr. to the statute in that behalfe provided, that all and euery the persons here vnder named, being inhabitants within your parish of W. vpon the twelfth day of this instant moneth of Nouember haue bin, and continued drinking and tipling in the house of G. W. of your said towne (Inne-keeper or Alehouse keeper) contrary to the forme of the same statute: These are therefore in his maiesties name to charge and commaund you and euery of you, forthwith to leuie by distresse and sale of the goods of euery the said persons hereunder named, the summe of three shillings and foure pence a peece, if they shall refuse or neglect, forthwith to pay the same (which seuerall forfeitures shall bee bestowed and employed by you to the vse of the poore of your said parish) And that you render to euery of the said offendours the ouerplus that shall remaine vpon your sale of their said goods: and if the said offendours, or any of them shall refuse or neglect to pay their said seuerall forfeitures, and that you can find no sufficient distresse whereon to leuie the same, that then you the Constables, or one of you, shall commit euery such offendour or offendours (refusing or neglecting to pay the said summe or forfeiture, and not hauing sufficient whereon to be distrained for the same) to the stocks, there to remaine by the space of foure houres: and this shalbe your sufficient warrant herein, Dated &c.

E f 3

Against

Against Alehouse-keepers.

THE like warrant may bee made to leuy the forfeitures of Inne-keepers, or Alehouse-keepers, for suffering townsmen to continue drinking in their houses; or for selling lesse then one quart of their best beere or ale for 1. d. sauing that the distresse taken of such Inne-keepers and Alehouse-keepers, is not to be sold, till after sixe daies, and then for default of satisfaction, the same are presently to be apprifed & sold, and therefore such warrant must therein be made accordingly, see 1. *Iac. ca. 9. P. 7. 8.*

A warrant for the remouing of a petty Constable, and for the swearing of another.

Canabr.

Iacobus dei gratia Erc. vicecom' Cantabr. Necnon capitali Constabulario hundredi de R. & eorum cuilibet salutem, Quia W. P. & R. S. subconstabular' villa de C. & K. (certu de causis nos mouentibus) ab officio suo amoueri & exonerari fecimus; Ideo vobis & cuilibet vestrum coniunctim & diuisim pr' accipimus & mandamus, quod I. F. et R. M. ad omnia et singula eidem officio incumbencia bene et fideliter exercenda et exequenda (pro ut ipsi nobis inde respondere voluerint) iurare faciatis: dictisq; W. P. et R. S. simili' iniungentes, quod ipsi de dicto offic' ulterius exercendo et exequendo nullatenus se intromittant, quousq; aliud de nobis habuerint mandatu: Et quicquid inde feceritis, Iusticiarijs nostris and pacem nostram in dicto com' conseruand' assigni ad prox. general' sessionem pacis apud C. in dicto com' tenenda, certificetis, Nos pr' acceptu nostru tunc et ibidem remittentes. Teste Iacobo Reynolds milite, vno Iusticiar' nostroru pr' adictoru, tali die Erc.

You shall find this former president in *M. Lamb.* But vpon such warrant, *quare* who shall giue the oath to the new constables, whether the high sherife, or high constable, or the Iu. of P. that granted out such warrant. *Lam. 77. 3. b*

This authority of remouing petty Constables, & of chusing and swearing new, is reputed properly to belong to the leete, (It being one of the most auncient courts in the Realme, *Br. Leet 14.*) and if the new elect be not present at the leet to take his oath accordingly, then vpon certificat or notice therof to any Iu. of P. of that county, the Iu. doth vse to send his warrant for the party so chos'n, and to giue them their oath.

Also in default of the leet, or otherwise, where there shall be iust cause, Every Iu. of P. (*ex officio* as it seemeth) may remoue the old Constables, and may chuse, and swear new, which also we see to be warranted by common experience.

And

And I haue seene some presidents to such purpose as followeth.

To our louing friend A. B. of W. yeoman.

THEse are in his Maiefties name to charge and commaund you, *Canabr.* to make your repaire vnto vs, or to some other Iu. of P. of this county, to take the oath of a Constable, to serue his maiefty within the towne of W. according to the choise made of you by the Jury at the last Leete holden in your towne,) And hercof sayle you not, dated &c.

The forme of the Oath concerning the office of a Constable.

YOU shall swear, that you shall well and truly serue our soueraigne Lord the King in the office of a Constable: you shall see and cause his maiefties peace to be well and duely kept and preferred according to your power: you shall arrest all such persons, as in your sight and presence shall ride or goe armed offensively, or shall commit or make any Ryot, Affray, or other breach of his maiefties peace: you shall do your best indeauour (vpon complaint to you made) to apprehend all Felons, Barretors, and Ryottors, or persons ryottously assembled, And if any such offender shall make resistance (with force,) you shall leuie Huy and Cry, and shall pursue them, vntill they be taken: you shall doe your best indeauour that the watch in your towne be duely kept, and that Huy and Cries bee duely pursued according to the statute of Winchester, And that the statutes made for the punishment of Rogues and Vagabonds, and Night-walkers, and such other idle persons, comming within your bounds or limits, be duly put in execution: you shall haue a watchfull eye to such persons as shall maintaine or keepe any common house or place where any vnlawfull game is or shall be vsed, As also to such as shall frequent or vse such places: or shall vse or exercise any vnlawfull games there or elsewhere, contrary to the statutes: And you shall haue a care for the maintenance of Archerie according to [the statute: you shall well and duely execute all Precepts and Warrants to you directed from the Iustices of Peace of this County: And you shall well and duely according to your knowledge, power and ability, do and execute all other things belonging to the office of a Constable, so long as you shall continue in this office, So helpe you God.

This oathe I haue set downe the more largely, thereby to shew the principall matters whereof the Constables are chiefly to haue care.

The

*The forme of a Superseas by a
Justice of Peace.*

Iohn Ghoſlin docter of Diuinity, and vice-Chancellor of the Vniuerſity of Cambridge, one of the Iu. of P. of our ſoueraign lord the K. maieſty within the county of Cambridge, to the ſherif, bayliſs, conſtables, and other the faithful miniſters, and ſubiects of our ſaid ſoueraign lord within the ſaid county, and to euery of them, ſendeth greeting: Forasmuch *A. B.* of &c. yeoman hath personally come before me at &c. And hath found ſufficient ſuretie (that * is to ſay *C. D.* and *E. F.* &c. yeomen, either of the which hath vnder taken for the ſaid *A. B.* vnder the paine of twentie pounds, and he the ſaid *A. B.* hath vnder taken for himſelſe vnder the paine of fortie pounds) that he the ſaid *A. B.* ſhall well and truly keepe the peace, towards our ſaid ſoueraigne Lord, and all his liege people, and eſpecially towards *G. H.* of &c. yeoman, and alſo that he ſhall personally appeare before the Iuſtices of the peace of our ſaid ſoueraigne Lord, at the next generall ſeſſions of the peace to be holden for this county of Cambridge: Therefore on the behalfe of our ſaid ſoueraigne Lord, I commaund you, and euery of you, that you vterly forbear and ſurceaſe to arreſt, take, imprifon, or otherwiſe by any meanes (for the ſaid occaſion) to moleſt the ſaid *A. B.* And if you haue (for the ſaid occaſion, and for none other) taken or imprifoned him, that then you do cauſe him to be deliuered, and ſet at liberty without further delay. Yeouen at Cambridge aforeſaid, vnder my ſeale this laſt day of Iuly &c.

*The Superseas is good, though it name neither the sureties nor the summes

The forme of a Superseas (by a Iuſtice of Peace) vpon
a writ of *Supplicauit* againſt an Infant.

Cantabr.

Valentinus Cary *sacra theologia doctör, & decanus Sancti Pauli London, vnus Iuſticiar' domini Regis nunc ad pacem in com' predict' conseruand' assignat', vicecom' eiusdem com', ac omnibus & singul' balliuus, constabular', ceterisq' dicti dom' regis ministris tam infra libertates, quam extra in com' predict', salutem: Sciat'is qd' breue dicti domini regis recepi in hac verba, Iacobus &c.* (reciting here all the writ *verbatim*) *Et quia I. B. de &c. I. S. de &c. Et prefat' C. A. coram me pref. Valentino Cary, personaliter comparuer', & predict' I. B. & I. S. manuceper' predicto C. A. qui infra atatem 21. annor' existit' viz. quilibet manuceptor' pred' in 20. li. quas recognouer' se debere dicti domino regi, ac concess. de terris & tenementis, bonis & catallis suis ad opus dicti domini regis*

gis leuand' viz. qd' pred' C. A. dampnū vel malum aliqd' alicui de populo dicti dom' regis de corpore suo, vel de incendio domorum suarū non faciet nec fieri procurabit quorūmodo: Ideo ex parte dicti domini regis vobis & cuilibet vestrum mando, qd' de conseruand' aut attachiand' dictum C. A. ad inueniendam aliquam securitatem pacis per ipsum gerend' erga dictum dom' regem & cunctum popul' suū, seu alicui de eodem populo suo corā vobis, seu aliquo vestr' inueniend' super sed' seu super sed' fac' omnino, Et si ipsum C. A. occasione pr ad' et non alia ceperitis, seu capi mandaveritis, & in prisona ipsius dom' regis, sub custodia vestra detineritis, tunc ipsū a prisona in qua detinetur sine dilatione deliber' fac', seu vnus vestr' deliberari fac': Teste me pr. of. Valentino Cary, 20. die Novem. anno reg. dicti dom' regis Iacobi dei gracia &c.

A Superseas for the good behaiour.

Crom. 237. **N**ote that vpon good sureties taken (for the good behaiour) a *Superseas* of the good behaiour, may be granted, as for the peace, *mutatis mutandis*.

Note also that a *Superseas, de Capias indictatum de transgression'*: and so of an *Exigent*, may be granted by the Iu. of P. out of ſeſſions: For otherwise it were mischieuous for the party, as well by reason of his imprisonment, as also for that he may be outlawed before the ſeſſions, if the Iu. of P. might not take sureties of him for his apparance; and all is but to appeare to anſwere to the indictment.

Crom. 234. hic 275. Li. Int' 601. Lambt. 502. & 773. And master *Crompton* is of opinion that these may be granted by any one Iust. of P. with whom agreeth the book of Entries: But *M. Lambers* thinketh it not in the lawfull power of any one Iu. of P. to grant such *Superseas*, at this day, but that it must be done by two Iu. at the least, & the one being of the *quorum*: Neuertheſſe for that I find the old presidents to run in the name of one Iu. of P. alone, I haue drawne these accordingly; perswading notwithstanding the ioyning of two Iust. herein, and the one of the *quorum*, if they may conueniently.

A Superseas de Capias indictatum de transgression'e.

Cromp. 233. Li. Int' 601.

IO. Richardson, *sacra theologia doctör, vnus Iuſtic' dom' regis nunc ad pacē in com' predict' conseruand', Necnon ad diuersa felon' transgres. &c. in eodem com' audiend' et termin' assign' vic' com' pr ad' sal. Quia C. D. de A in com. tuo yeoman, venit coram me et in ven' suffic' manuceptores essendi coram Iuſticiar' dicti domini regis ad pacem in comitat' pr ad' conseruand', Necnon ad diuersa felonias &c. in dicto comitat' audiend' et terminand' assign' ad generalem sessionem pacis (apud C.) in com' pr ad' prox. die tenend', ad responderd' dicto domino regi de quibusdam transgres.*

con-

comen-pitibus et offensis, unde in dictis existit: Ideo ex parte dicti domi regis tibi precipio quod de capiend' pr'af. C. D. seu ipsu' imprisonand' aut eum, ea ex causa aliquali' molestand' omnino super sed' & si eu', ea ex causa et non al' ceperit is, tunc ipsum sine dilatione deliber' faciat, Teste me pr'afato Iohan. Richardson tali die et anno.

Alias quia inuenit plegios pro fine.

Cantabr. **S**Amuel Collins, sacra theologia doctor, unus Iustic' dicti domi regis ad pacem in comi' pr'ad' conservand', Necnon ad divers' felon' transgres. et alia malefacta in eodem comi' audiend' et terminand' assign' vicecomi' comi' pr'ad' ac omnibus et singulis ball', constabul', ceterisq' dicti domini regis ministris, tam infra libertates quam extra in comitat' pr'adicto salutem: Licet nuper per breve dicti domini regis vobis seu vni vestrum pr'ceptu' fuit quod caperetis seu unus vestrum caperet A. B. de S. in comitat' pr'adict' yeoman, si inuentus fuerit in eodem, et ipsum salvo custod', Ita quod haberetis seu unus vestrum haberet corpus eius coram custodibus pacis, ac Iusticar' dicti domini regis ad pacem in comitat' pr'adict' (Necnon ad divers' felonias transgres. et alia malefacta in eodem comitat' audiend' et terminand' assign') apud Cantabr. tali die ad respondend' dicto domino regi de contemptibus & transgression' unde coram dictis Iustic' indictatus existit: quia modo pr'adictus A. B. venit coram me & inuenit sufficien' plegios pro fine suo cum dicto domino rege pro promissis faciend', Ideo ex parte dicti domini regis vobis coniunctim et divisimando quod ad executionem brevis pr'adict' ulterius fac' super sed' omnino, Et si ipsum A. B. ea occasione et non alia ceperitis, et in prisona dicti domini regis detineritis tunc ipsum sine dilatione ab eadem deliberat' faciat, seu unus vestrum deliberat' faciat, et habeas seu unus vestru' habeat hoc pr'ceptum ad sessiones pr'ad' dat', die Augusti anno regni dom. nostri Jacobi dei gratia &c.

Superfedead de Capias pro fine.

Cantabr. **H**enicus Vernon armiger, unus Iusticiar. domini regis nunc ad pacem in comitat' pr'ad' conservand' assign', vic' comitat' pr'adict' salutem. quia C. D. de A. in dicto comitat' yeoman, venit coram me, et inuenit sufficien' manucaptores essendi ad proximam generalem sess. pacis in comitat. pr'ad' tenend', ad faciend' sine cum dicto domi rege pro quibusdā transgr. contemptibus et offensis, unde indictatus existit, Ideo tibi precipio, quod de capiend' pr'afat. C. D. imprisonand. seu ipsum ea occasione aliquali' molestand' omnino super sed. et habeas ibi tunc hoc pr'ceptum, Teste me &c.

Superfedead de Capias indictat' de feloniam.

Cantabr. **F**ranciscus Brakin armig', unus Iusticiar' domini regis nunc ad pacem in comitat' pr'adicto conservand' assign', vic' comitat' pr'adict. Necnon

non omnibus & singulis balliuis consta. ceterisq' dicti domi regis ministris tam infra libertates quam extra in dicto comitat' salutem: Quia A. B. de C. in comitat' pr'adict' husbardman, venit coram me, & inuenit sufficien' securit' essendi coram Iustic' dicti domi regis ad pacem in comi' pr'ad. conservand'. Necnon ad divers' felonias, transgr. & alia malefacta in eodem comi' audiend' & terminand' assign', ad prox. general' sess. pacis in comitat. pr'ad' tenend' ad respond' dicti domi regi, de divers' felon' & transgr. unde coram eis indict' existit, Ideo ex parte dicti domi regis vobis & cuilibet vestrum mando, quod de capiend' pr'adict' A. B. ea ex causa super sed' omnino, & si eum ea occasione & non alia ceperitis, seu imprisonaueritis, tunc ipsum sine dilatione deliber' faciat, dat' &c.

Superfedead de exigi fac' de feloniam.

Cromp. 233 **I**acobus &c. vic' com' Cantabr. salutem. Quia C. D. de A. in comit' tuo yeoman, venit coram E. F. &c. et inuenit sufficien' manucapion' essendi coram custod' pacis nostrae ac Iustic' nostris ad divers' felonias &c. ad generalem session' pacis nostrae apud C. tali die tenend', ad respondend' nobis de quibusdam felonis unde indictatus est, Ideo tibi precipimus quod de ulterius exigend' pr'afat' C. D. ad aliquod comitat' tuum, vel imprisonand', siue ipsum ea occasione aliquali' molestand', omnino super sed' & habeas ibi tunc hoc breve. Teste Roberto Castle apud H. tali die et anno.

Recognisances.

A single Recognisance taken before Iustices of Peace.

Memorand' quod die anno regni Cantabri domini nostri Jacobi dei gratia Anglia, Francia, et Hibernia regis, fidei defensoris &c. venerunt coram nobis Edwardo Aldred, et Henrico Martin armiger' Iusticar' dicti domini regis ad pacem in comitatu C. conservand' assignat' I. S. de B. in comitatu pr'adicto yeoman, et W. S. de eadem weaver, ac R. D. de S. in comitat' pr'adict' Taylor, et recognouer' se debere dicto domino regi, viz. quilibet manucap' pr'adict' quinq' libr', et pr'adict' I. S. de B. decem libr' bona et legalis moneta Anglia, (soluend' eidem domino regni in festo Purificationis beate Mariae virginis proximo futur' post dat' present') Et nisi fecerint, concesserunt pro se, hered. executor. et administ. suis per presentes quod dicta sepeales summa leueni' et recuperent de manerij's, messuagij's, terr' tenement', bonis, catallis, et hereditament' ipsor' I. S. W. S. et R. D. hered. executor', et assign' suor' ubicunq' fuerint inueni' per presentes, dat' &c.

Another

Another fingle Recognifance.

Cantebr. Memorand' qd' die anno regni domini nostri Jacobi dei gratia &c. D. E. de Balfham in com' pred' yeoman, personalit' venit coram me Michael'e Dalton armig. uno Iustic' dicti dom. regis ad pacem in com' pred' conseruand', assign', & recogn' se debere dicto dom' regi 10. li. bona & legal' moneta Angl. (de bonis & catallis, terris, et tenementis suis fieri & leuari, ad opus dicti dom' regis hared' & successorum suoru) si defecerit in conditione indors'a.

Alias.

Cantebr. Memorand' qd' die anno regni &c. vener' coram me M. D. uno Iustic' &c. assign' T. H. de Westwating in com' pred' yeoman, & I. S. de eisdem villa & com. husbandman, & manuceperunt & uterq' eoru seperatim manuceperit sub pena 5. li. legalis moneta Anglia, pro W. St. de W. pred' tailor, Et pred' W. St. assumpsit pro seipso sub pena 10. li. confirmilis moneta Angl' quas quidem seperales summas recognouer' et quilibet eoru ut predicatur recognouit se debere dicto dom' regi de terris & tenentis bonis & catallis suis fieri &c. Si pred' W. St. defecerit in performance condic' introscripti.

A Recognifance for the Peace.

Memorand' qd' die anno regni domini nostri Jacobi dei gratia &c. R. P. de E. in com' pred' yeoman, in proprijs persona sua venit coram me Rog. Thornton armig', uno Iustic' dicti dom' regis ad pacem in dicto com' conseruand' assign' et assumpsit pro seipso sub pena 20. li. & H. I. de L. in com' pred' yeoman, et N. N. de &c. et P. Q. de &c. husbandmen, tunc et ibid' in proprijs personis suis scil' ter' vener', et manuceperunt pro pred' R. P. viz. quilibet eor' seperas. sub pena 100. s. qd' idem R. P. personalit' comparebit coram Iustic' dicti dom' regis ad pacem, ad prox. general' sessionem pacis in com' pred. tenend', ad faciend' et recipiend' qd' ei per curiam tunc et ibid' iniungetur: Et qd' ipse interim pacem dicti dom' regis custodiet erga ipsu dom' regem et cunct' populu suu et precipue versus M. N. de pred' yeoman, et qd' dampnum vel malum aliqd' corporale aut grauamen pref. M. N. aut alicui de populo dicti dom. regis, qd' in lesione aut perturbacionem pacis ipsius domini regis, seu prefati M. cedere valeat quouis modo, non faciet, nec fieri procurabit. Quam quidem summi viginti librar' predic' R. P. et quilibet manucaptorum pred. predictas seperales summas cent' solid' recognouerunt se debere dicto domino regi de terris, et tenementis, bonis, et catallis suis quorumlibet et cuiuslibet eor', ad opus dicti domini regis hared' et successor' suorum fieri & leuari (ad quorumcunq' manus deuenierint) si contingerit ipsum R. P. premissa, vel eoru aliquod in aliquo infringere, et inde legitimo modo conuinci, In cuius rei testimon' ego predictus Rogerus Thornton, sigillum meum apposui, dat' apud &c.

And

And if the Iustice shall onely subscribe his name to the Recogn. without his scale, it is well enough; and so is the vsuall course and forme with vs.

Or thus for the Peace.

Lamb. 109 Memorandum, quod die &c. A. B. de &c. & C. D. *Cantebr.* de eadem, yeoman, venerunt coram me Thoma Brewster armiger' uno Iusticiar' &c. & manuceperunt pro I. S. nuper de L. &c. quod ipse personaliter comparebit coram me prefato Tho. Br. & socijs meis Iusticiar' pacis domini regis ad proximū generalem sessionē &c. Et quod ipse interim geret pacem erga cunctum populum Domini Regis, & precipue erga R. B. &c. viz. quilibet manucaptorum pr adictorum sub pena viginti librar'. Et pr adictus I. S. assumpsit ut supra pro seipso sub pena quadraginti librar'. Quam quidem summam quadraginti librar' pr ad' I. S. & quilibet manucaptorū pr ad' dict' summū viginti librar' recognouerunt &c. ut supra.

And this may be well done also by a single Recogn. in Latine, with with a Condition added, or endorsed in English, for the keeping of the peace, and for the day and place of the parties appearance at the quarter Sessions; as followeth.

A Condition to keepe the Peace.

The Condition of this Recognifance is such, that if the within bounden I. S. shall personally appeare before the Iustices of our said Soueraigne Lord the King, at the next generall Sessions of the Peace to bee holden in the said Countie of Cambridge, To doe and receiue that which by the Court shall bee then and there enioyned him; And that he in the meane time doe keepe the Peace of our said Soueraigne Lord the King, towards the Kings Maiestie and all his liege people, and especially towards A. B. of C. aforesaid, Yeoman, That then &c.

A Recognifance for the good Behaiour.

Memorand', quod die mensis ann. regni Jacobi &c. R. G. de &c. & H. C. & I. S. de eadem, &c. in proprijs personis suis vener' coram nobis Isaac Baro, & Roberto Hagar, Armiger' Iustic' dicti domini regis, &c. Et pr adicti H. C. & I. S. manuceperunt pro prefato R. G. & idem R. G. ad tunc assumpsit pro seipso, quod idem R. G. personaliter comparebit coram Iustic' dicti domini Regis ad pacem, &c. ad proximam generalem Sessionem, &c. Et quod ipse interim se bene geret erga dominum Regem & cunctum populum suum, & precipue erga I. B. de C. &c. sc. quod ipse non inferet, nec inferri procurabit, per se, nec per alios, aliquid seu grauamen prefato I. B. seu alicui de populo ipsius Domini Regis de corporibus suis, per insidias, insulias, seu aliquo alio modo, quod

* See the
Recogn. for
the peace.

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in lesionem seu perturbationem pacis dicti Domini Regis cedere valeat quovismodo, viz. uterq; pr ad H.C. & I.S. sub pena cent' libr. & pr ad⁴⁵³ Lib. Inr. R.G. sub pena ducent' librar': Quas quidem separales summas cent' librar' uterque pr adictor' H.C. & I.S. (ut pr adicitur) per se, ac pr adictus R. G. pr adict' summam ducent' librar' recognouerunt se debere dicto domino Regi de terris & tenementis, bonis & castallis suis & quorumlibet, ac cuiuslibet eorum, Ad opus ipsius dicti Domini Regis fieri & levari, si contingat prefatum R. G. in aliquo pr amissorum deficere, et inde legitimo modo convinci. Dat' &c.

Or thus, for the good Behaviour.

Cante br. Memorandum, quod die mensis Anno regni Iacobi &c. R. G. de &c. in propria persona sua venit coram nobis Isaac Baro, & Roberto Haggar, Armigeris, Iusticiar' dicti Domini Regis ad Pacem in dicto Com' conservand' assignat': Et assumpsu pro seipso sub pena 200. li. Et H.C. & I.S. de eisdem villa & Comitatu, Husbandmen, tunc & ibidem in proprijs personis suis similiter venerunt, & manuceperunt pro prefato R. G. viz. uterq; eorum separatim sub pena centum librar': Quod idem R. G. personaliter comparabit coram Iustic' dicti Domini regis ad pacem &c. ad proxim' generalem Sessionem Pacis in Com' pr ad' tenend' ad faciend' & recipiend' quod ei per Cur' tunc & ibide in- iungetur. Et quod ipse interim se bene geret erga Dominu Regem, & cunctum populum suum, & precipue erga I. B. de C. &c. scz. quod ipse non inferet, nec inferri procurabit, per se nec per alios, dampnum aliquod seu grauamen pr afato I. B. seu alicui de populo ipsius domini regis de corporibus suis, per insidias, insultus, seu aliquo alio modo, quod in lesionem seu perturbationem pacis dicti domini Regis cedere valeat quovismodo. Quas quidem separales summas &c. ut supra.

Or by a single Recognizance, with this Condition subscribed, or indorsed.

The condition of this Recognizance is such, That if the aboue bounden R. G. shall personally appeare before the iust. of our soueraigne Lord the K. at the next generall Sessions of the peace, to bee holden in the county of C. to doe & receiue, that which by the Court shalbe then and there enioyned him: And that in the meane time he bee of good behauiour (and do keep the peace of our said soueraigne Lord the K.) towards his Majesty, and all his liege people. That then &c.

Or thus.

Conditio Recognitionis pr ad', talis est, Quod si pr adictus R. G. impo- steriorum se bene geret, (& pacem domini Regis conservabit) erga dictu' Dominum Regem, & cunctum populum suum, quod tunc recognitio pr ad' pro nullo teneatur, alioquin in suo robore permanet.

Or

Or thus.

Lambe. 125
Lib. Inr.
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Conditio Recognitionis pr adict' talis est, Quod si pr adictus R. G. im- posterum se bene geret, & Pacem Domini regis conservabit erga dictu' Dominum regem, & cunctum populum suum, & precipue erga I. B. de &c. & nullam dampnum corporale, nec aliquid quod in lesionem pacis Domini regis cedere valeat pr afato I. B. seu alicui de populo ipsius domini regis fa- ceret quaquo modo, extunc recognitio pr adict' a pro nullo teneatur, alioquin in suo robore permanet.

35 H. 8. c. 39 Note, that all Bonds, Obligations, and Recognizances that shall be taken by any Iust. of P. (or other) for any cause touching the K, must be made and taken in the K. name, & by these wordes, *Dominio Regi, &c.* See hereof *antea, Surety for the Peace, and Recognizances.*

Also, note that the Recognizance runneth, *De terris & tenementis, bonis & castallis, &c. fieri & levari &c.* And yet the K. may bee at his election, to take execution of the body of the Recognizors, (as well of the principall of the sureties) or of their lands, and chattels (for the sum in the Recognizance contained) *per Curiam 7. Hen. 4. 34. a. Vide antea lit. Surety for the Peace.*

And (it seemeth) by the Common Law, before the Stat. of 33. H. 8. 39. That in all cases where a man is a debtor to the King, as well his body, as his lands and goods, are liable to the K. Execution; For *Theaurus Regis, est Pacis vinculum, & Bellorum nervi.* And therefore the Law doth giue to the King full remedy for it. See *Coke 3. 12. b. & Coke 11. 93. a.*

A Recognizance to giue in Evidenccce against a Prisoner.

Cante br. Memorandum, quod die anno regni do- mini nostri Iacobi, Dei gratia Anglia, Francia, & Hibernia regis fidei Defensor &c. R. T. nuper de C. in Comitatu pr adict' Yeoman, ve- nit coram me Ro. Th. Armiger' uno Iusticiar' dicti Domini regis ad Pa- cem in Comitatu pr adict' conservand' assignat', & cognovit se debere dicto domino regi quinquae libr' legalis monete Anglia; sub condicione quod si ipse personaliter comparabit coram Iusticiar' dicti Domini regis ad proximam generalem Gaolam deliber' in Comitatu pr adict' tenend', ad- tunc & ibidem ostendendum in evidenc' secundum formam Statuti: *vers. D. F. nuper de W. in Comitatu pr adict', qui modo attach. & sus- spect' felonia Gaole, dicti Domini regis Comitatu pr adict' commissus ex- istit, quod tunc &c. Alioquin &c.*

Or this may be done by a single Recognizance, with a Condition endorsed, as followeth.

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A Condition to preferre a Bill of Inditement, and to giue in euidence against a Prisoner.

THe condition of this Recog. is such, That whereas one *A. B.* of *G.* Laborer, was this present day brought before the said Iust. by the within bound *D. E.* & was by him charged with the felonious taking of xx. sheepe of the goods of him the said *D.* & thereupon was sent by the said Iust. to the Kings Maiesties gaole: If therefore he the said *D. E.* shall and do at the next generall Gaole deliury (to be holden in the said County) preferre or cause to be framed and preferred one Bill of Inditement of the said felony against the said *A. B.* and shall then also giue euidence there concerning the same, as well to the Iurors that shall then enquire of the said Felony, as also to them that shall passe vpon the triall of the said *A. B.* That then &c. or else to stand in full force for the King.

Or thus to giue in euidence.

THe condition, &c. That if the aboue bounden *D. E.* doe at the next generall Sessions &c. pursue and giue such euidence as hee knoweth against *A. B.* now prisoner in the castle of *C.* concerning certaine felonious acts by him committed; Then &c.

A Condition to appeare before the Iustices of Peace at their next Sessions.

Conditio istius Obligationis talis est, quod si *A. W. de E. c. Spinster*, in propria persona sua compareat coram Iusticiariis Domini Regis de pace Comitatus *C.* conseruanda assignat' (necnon ad *E. c.*) ad proximam Sessionem Pacis dicti Domini Regis in Comitatu pr ad tenend', ad respondend' tam dicto domino regi, quam *G. S. de placito transgressionis & contemptus contra formam Statuti seruient*: Quod tunc prasens Obligatio vacua, & pro nulla habeat', & si pr adict' *A.* contra pramissa seu eorum aliquod in futur' fecerit, quod tunc prasens Obligatio in omni suo robore stet & effectu, &c.

A Condition for Alehouse-keepers.

THe Condition of this Recog. is such, Whereas the within bounden *A. B.* is admitted and allowed by the within named *Sir Ed. Peyton*, and *Henry Vernon*, (two of the Kings Maiesties Iust. of peace within the County of Cambridge within written) to keepe a common Alehouse, or Tipling house, & to vse common selling of Ale or Beere, only within the now house of him the said *A. B.* (and not elsewhere) scituate in the high streete of the Towne of *M.* within written, and called the signe of the Hart, If therefore hee the said *A. B.* during such time as hee shall keepe such common Ale-house there, shall

This or the like forme haue heretofore been allowable

shall not suffer any vnlawfull play at the Tables, Dice, Cards, Tennis, Bowles, cloth, Coyts, Loggets, or other vnlawfull Games to be vsed in his said house, or in his garden, orchard, or other his ground, or place, (especially by mens Seruants, Apprentices, common Laborers, or idle persons) Nor dresse, or cause, or suffer to be dressed any flesh to be eaten vpon any day forbidden by the Lawes or Statutes of this Realme of England: Nor wittingly and willingly admit, or receiue into his said house, or any part therof, any person notoriously defamed, of, or for Theft, Incontinency, or Drunkenesse, or that shall bee before hand notified to him the said *A. B.* by the Constable of *M.* aforesaid, for the time being, or by his deputie, to be an vnmeet person to bee receiued into a common Ale-house: Nor shall keepe or lodge there any strange person, aboute the space of one day, and one night together, without notice thereof first giuen to the Constable, or his Deputie there: And finally, if hee the said *A. B.* during all the time that hee shall keepe common selling of Ale or Beere in the said house, shall and doe there vse and maintaine good order and rule: Then this present Recognifance to be void, &c. or else, &c.

Or where the Iustices of Peace at their meeting, take diuers such Recogn. they were made shortly, as followeth:

Memorand', quod die Aprilis, ann. regni domi nostri Iacobi *E. c.* Cantabr. coram nobis *Ed. Peyton Milite & Baronetto & H. V. armig. duobus Iusticiariis E. c. venerunt,*

A. B. de Newmarket in Com' pr adict' Viuallier, & cognouit se debere dicto dom' Regi x. li. Et C. D. de E. c. & E. F. de E. c. vterque eorum recognouit se debere dicto domino Regi v. li. bone & legalis moneta, Angl', de bonis & chatallis, terris & tenementis suis fieri & lenari ad opus E. c. si defecerit in Conditione sequente.

The condition of this Recog. is such, That if, &c. and write the Condition at large.

G. H. de Newmarket, in Com' pr ad victualler, & cognouit se debere dicto dom' Regi x. li. Et I. K. de E. c. & L. M. de E. c. vterque eorum recog' se debere dicto domino Regi v. li. E. c.

Sub Conditione vt supra.

N. O. de Newmarket, in com' pr ad victualler, & cognouit se debere dicto domino Regi x. li. Et P. Q. de E. c. & R. S. de E. c. vterque eorum recog' se debere dicto domino Regi v. li. E. c.

Sub Conditione vt supra.

T.V. de Soham in Com' pradiēt' victualler, & cognovit se debere dict' domino Regi. x. li. Et W.W. de &c. & X. Y. de &c. vterq; corum recog' se debere dicto domino Regi, v. li. &c.

Sub Conditione vs supra.

Et sic de ceteris.

For the manner of this Condition for Alehouse-keepers, it is (by the statute) partly referred to the discretion of such Iustices of peace, as take such Recognisance, or Bond, as you may see before *titulo Alehouses.*

And in some Shires the Iust. of P. did condiscend vpon certaine Articles framed by their discretions, and generally to be propounded to all common Ale-sellers, taking the Bond for the performance of the same, A copie whereof they did vsually deliuer to euery of them, which maner was auowable also.

Amongst articles of this kind, I did commend to the Iustices care these three especially:

First, that no Alehouse-keeper vpon the Sabbath day should receiue or suffer to remaine any person whatsoever (as their guesstes) in any their houses, or other places, to tittle, eat or drinke; other then trauailers, and such as come vpon necessary businesse.

Secondly, that they suffer no person whatsoever, resorting to their houses only to eat or drinke, to remaine or be there after nine of the clocke in the euening, from Michaelmasse till Lady day, nor from Lady day till Michaelmasse, after ten of the clocke at night.

Thirdly, that they suffer no person, resorting to their houses only to eate and drinke, to remaine tipling there aboute one houre, other then trauailers.

But note, that now there be diuers articles of far better direction published (touching Ale-houses) by Proclamation, giuen by the K. Maiesty at Newmarket, the 19. day of Ianuary in the 16. yeare of his Highnesse reigne of great Britaine, France, and Ireland, *Anno Dom. 1618.* in manner and forme following: *viz.*

First, that the Iustices of P. of euery County, Citie, or Towne Corporate within this kingdome, and the dominion of Wales, doe once euery yeare in the moneths of April and May, assemble themselves, either at a speciall Sessions, or such other meeting as they shal appoint for that purpose (respecting the ease and conueniency of the people of the country) and there call before them or any two of them (whereof one to be of the *Quorum*) all such persons as doe sell Ale or Beere by retayle in any place (as wel within Liberties as without) within such County, City, or Towne Corporate; and then and there taking true certificat, and information from men of trust; who

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bee persons of honest conuersation, and who not. And to giue Licence to such persons, as they in their discretions shall thinke meete, to keepe common Ale-houses, or Victualling houses, within the places where such persons dwell.

2 That in the Licencing of the said Victuallers, and Ale-house-keepers, the forme of the Recognisance, hereafter following, and the Condition thereunto annexed, be vsed, and none other.

Memorandum, quod Anno regni Dom. nostri Iacobi, Dei gratia Regis Angliæ, Franciæ, & Hiberniæ fidei defensor. &c. & Scotiæ Coram Iusticiarijs dicti domini Regis ad pacem in Comitatus pradiēt. conseruand. &c. manu- ceperunt pro victular. viz. vterque manucaptor. pradiēt. sub pœna quinq; librar. & pradiēt. assumpsit pro seipso sub pœna x. li. Quas concesserunt. &c. Sub Conditione sequente.

THE Condition of this Recognisance is such, that whereas the a-
boue bounden is admitted and allowed by the
said Iustice, to keepe a common Alehouse and victualling house, vn-
till the first of April next ensuing the date hereof, and no longer, in
the house wherein he now dwelleth, at in the said
County of and not elsewhere in the said Countie.
If therefore the said shall not, during the time afore-
said, permit or suffer, or haue any playing at Dice, Cardes, Tables,
Quoits, Loggets, Bowles, or any other vnlawfull game or games in
his house, yard, garden, or backside; nor shall suffer to be or remaine
in his house any person or persons (not being his ordinary household
seruant) vpon any Sabbath day, or Holy day, during the time of di-
uine Seruice or Sermon: Nor shal suffer any person to lodge or stay
in his house aboue one day and one night, but such whose true name
and surname he shall deliuer to some of the Constables, or in his ab-
sence to some of the Officers of the same Parish the next day fol-
lowing, vnlesse they bee such person or persons as hee or shee very
well knoweth, and will answer for his or their foorthcomming: nor
suffer any person to remaine in his or her house, tipling or drinking
contrary to the Law; nor yet to be there tipling or drinking after 9.
of the clocke in the night time, nor buy or take to pawne any stolen
goods; nor willingly harbor in his said house, or in his barnes, stables
or other where, any Rogues, Vagabonds, Sturdy beggers, Master-
lesse men, or other notorious offenders whatsoever: Nor suffer any
person or persons to sell or vtter any Beere or Ale, or other victuall
by Deputation, or by colour of his or her License. And also if hee
shall keepe the true assise and measure in his pots, bread, and other-
wise, in his vttering of his Ale, Beere, and Bread; and the same Beere
and

and Ale to sell by scaled measure, and according to the assise, & not otherwise. And shall not vter or sell any strong Beere or strong Ale above a peny the quart, and small Beere or small Ale above a half-peny the quart, and so after the same rates. And also shall not vter nor willingly suffer to bee vtered, drunke, taken, and tipled any Tobacco within his said House, Shop, Cellar, or other place thereunto belonging, that then, &c.

3 That euery Ale-house-keeper and Victualler so to be licensed, doe enter into Recog. with two able sureties, to be bound in v. li. a-piece, and the principall x. li. at the least, for the performance of the Condition of the said Recog. which shall indure but for one whole yeare, and then to determine, vnlesse it shall seme fit to the Iust. of P. to renew the same againe, by taking a new Recog. of the same Condition: And whatsoever Date the Recog. shall haue, it is to indure but vntill the said moneths of April and May, or one of them.

4 That the Clerkes of the Peace, Town-Clerkes, or their Deputies respectively bee called to attend the Iust. of P. at such their meetings or assemblies, and that they do there take the Recog. aforesaid of euery Victualler or Alehouse-keeper licensed, and doe duely enter them amongst the Records of the Sessions of the Peace in their charge, whereby his Maiestie may bee duely answered of the forfeitures that shall be made of the parties so bound.

5 That the Clerkes of the Peace and Towne-clerks aforesaid, or their Deputies, shall within some conuenient time after the taking of the said Recog. faire engrosse the Recognifance and Condition in parchment, which they shall keepe as the Originall, and send a true copie of the said Recog. examined with the said Originall, to euery Alehouse-keeper allowed, whereby he may the better enforme himselfe what he and his sureties are bound to obserue.

6 That the Clerks of the Peace, and Town-clerks or their deputies do write out & bring with them to euery Sess. of the Peace, or other meeting of the Iust. a Register book containing the true names, surnames, & places where euery Alehouse-keeper or Victualler that is licensed doth dwell, to the end it may appeare to the Iust. of P. who be licensed, and by whom, and who bee not, and what other alterations haue bin from time to time for the placing of men of honest and good conuersation, and displacing of others of ill behauiour.

7 That the Clerkes of the Peace, and Town-clerks, and their deputies may take of euery Alehouse-keeper for their fee, for performing of the seruices aforesaid, at the time of the acknowledgmet of the said Recog. the fee of xvij. d. and no more, ouer and aboue the fee of xij. d. allowed for the Iustices clerkes by the Statute, which shall be paid to the said Iustices clerkes.

8 That

8 That in case the Alehouse-keeper not knowing of the Iustices meeting, or being hindred by sicknesse, or other such like impediment, shall faile of admittance at the generall or publike assemblies, and shall notwithstanding be admitted or licensed by two Iust. of P. (whereof one to bee of the *Quorum*) The Recog. with Condition faire engrossed in Parchment in the forme prescribed, as aforesaid, shall forthwith or at the next Sessions at the furthest, bee returned to the Clerkes of the Peace, or the Towne-clerks respectively vnder the hands of the Iustices, before whom such Recog. was taken, together also with the said Fee of eightene pence for the entring, registering, making, and deliuering of a Copie vnder his hand to the Alehouse-keeper, as aforesaid.

9 That none bee licensed or allowed to keepe an Alehouse that hath not one conuenient lodging at least in his or their houses, for the lodging of any passenger or traeller, and to haue alwayes in her or their houses good and wholesome small beere and ale of two quarts for a peny, for the reliefe of the Laborer, Traeller, or others that call for the same.

10 That the Iust. of P. within their seuerall Precincts, do not permit or suffer any vnlicensed Alehouse-keeper, or Victualler, to sell Beere or Ale, but that they proceed against them, by all due and lawfull meanes whatsoever: And that they bee very carefull, from time to time, to cause the Brewers to be proceeded against in their generall and quarter Sessions, for deliuering Beere, or Ale, to such vnlicensed persons, according to the statute in that case provided.

11 That the Clerks of the Peace, or Towne-clerks respectively, doe once euery yeare in *Trinitie Terme*, make and bring in a Briefe, of all such Recog. as shall be taken within euery County, Citie, and Towne corporate, into the Office of the Patentees (appoynted by them for that purpose) to the end all concealments of Recog. taken in that behalfe, may be discouered; and the benefit accruing vnto his Maiestie, by such as wilfully breake the same, may bee more duely prosecuted: Of which, that his Highnesse be not defrauded, Order is giuen to the Patentees, that with the allowance of the chief Iustice of the K. Bench, there be appointed Committees in euery Countie, for the recouery thereof, from time to time.

12 That the Iustices of Assise in their Circuits, and Iustices of Peace, at their generall Sessions of the Peace, doe from time to time enquire of the due execution of these presents, and of all other abuses, disorders, and misdemeanours whatsoever, committed, or suffered, against the prouisions aforesaid, and the true meaning of them.

A Licence to keepe an Alehouse.

Cantabr. **I**ohn Cotton, Knight, and *Michael Dalton*, Esquire, two Iust. of the P. of our Soueraigne Lord the Kings Maiefty, in his Highnesse countie of C. send greeting in our Lord God euerlasting: Know yee, that we the said Iustices, of good & credible report to vs made, by diuers credible and honest persons, &c. That I. W. of &c. is a man meet to keepe a common Alehouse in the house where he now dwelleth, haue licenced, allowed, and admitted, and by these presents doe licence, allow, and admit the said I. W. to keepe a common Ale-house or tripling house at L. for one whole yere next ensuing the date heereof, so that the said I. W. suffer nor any vnlawfull Games to bee vsed in his said house, nor any euill rule or order to be kept within the same, during the time of his said Licence; for the vsing of which Licence accordingly, we do you to wit, that we haue bound the said I. W. and two other sufficient sureties, in an hundred shillings apiece by Recognisance to the K. Maiesties vsé. In witnesse wherof we haue hereunto set our hands and scales. Dated &c.

Or thus.

Cantabr. **W**e whose names are herevnder written, Iust. of the P. of our Soueraigne Lord the K. within the county of Cambridge, do licence and allow I. W. of L. in the said county, to keepe a common Alehouse, or tripling house in L. aforesaid, for and during one whole yere next ensuing the date hereof; So as he doth not suffer any vnlawfull Games to bee vsed in his house, nor any euill rule to bee kept there, but doe behaue himselfe therein, according to the lawes & Stat. of this realme in that behalfe made and provided. In witnesse &c.

A Licence to Brew, and keepe an Alehouse.

Cantabr. **W**hereas A. M. of W. in the County of D. Husbandman, hath come before vs, *Iohn Cutts*, Knight, and *Fr. Brakin*, Esquire, two of the K. Maiesties Iust. of P. within the said County, and bound himselfe in a Recog. with sufficient sureties, to brew & sell, and keepe a common Alehouse, according to the stat. made in the fift yere of the reigne of our late soueraigne Lord and K. *Edw. 6.* Now know yee, vs the said *Iohn Cutts*, and *Fr. Brakin*, to haue licenced the said A. M. to brew to sell, and to keepe a common Alehouse, according to the said statute. Giuen vnder our hands, the 13. of Iuly, in the &c.

A Testimoniall, or Passport to trauell.

Cantabr. **S**ir *Roger Millisent*, Knight, and *Sir James Reynolds*, Knight, two of the Kings Maiesties Iust. of P. within the said Countie, To all Iust. of P. Maiors, Bailiffes, Constables, & all other his Maiesties Officers and

and Ministers whatsoeuer, sendeth greeting in our Lord God euerlasting: Forasmuch as the bearer hereof E. P. widow, being brought in to great pouerty and necessitie, as well by the late death of her husband, as otherwise, hath desired our Testimoniall (or Licence) for her safer trauell vnto the Citie of B. whereas one E. P. brother of her said husband inhabiteth, by whose goodnesse shee hopeth greatly to be relieued and holpen. In consideration whereof, know ye, we the said Sir *Roger Millisent*, and *Sir James Reynolds*, so farr as in vs lieth, to haue licenced the said E. P. to trauell and passe the direct way from H. within the said county of C. whereas she lately dwelled, vnto the said city of B. together with her two litle children, so as her iourney be not of longer or further continuance then twentie dayes next after the date hereof, praying you and euery of you, not to molest or trouble the said poore woman in her trauel, but to permit and suffer her peaceably to passe (and also to aid and assist her) in this her iourney, so that shee shew her selfe in no respect offensive to his Maiesties Lawes. In witnesse, &c.

But vpon such Licence, the persons thus licenced to trauell, may neither begge, nor wander idly, nor out of their direct way: Besides, the Iustices must bee sparing to graunt such Licences, except in cases of necessitie.

The forme of a Testimoniall, for the conueying of a Rogue, that hath bin punished according to the Stat. of 39. Eliz. cap. 4.

Iohn at Style, a sturdy vagrant begger (of low personage, red haired, *Cantabr.* and hauing the naile of his right thumb clouen) aged about yeres was this sixt day of April, in the 14. yere of the reigne of our Soueraigne Lord King *JAMES*, of England, &c. openly whipped at W. in the said County (according to the law) for a wandring rogue; and is assigned to passe forthwith from Parith to Parith by the Officers thereof, the next straight way to Sale in the Countie of Essex, where (as he confesseth) he was borne (or dwelled last by one whole yere, &c. if the case be such) and he is limited to be at Sale aforesaid, within tenne dayes now next ensuing, at his perill. Giuen (at Vvestwratting vnder the hand and seale of *Mi. D.* Esquire, one of his Maiesties Iust. of P. of the said countie of Cambridge.

Note by the words of the statute 39. *Eli. 4.* such testimoniall must be vnder the hand & seale of the Iu. of P. Constable, Headborough, and of the Minister of the Parith, or of any two of them; and yet it is taken that the Iust. of P. alone vnder his hand and seale may make such a Testimoniall. *Lamb. 206.*

Note also; that it is needfull both in this, and in all other Testimonialls, Certificates, safe Conducts, and Passports whatsoeuer, to note and specifie expressly, some assured markes of the partie,

as his stature, colour of haire, complexion, or (if it may bee) some apparant scarre or other note, by which hee may bee infallibly distinguished and knowen from others; lest (as is 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 of the Law in that behalfe prouided.

A Testimoniall for such as haue suffered shipwracke.

Norff.

A. B. of C. in the County of Norff. Esquire, one of the K. Maiesties Iustices, &c. To all &c. Forasmuch as the bearer hereof I. S. aged about, &c. hauing lately been at sea in a ship, called the &c. and hath suffred shipwrack, and got to land at Y. in the said County of Norff. vpon the day of last past (as I am credibly informed as wel by the report of the said I. S. as also by the testimony of diuers the inhabitants of Y. aforesaid) and for that the said I. S. hath not wherewith to relieue himselfe in his trauell homewards to D. in the county of H. where he saith he was borne, (or hath a dwelling &c.) These are therefore to pray you & euery of you, to whom these presents shal come, not to molest or trouble the said I. S. in his trauell to D. aforesaid, where he is limited to be within daies next after the date hereof; But desiring you rather to relieue him in his necessity, as to you shall seeme meet. And withall, you the Constables of euery town where he shall come, to helpe him with lodging in conuenient time: So that hee trauelleth the direct way to D. aforesaid, not doing any thing contrary to the lawes and stat. of this realme. In witness, &c.

Mariner or
Soldier.

The like (with very little alteration) may bee made, for a poore Mariner, or a poore Souldier, comming from the seas, or from beyond the sea. *Vide antea tit. Rogues.*

But these two last Testimonials, must be made by some Iust. of P, dwelling neere where such persons do land.

Warrant' custodi Gaola. ad recipiend' prisonarium pro feloniam.

Cantabr.

Edwardus Peyton miles & Baronettus, vnus Iusticiar. Domini regis nunc ad pacem in com' predicta conseruand', necnon ad diuersa felonias transgress' et alia malefact' in eodem com' audiend' et terminand' assign': custod' Gaola dicit' domini regis in com' predicta, aut eius locum tenentis, et eorum cuiuslibet salutem, Quia R. T. nuper de I. in comit' predicta Laborer, iam pro suspicionem cuiusdam feloniam per ipsum (ut dicitur) perpetrat, per Constabul' villa de R. in com' predicta arrestat: Ideo ex parte dicit' domini regis vobis et cuiuslibet vestrum pr' accipio, quod ipsum R. in custod' vestra recipiatis, seu vnus vestrum recipiat, ibide moratur, quousq' secundum legem et consuetudinem regni Anglia a custod' vestra deliberetur. Dat' apud Isteham &c.

A Mit-

A Mittimus of a felon, after this examination taken.

Iohn Cotton knight, one of the Iustices, &c. To the Keeper of his Maiesties Gaole at the Castle of Cambridge in the said County, &c. Greeting. I send you herewithall the body of A. B. late of C. Labourer, brought before me this present day, and charged with the felonious taking of twenty sheepe (which also he hath confessed vpon his examination before me,) And therefore these are (on the behalfe of our said soueraigne Lord) to command you, that immediately you receiue the said A. B. and him safely keepe in your said Goale, vntill that he shall be thence deliuered by the due order of his Maiesties Laws. Hereof faile you not, as you will answer for your contempt at your owne perill. Giuen at Cheneley, the day of in the year of the raigne of our said soueraigne Lord James by the grace of God, King of England, France, and Ireland, Defendor of the Faith &c.

A Mittimus to send to the gaole, an Alehouse-keeper, that vntually contrary to commandement, &c.

Henry Vernon, and Roger Thornton Esquires, two of the kings maiesties Iustices of the P. within the said county of Cambridge, To the Keeper of the K. maiesties gaole, at C. Greeting: Whereas R. D. of B. in the said county of Cambridge (vpon complaint lately made vnto vs of the euill rule kept and suffered by him in his house, and other misdemeanours) by warrant vnder both our hands and seales was discharged of his Alehouse-keeping, and was commanded from vs, that he should thenceforth vse no more common selling of ale or beere. And wheras we are credible informed that the said R. D. (notwithstanding our said warrant and commandment giuen him to the contrary, as aforesaid) hath euer since obstinately, and vpon his owne authority, taken vpon him to keepe a common Ale-house or tripling house, and still continueth the same. Wee doe therefore send you herewithall the body of him the said R. D. commanding you in his said maiesties name to receiue him into your said gaole, and there safely to keepe him, vntill such time as he shall be from thence deliuered by due order of Law. And hereof sayle ye not at your perils. Dated at the day of in the year of &c.

*Or, to vse commonly selling of ale or beere
*Or, it shall do well, to set downe how long time the offender is to be kept in prison.

A Mittimus (to the Gaole) of the reputed father of a Bastard child &c.

I send you herewithall the body of R. C. of B. in the countie of C. Labourer brought before me this present day, and charged by F. S. of the same Towne to haue gotten her with childe, Hh and

and for that the said R. refuseth to put in security for his appearance at the next Quarter Sessions, and to the end hee may bee forth comming when as order shall be taken for the reliefe and discharging of the said Towne of B. and for the keeping of the said child (when it shall happen to bee borne) according to the statute in that case provided: These are therefore on the Kings Maiesties behalfe to charge and commaund you, that immediarly you receiue the said R.C. and him safely to keepe in your said Gaole, vntill such time as he shall be from thence deliuered by due order of Law. And hereof faile yee not as you will answere your contempt at your perill, Dated, &c.

In euery Mittimus, the cause of the commitment is to be set down, to the end it may appeare whether the prisoner be bailcable, or no. See hereof before in the title *Baylement*.

Also where the Iustices of P. out of their Sess. may heare and determine, and so may commit offenders, for the offence or fine, it is necessary that in their Mittimus, there be contained the manner of the offence, and how long time the offender is to be kept in prison for it. See the Mittimus for guns, afterwards in pag. 343.

A Mittimus, to the house of Correction, of a dangerous Rogue.

Cambr.

Or such rogue may be sent to the gaole. See before tit. Rogues.

Iohn Richardson doctor of diuinity, & Michael Dalton Esquire, two of the K. maiesties Iust. of the P. within the said county of Cambridge, To the M^r. or gouernor of th house of correction at Botolphsham (for the East side of the said county) or to his deputy there, Greeting; Whereas I. S. a sturdy vagrant begger, was this day of September, *anno domⁱ* brought before vs, and charged (as well with begging and idle wandring abroad, as also with other lewd and disorderly behaiour, so as he appeareth to vs, to be dangerous to the inferiour sort of people (or such a one as will not bee reformed of his roguish life) contrary to his maiesties lawes in such behalfe provided: These are therefore to will and require you, to receiue the said I. S. and him safely keepe in your said house, vntill the next quarter sessions to be holden in the said county: And during all that time (that he shall so continue with you) that you holde him to worke and labour, & to punish him by putting Fetters or Gyues vpon him, & by moderate whipping him, as in good discretion you shall find cause, yeelding him for his maintenance only so much as he shall deserue. or earne by his labour and worke. And that at the said next quarter sess. you haue the said I. S. there, together with this our warrant. And hereof see that you faile not, &c. Dated at the day of _____ in the yeare of, &c.

See Stat. 7. 12c. 4. & 39. Ed. ca. 4.

A mittimus to the house of correction of a disorderly seruant, or other idle person.

I Haue sent you herewithal the body of E. C. of W. in the said county of C. being an idle, dissolute, and disordred fellow: (Or one that will not keepe his seruice, nor follow any honest course of life) These are therefore to will and require you to receiue the said E. C. and him safely to keepe (* vntill that he shall be thence deliuered by warrant from my selfe, or some other his maiesties Iustices of P. for this county of Cambridge) And in the meane time to holde him to such works, & to giue him such punishment by putting fetters &c. (*vt supra*) And hereof see that you faile not, at your perill. Dated &c. See the stat. 7. 12c. ca. 4.

* Or, by the space of 10. daies next after the date of this warrant.

Another, for one that runneth away, leauing her charge to the towne.

W Ee haue sent you herewithall the body of I. R. of W. single woman, being lately deliuered of a childe, and one that is able to labour, and thereby to relieue her selfe and her said child; and hath notwithstanding lately run her way, and left her child vpon the parish to the charge of the same parish, contrary to the stat. in that behalfe provided: These are therefore to will and require you to receiue the said I. R. and her safely to keepe vntill the next quarter sessions to be holden for this county, And in the meane time to holde her to such works, and to giue her such due correction by moderate whipping or otherwise, as shall be fitting in your discretion, and according to the Law in that behalfe provided, yeelding her for her maintenance, &c. *vt supra*. And hereof see that you faile not at your perill. Dated &c. See the statute. 7. Iacobi. ca. 4. & *vide antea titulo Rogues, bis.*

* Or esse such party must be deliuered at the meeting of the Iust. vpon priuie search made for Rogues, and not otherwise. 7. 12c. ca. 4.

Note, if any meane person shall but threaten to run away, and leaue their family (as aforesaid) any two Iu. of P. of that diuision, may send them to the house of correction, as aforesaid; but such their threatning, must bee proued by two sufficient witnesses, vpon oath, before the said Iustices of P. *Vide antea tit. Rogues.*

A mittimus, to send to the gaole such as shoot &c. in Guns.

To the Keeper of his Maiesties Gaole at the Castle of Cambridge, and to his deputie or deputies there, and to euery of them.

Foasmuch as this present day A. B. and C. D. of _____ in the said countie Yeoman, did arrest and bring before mee (aforesaid) one Lat S. in the said countie Mariner, whom

Lamb. 292. 22

Hh 2

whom they had scene and found the same day (as they said) shooting in a hand-gun (charged with powder, and a peller) at a connic in a certaine place in C. within the said county called the Churchfield, contrary to the law of this realme, and thereupon prayed mee that iustice might be done in that behalfe. I *John Cutts* Knight being the next iustice of the peace in the said County to the place aforesaid, did then at aforesaid, vpon the said request take the examination of the said *I. at S.* and did also then and there heare the proofes of them the said *A. B. and C. D.* touching the said offence; and for that it did then manifestly appeare vnto me, as well by the testimonies of them the said *A. B. and C. D.* as also by the plaine confession of him the said *I. at S.* that he had not then lands, tenements, fees, annuities, or offices to the cleere yearely value of one hundred pound, and that he had shot in the said hand-gunne, in manner and forme as is aforesaid; I doe send you herewithall the body of him the said *I. at S.* as lawfully conuicted of the said offence before me; requiring you in his Maiesties name to receiue him into your said Gaole, and him there safely to keepe (as his maiesties prisoner) vntill that he shall haue truely paid the paine and forfeiture of x. li. of lawful money of England, layd vpon him for his said offence, by the statute thereof made in the three and thirtieth yeare of the raigne of the late King *Henry* the eighth, That is to say, the one moire thereof to our said soueraigne Lord, and the other moire to them the said *A. B. and C. D.* the first bringers of him before me. And this shall bee your sufficient Warrant in this behalfe. Hereof sayle you not, as you will aunswere for your contempt at your owne perill. Ycouen at aforesaid, the twentieth day of March, in the year of the raigne of our said soueraigne *Lo. James* by the grace of God, King of Engl. France and Ireland, & of Scotland the &c. Defendor of the Faith, &c.

By me the said *John Cutts.*

The Iustices Record thereof.

Cantabr.

Memorand' quod vicesimo die Martij anno regni domini nostri Iacobi Dei gratia Anglia, Francia, & Hibernia, Regis fidei defensoris &c. *A. B. & C. D. de in com' pred' yeoman, Quendam r. at S. de in dicto com' marriner inuenerunt et viderunt apud in com. pred. die et anno supradict. eum quodam tormento (Anglice vocat' a Hand-gun) onerato pulvere tormentario & globo plumbico (Anglice charged with gun-powder and a leaden bullet) in quendam cuniculu' ad tunc existent' in quodam loco ibidem vocato Churchfield sagittante et exonerante dictu' Torment' contra formam Stat' (in Parliament' domini Henr' nuper regis Anglia octavi, apud Westminst. anno Regni sui tricesimo tertio tenent') provisum ac editi: Ac proinde die et anno supra-*

supradict' prefat' *I. at S.* arrestauerunt, et apud *pradict'* coram me Iohanne Cutts milite, uno, et dicto loco proximo Iusticiar' dicti Domini Regis ad pacem in dicto comitat' conservandam (Necnon ad diversa transgress. et alia malefacta in eodem comitat' perpetrata audiendum et terminand') assignator: ad tunc una secum adduxerunt, petentes inde Iusticiam fieri. Qua quidem petitione audita, ego prefatus Iohannes Cutts apud *pradict'* die et anno supradictis, debite super inde examinari prefat' *I. at S.* ac probationes predict'. *A. B. & C. D.* in hac parte cepi: Ac propterea quod tam per probationes predict. quam per confessionem ipsius *I. at S.* ad tunc et ibid. apparuit mihi manifeste quod pref. *I. at S.* (cum non haberet in iure suo proprio, nec in iure uxoris sua ad usum suum proprium, nec aliqui alij ad usum eiusdem *I. at S.* haberent terras, tenementa, feoda, annuitates, aut officia ad clarum annum valorem centum librarum) in tormento predicto modo & forma predictis sagittasset, contra formam statuti predicti, Ego prefatus Iohannes Cutts prenommatum *I. at S.* die & anno supradict' proxime Gaola dicti Domini Regis apud Cantabr. in comitat' predicto (de transgress. pradict' coram me conuictu') commisi, ibidem moraturum quousq' penam & forisfacturam decem librar' Legalis monet' Angl' vere solverit, viz. unam medietatem inde dicti domi' regi, et alteram medietatem inde dicti *A. B. & C. D.* primis eiusdem *I. at S.* coram me ductoribus. In quor' omnium fide & testimonio, ego pref. *Io. Cutts,* hijs presentibus sigill' manu apposui, Dat' apud *pred' die & anno* primu' supradictis.

Per me pref. Iohannem Cutts.

Baylement.

Memorand' quod secundo die mensis Septembris Anno Regni Domini nostri Iacobi &c. venerunt coram nobis Iohanne Cage milite, et Roberto Castle armiger' duobus Iusticiar' dicti Domini regis ad pacem, in comitat' predicto conservand' assignat' apud *H.* in comitat' predicto *A. B. & C. D. de E. in dicto comitat. yeoman, & ceperunt in balliuu, usq' ad proximam Gaola deliberationem in dicto comitat' tenend. quendam F. G. &c. Laborer, captum et detentum in prisona pro suspitione cuiusdam felonie &c. Et assumpserunt super se, scz. quilibet pred. *A. B. & C. D.* sub pena viginti libr. bone et legalis monet. Angl. et pred. *F. G.* assumpsit pro seipso sub pena 40. libr. similis monet. a de bonis et catallis terris & tenement. eor' quorumlibet, & cuiuslibet eor. ad opus dicti dom. regis heredum & successorum suor' levandar. si pref. *F. G.* ad eandem proximam Gaola deliberationem personaliter non comparabit coram Iusticiariis dicti domini regis, ad dictam Gaolam deliberand' assignatis, ad standu' recto de felonis pred. et ad respond' dicti dom. regi tunc & ibid. de et super omnibus qua illi obijcientur. Dat' sub sigill. nostris, die et anno primum supradictis. Vide antea tit. Bailement.*

Hh 3

Alias.

Alias.

Cantabr. Memorandum quod die Erc. venerunt coram nobis Erc. A. B. de Erc. & C. D. de Erc. et E. F. de Erc. et manuceperunt pro R. B. de L. in comitatu pradiet gener, videlectes, quilibet eorum corpus pro corpore, quod idem R. B. personaliter comparabit coram prefat' Iustic' & socijs suis, ad proximam generalem sessionem pacis in comitat' pradiet. tenend' ad stand' recte in Cur': (si quis versus eos loqui voluerit) de diversis felonys et transgr' unde idem R. B. indictatus existit, (ut dicitur) et ad respond' dicto dom' rege de eisde' prout debet. Erc. Vide antea tit. Bailement, that it must be vpon a certaine summe of money.

Crom. 135.
21. H. 7. 20.
Br. Main. 44

Yet note, vpon this last maner of Bailement, the mainpernours shalbe only fined, if the prifoner maketh default.

Crom. 135.
Br. Main. 44

The Liberate to deliuer a prifoner committed for felony.

Cantabr. Edward Hinde Knight, and Edward Aldred' Esquire, two of the Iustices &c, To the Keeper of his Maiesties Gaole in &c. Greeting, Forasmuch as F. G. &c. Laborer, hath before vs found sufficient mainprife to appeare before the Iustices of the Gaole deliury, at the next generall Gaole deliury, to be holden in the said county, there to anwere to such things as shal be then, on the behalfe of our said soueraigne Lord objected against him, & namely to the felonious taking of two sheep (for the suspition wherof he was taken, and committed to your said gaole) Wee commaund you on the behalfe of our said soueraigne Lord, that (if the said F. G. do remain in your said gaole for the said cause, and for none other) then you forbear to grieue or detain him any longer, but that you deliuer him thence, and suffer him to goe at large, and that vpon the paine that will fall thereon. Giuen vnder our seales this &c.

Lamb. 341.

Warrant' ad deliberand' seruientem extra Gaolam.

Cantabr. Franciscus Brakin armig. vnus Iustic' Erc. custodi Gaola dicti domini regis in com' pr ad' salutem. Quia W. C. de N. Laborer, corame me in- venit sufficiens securitat' essendi coram Iust' sic domini regis ad pacem in com. pred. conseruand. Erc. ad proximam generalem sessionem pacis in com. pred. tenendam, ad respondend. tam dicto domino regi, quam C. D. de Erc. de transgr. et contemptu suis, contra formam Statuti de seruientibus nuper edit. et prouif. Ideo tibi ex parte dicti domini regis mando quod pred. W. C. a prifona tua, si ea occasione, et non alia ibidem detineatur, sine dilatione deliberar. fac'. Dat'. Erc.

Crom. 138.

Wherfoeuer a Iustice of Peace, vpon his own motion and discretion, hath committed one to the gaole, or house of correction, for (want of sureties for) the peace, or good behauiour, Or for being a vagrant, or idle person, or the like, it seemeth the same Iustice of P. may

may in like discretion, afterwards discharge him againe, and make his Liberate or Warrant to deliuer such prifoner. See 14. H. 6. fo. 8. Br. Imprif. 27.

Releases of the Peace.

The Release of the Iustice of Peace.

Ego prafa. H. Martin, qui supra nominatum A. B. ad pr ad' securitatem pacis inueniend': ex mea discretionem compuli, eandem securitat' pacis (quantu in me est) ex mea discretionem, 1. die Aug. Erc. remisit et relaxaui. In cuius rei testimon', huic present' relaxationi mea sigillu meū apposui dat' die et anno supradictis.

The Release of the party (before the same Iustice that tooke it.)

Memorand' qd' primo die Aug. Erc. pr af. C. D. venit corū me Roger. Thornton, et gratis remisit et relaxaui (quantu in se est) pr ad' securitatē pacis per ipsū corū me, versus supra nominatū A. B. petitū. In cuius rei Testimon', Ego pr afat' Ro. Thor. Sigillū meū apposui dat' Erc.

These two former Releases, are to be written vnder the Recognifance it selfe: and if the Iu. shall only subscribe his name to the Release, without his seale, it is well enough, (especially where the Recognis without seale.)

Or the Release of the partie may bee by it selfe in this forme, scilicet.

Memorand' qd' C. D. de S. in com' pr ad. yeoman, primo die Augusti Anno regni domi nostri Erc. venit coram me Isaac Baro armig' vno Iustic' dicti domi regis ad pacē in com' pr ad' conseruand' assign': apud W. in com' pr ad. et ibid' remisit, et gratis relaxaui R. W. de S. in com' pr ad. Laborer, securitatē pacis per ipsum C. D. versus dictū R. W. corū me petitam. Dat' die et anno supradictis.

Cantabr.

And if the Release be made before another Iu. which tooke not, or hath nor, the Recogn. it may be thus:

Memorand' qd' A. B. de C. in com' pr ad' yeoman, primo die Augusti Erc. venit corū me Rob. Hagar armig', vno Iustic' dicti domi regis ad pacē in com' pr ad' conseruand' assign' (apud W. in com' pr ad') et securitatem pacis quam habet versus I. S. de Erc. penitus remisit et relaxaui, Dat' die et anno supradictis.

Release

Release for the good Abearing.

M' Lamberts seemeth to doubt, whether the suretie of the good Abearing, may be released by the party, (because it seemeth more popular then the suretie of the peace:). But others doe hold that it may be released; and then may the formes of such release be easily made, by those which are before concerning the peace, vsing the words *Securitatem de se bene gerendo* in stead of the words, *Securitatem pacis*.

Lamb. 126.
P.R.22.



Forcible Entrie.

The forme of the Record (of a Forcible Entrie) by the Iustice, vpon his view.

Cantabr.

Memorandum qd' die mensis Ianuar' Anno regni Domini nostri Iacobi, &c. Questus est mihi Iohanni Cotton Militi, vno Iusticiar' dicti Domini Regis ad pacem in dicto comitat. conseruand assignat'. Quidam A. B. de W. in dicto comitatu, yeoman, quod C. D. de W. predic', et nonnulli alij pacis dicti Domini Regis perturbatores ignoti, in domum mansionalem ipsius A. B. in W. predict. manusforti ingressi sunt & ipsum A. B. dissessi verunt ac eandem manusforti & armata potentia adhuc tenent: ac proinde petijt a me sibi in hac parte remedium apponi: Qua quidem querimonia et petitione audita, Ego prefatus Iohannes Cotton, immediate ad dictam domum mansionalem personaliter accessi, ac in eadem domo ad tunc inueni prefatum C. D. & quosdam E. F. & G. H. &c. domum illam vi & armis, manusforti, & armata potentia, (videlicet arcubus & sagittis, gladijs, pugionibus, galeis, & Loricis) tenentes contra formam Statuti in Parlamento domino Richardi, nuper Regis Anglia, secundi, Anno regni sui decimo quinto tento provisum, ac contra formam dixerunt aliorum statutorum. Ac propterea ego pref. Iohann. Cotton, predictos C. D. E. F. & G. H. ad tunc & ibidem arrestari, proxima q' gaola dicti domini Regis ad Castrum Cantabr. in dicto comitatu duci feci, vt de dicta manusforti tentione per visum & recordum meum conuictos, ibidem mortuar' quousque fines dicto domino regi pro transgressis suis predictis fecerint. Dat' apud W. pred. sub sigillo meo, die & anno supradictis.

The

The forme of the *Mittimus* (to the Gaole) of such as hold land by force.

Iohn Cotton Knight, one of the Iustices of the Peace of our soueraigne Lord the Kings maiestie, within his said Countrey of Cantabrige, to the Keeper of his maiesties gaole at &c. in the said countrey, and to his deputy and deputies there, and to euery of them greeting. Whereas vpon complaint made vnto me this present day by A. B. of Weston in the said countrey yeoman, I went immediatly to the dwelling house of the said A. B. of Weston aforesaid, and there found C. D. E. F. and G. H. of aforesaid, Labourers, forcibly, and with strong hand, and armed power, holding the said house against the peace of our soueraigne Lord, and against the forme of the statute of Parliament thereof made in the fifteenth yeare of the late King Richard the second. Therefore I send you (by the bringers hereof) the bodies of the said C. D. E. F. and G. H. conuict of the said forcible holding, by mine owne view, testimony and record: Commanding you in his maiesties name, to receiue them into your said gaole, and there safely to keepe them, vntill such time as they shall make their fines to our said soueraigne Lord, for their said trespasses, and shall bee thence deliuered by the order of the law of the land. Hereof sayle you nor, vpon the perill that may follow thereof. Yeouen at Weston aforesaid, vnder my seale, the day and yeare abouesaid.

The forme of a Precept (to the Sherife) to returne a Iury, for an Inquiry.

Iohannes Cotton, Miles, vnus Iusticiarior. Domini Regis ad pacem in Comitatu Cantabr. conseruand. Assign. Vicecomit. eiusdem Comitatus salutem. Ex parte dicti Domini Regis tibi mando & precipio, Quod venire facias coram me apud Balsbam, in Comitatu predicto, vicesimo die Septembr. proximo futur. 24. probos, sufficientes, & legales homines de vicineto de Weston in Comitatu predicto: quorum quilibet habeat 40. solidos terrar. & tenementor. vel redd. per annum ad minus ultra reprises, ad inquirend. super Sacrament. suu pro dicto domino rege de quodam ingressu manusforti facto in messuag. cuiusdam A. B. apud Weston praed. contra formam Stat. in Parlamento Domini Henrici nuper regis Anglia sexti, anno regni sui octauo tento editi, vt dicit: Et videas quod super quemlibet Iuratorum per te in hac parte impanellandoru viginti solidos, de exitibus ad prefat. diem returnes: Et hoc nullatenus omittas sub pena viginti librar' quam noueris te incursum, si in executione praemissor. tepidus aut remissus fueris: Et habeat tibi tunc hoc preceptum. Teste me prefat. Iohanne Cotton, decimo die Martij, anno

anno regni dom. nostri Jacobi Dei gratia Angl', Francia, et Hibern' regis fidei defensor' &c.

The forme of the Enquiry, Indictment, Presentment, or Verdict of the Iury.

Cantabr.

Inquisitio pro domino rege cap' apud B. in comitat' predicto, die Julij, anno regni domini nostri Jacobi Dei gratia Angl', Francia, et Hibernia regis fidei defensor' &c. & Scotia &c. per Sacramentum A. B. C. D. E. F. &c. coram Iohanne Cotton, Militi' vno Iusticiar' dicti domini regis ad pacem in dicto comitat' conservand' (Necnon ad diversa felonias transgress' et alia malifac'ta in eodem comitat' perpetrata audiend' et terminand') assign': Qui dicunt super sacramentū suum predictum qd' A. B. de W. predict' yeoman, diu legitime & pacifice seisinus fuit in dominio suo, ut de feodo de & in vno messuagio &c. cum pertinentijs in W. predict' & possessionem ac seisinam suam predictam sic continuavit quousq' C. D. de &c. et alij malefactores ignoti primo die Septembris ultimo elapso, (vi & armis, videlicet, cum baculis, gladijs, arcibus, & sagittis) in messuagiū predictū &c. intraverunt, ac ipsum A. B. inde disseisuerunt et manusforti expulerunt, et eundem A. B. sic disseisitum & expulsū ab eodem messuagio &c. a predicto primo die &c. usq' ad diem captionis huius inquisitionis, cum huiusmodi fortitudine et potentia armata extratenuerunt & adhuc extra tenent, in magnam pacis dicti domini regis perturbationem, ac contra formam statuti Parliamenti domini Henrici, nuper regis Anglia sexti, anno regni sui octavo 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 ingressū suum predictum, neque alio tempore precedente ad noticiam Iurator' predicti.

Alio modo super Statutum 8. H. 6.

Iurator pro Domino Rege, presentant, * quod cum in Statuto in Parlamento Domini Henrici, nuper Regis Anglia sexti apud Westmonast. Anno regni sui octavo tento editi, inter cetera continetur, Qd' si aliqua persona, siue aliqua persona de aliquibus terris aut tenementis manusforti expuls' seu disseisus vel pacifice expellatur & postea manusforti extra teneatur vel aliquod seoffament', vel discontinuac inde post talem ingressum ad ius possessoris defraudandum & tollendum aliquo modo fiat, habeat in hac parte pars grauata' versus talem disseisitor' assisam noue disseisus vel breue transgres'. Et si pars grauata' per assisam, vel per actionem transgress' recuperet, vel per veredictum, vel aliquo alio modo per debit' legis formam inueniatur, quod pars defendans in terris, & tenementis, sic ingressus fuit, vel ea per vium post talem ingressum suum tenuit,

* Yet these words, vi & armis, here seeme to be needless, being necessarily implied in the word manusforti. Vide aut. tit. Forcible Entry.

This last clause may be omitted.

* And yet it seemeth not best to recite the stat. but shew the forcible ent &c. and to conclude, contra form. stat. in parliament. &c. Vide postea tit. indictment.

tenuit, recuperet quer' dampna sua ad triplum versus talem defend', & ulterius idem defend' finem & redemptionem dicto Domino Regi feceret, prout in Statu' predict' plenius continetur. Quidam tamen W. W. nuper de W. in Comitatu predicto, Husbandman, & G. D. de eadem, Labourer, Statutum predict' minime ponderant, nec penū in eodem Statu' content' aliquatiter veretes, die Februar' anno regni Regis Jacobi, &c. apud C. in Comitatu predicto in unum Horreum existent' liberum tenement' Roberti W. (Decani Ecclesia Cathedralis W.) manusforti, ac vi & armis, videlicet, gladijs, &c. intrauer' & ingressum fecerūt, & predictum Decanum Ecclesia predicta a libero tenemento suo manusforti, ac vi & armis predictis inde sine iudicio expuler' & disseisuer' & L. P. milit' firmar' Decani predicti, Horrei predicti, ad tunc & ibidem de predicto horreo expulerunt & eiecerunt, & pref. Decanum sic inde expulsū & disseisū a predicto die Februar' anno supradicto, usque diem captionis huius Inquisitionis, de predicto Horreo vi & armis predict' & manusforti extratenuerunt & adhuc extratenent in contemptum dicti Domini Regis nunc, & graue dampnum ipsius R. & contra pacem dicti Domini Regis, contra formam Statuti predicti, &c.

Alio modo super Statutum 5. R. 2.

For such' recital of the stat. see after in the title Indictments.

Inquiratur pro domino rege, &c. qd' cum in statuto in Parlamento dom. Richardi nuper regis Angl' secundi post conquestū, apud Westm. Anno regni sui quinto tenu' editi, inter cetera ordinat' sit, qd' nullus faceret ingressum in aliquas terr' siue tenement', nisi in casu, ubi ingressus datur per legem, et illo casu non manusforti nec cum multitudine gentium, sed licito & quieto modo tantū; Et si quis in contrariū fecerit, et inde debite conuict' fuerit, per imprisonment corporis sui puniatur, et finem ad voluntatem dom. regis faciat prout in eodem stat. inter alia plenius continetur. Quia tamen T. H. de I. in com. predicti, yeoman, et alij &c. Statutu' predict' minime ponderant, 2. die Maij, anno regni dom. Jacobi, &c. vi et armis, viz. baculis, gladijs, falcastris, et bisurcis, in unū clausum I. C. militis iacent' apud in com' predicti in quodam loco ibide' vocat' H. super possession' eiusdē I. C. militis, ubi ingressus eis, aut eorū alicui non datur per legem, ingressū fecerunt, et cept' pertic' as sepium viuar' ipsius I. militis, ad tunc et ibid. crescent' radicauer' & oulserūt, et spoliauerunt, in dicti dom. regis nunc contemptū, et ad graue dampnū ipsius I. C. militis, et contra formā stat. predicti &c.

The warrant to the sberife, for the making of Restitution (if the Justice himselve will not make it.)

Iohan. Cotton miles, vno Iust. &c. assignat': Vicecom' eiusdem comit. Cantabr. salut': Cum per quandā Inquisitionē patria coram me apud B. in comit. predicto, 29. die Julij, &c. super sacramentū A. B. C. D. E. F. &c. ac per formam statuti de ingressibus manusforti, factis in tali casu prouisi comper-

tum fuit, Quod C. D. &c. & alij &c. primo die Septemb. &c. in quoddam messuag. &c. A. B. &c. in W. pred. vi et armis ingressi sunt ac ipsu A. B. inde tunc manserunt disseisuerunt, et expulerunt et pred. A. B. sic expulsu a pred. mess. &c. a pred. primo die Septem. &c. usq. ad diem captionis Inquisitionis pred. manserunt, et cum potentia, extra tennerunt, prout per inquisitionis pred. plenius liquet de recorde: Ideo ex parte dicti domini regis tibi mandando et precipio qd' (ad hoc debite requisitus) una cu posse comitatus tui (si necesse fuerit) accedas ad mess. et cetera pr amissa, ac eade cu pertin' re-seisuri facias, et pr af. A. B. ad, et in plenū possess. suam inde, prout ipse ante ingress. pr ad. fuerat seisisus restitui, et mitti facias iuxta formā dicti stat': et hoc nullatenus omittas periculo incubente. Teste me pr af. lo. Cotton &c.

A Certificate of the Presentment, or Verdict of the Jury, into the K. Bench, (wherof Vide antea tit. Forcible Entrie.)

A Certificate into the K. Bench, of the Record of a Force, viewed by the Ju. (wherof Vide antea tit. Forcible Entrie.)

These two former certificats (and the like) may be done and made by the Ju of P. by way of a Letter (as it seemeth) inclosing therein the said presentment of the Jury, or the said record of the Ju. Except the same be remoued thither by a Certiorari, And then may the Just. return them in such maner as appeareth hereafter tit. Certiorari, with some little alteration.

Or the Ju. of P. may himselfe deliuer into the K. Bench, such Presentment found before him; or such record made by him, & the like, and that without any Certiorari; for that he is a Iudge of Record.

8. Ed. 4. 18. Br. Cor. 151 Cromp. 133

The forme of the Certificate (or the manner of the Returne) of the writ upon the Statute of Northampton into the Chaucery.

Vpon the writ it selfe, these words may be indorsed.

The Returne Executio istius brevis patet, in quadam Scheda eidem breui consueta.

And the Schedule may be thus:

The Certificate. E Go Io. Cotton miles, vnus Custodu pacis domini regis in comit' Canteb. certifico in Cancellariu dicti domini regis, qd' virtute istius breuis mihi primo deliberati, decimo die April' anno &c. publice proclamari (ex parte dicti domini regis) feci, apud B. cuius in dicto breui fit mentio, prout in dicto breui precipitur, Et qd' quidam A. C. et D. E. de F. in com. pr ad. Labourers pr ad. proclam' parspendent, post proclamationē pred. ibid.

ibid' sic facti armati iuerunt, ac armati potentiu ibid' duxerunt, sc. duas galeas, vnum arcu & decē sagittas, duos gladios & totidē pugiones, in perturbationē pacis dicti dom. regis, ac terrore populi sui, necnon in contemptu stat. in dicti breui specificati manifestu. Ac proinde dicti A. C. D. E. vna cum armaturis suis pr ad. arrestatos & eoru corpora ad prox. prisonam dicti dom. rege pro ipsorum deliberatione habuero in mandatis, Armaturas etiā eoru pr ad. appretiarī feci, per A. B. C. D. & E. F. de B. pr ad. yeomen; ad hoc iuratos, Qui dicunt saper sacramēt. suum pr ad. quod pr ad. dua galea valent decē solidi, Et quod dicti arcus & decem sagitti valent sex solidi, Et quod gladij pr ad. valent viginti solidi, Et quod dicti pugiones valent quinq. solidi & sic armaturae pr ad. valent in toto quadraginti & vnum solidi, de quibus paratus sum respondere secundā tenorem dicti breuis, In cuius rei testimonium huic presentī certificationi mee sigillum meum apposui, dat' apud pr ad. die & anno supradictis.

Riotts.

The forme of the Record of a Ryot, viewed by the Iustices, and Sheriffe, or Vnder-sheriffe.

Memorandum quod vice simo die Ian. anno regni domini nostri Iacobi Dei gratia &c. Nos Iohannes Cutts, Miles, & Iohannes Cage Miles, duo Iust. dicti domini regis ad pacem in comitatu pr adicto, &c. assign'. & Willielmus Wendye, Miles, ad tunc vicecomes eiusdem com', ad gravem quarimoniam & humilem petitionem A. B. de C. in dicto comitatu yeoman, in proprijs personis nostris accessimus ad domum mansionalem ipsius A. B. in C. pr ad', ac tunc & ibidem invenimus D. E. F. G. & H. I. de C. pr ad' labourers, ac alios malefactores & pacis dicti domini regis perturbatores ignotos (ad numerum decem personarum) modo guerrino arraiatos, viz. gladijs, pugionibus, galeis, loricijs, arcubus, & sagittis illicite & riotose agregatos, & eandem domum obsidentes, multa mala in ipsum A. B. comminantes, in magnam pacis dicti dom. regis perturbationem, ac populi sui terrorem, & contra formam stat. in Parlamento dom. Henrici nuper Regis Angl' quart', anno regni sui decimo tertio teno editi & provisū, ac propterea nos pr afati Iohannes Cutts, Iohannes Cage, & Willielmus Wendye, pr ad' D. E. F. G. H. I. &c. tunc & ibid' arrestari, ac prox. gaola dicti dom. regis in comitatu pr ad. duci fecimus, per visum & recorde nostrum de illicita congregatione & riota pr ad. convictos, ibidē moraturos quousq. finem dicto dom. rege proinde fecerint. In cuius rei testimonium huic presentī recorde nostro sigilla nostra apposuimus, dat' apud C. pr ad. die & anno primum pr ad.

And if a man be slaine or maihemed, or a rescous bee done to the officer by the riotters; Then the record ought to be *riotose occiderunt*, ^{Lambe. 372.} or *riotose mahimauerunt*, or *riotose rescusserunt*, but not *felonice*, nor simply *rescusserunt*; because their authority in this case is restrained to the riot only: So as notwithstanding that Record, the parties may pleade, Not guiltie, to the felony, or to the rescous, howsoeuer, for the Ryot, they are estopped.

Minimum. The *Mittimus*, for conueying the riottors to the gaole, may (with some few words of change) be made out of that, which is here before, for such as hold by force. See hereof *paulo antea* amongst the *Presidents in Forcible Entry*.

The Precept (to the Sherife) to returne a Iurie, for an Inquire vpon a Riot.

Cantabr. **I**ohannes Cutts miles, & Iohannes Cage miles, duo Iustic' &c. assignat' vicecomit' eiusdem comitatus salutem. Ex parte dicti domini Regis tibi pr' accipimus, quod venire factas coram nobis apud I. in comitatu predicto die Ianuarij prox. futuro 24. probos, sufficientes, & legales homines de comitatu predicto, quoru quilibet habeat terras & tenementa, infra dict' com' liberi tenementi per chartam, ad annum valorem viginti solidor, aut per copiam Rotul' Curia ad annum valorem viginti sex solidos & octo denarior, aut per utrunq. ultra omnes reprisas, ad inquirendum pro dicto domino rege, ac pro indemnitate nostra in hac parte, super sacramentum suum de quibusdam illicitis aggregationibus & riottis apud C. in com' pr' ad' nuper commissis ut dicitur. Et hoc nullatenus omitas sub pena viginti librar', quam incursumus es; si in executione pr' amissor' defeceris. Et habeas ibi tunc nomina iuratorum predictorum, & hoc pr' acceptum. Dat' sub sigillis nostris die Ianuarij, anno regni dicti domini nostri Iacobi, &c.

The forme of the Inquire, Indictment, or Prementment of the Iurie.

Cantabr. **I**nquisitio pro domino rege, &c. (as before in Forcible Entries) coram Iohanne Cutts milite, & Iohanne Cage milite, duo Iustic' &c. Qui ad hoc Iurati & onerati, dicunt super Sacramentum suum pr' ad', Quod D. E. F. G. & H. I. simul cum alijs malifactoribus & pacis dicti domini regis perturbatoribus ignotis (ad numerum septem personarum) modo guerrino arraiata, vi & armis, videlicet, hawberdis, gladijs, arcibus & sagittis die mensis Ianuarij, ultim' pr' terito apud C. in comitatu predicto inter horas octavam & nonam post meridiem eiusdem diei, domum mansionalem A. B. de C. predict' yeoman, scituat' in C. predict' riotose fregerunt & intraverunt, & in ipsum A. B. tunc & ibidem insultum fecerunt, ac ipsum tunc & ibidem verberaverunt, vniueraverunt, & indignis

dignis modis tractaverunt, Ita quod de vita eius desperabatur in magnam pacis dicti domi regis perturbationem & populi terrorem, ac contra formam statuti de riotis, routis, & congregationibus gentium illicitis in Parlamento Domini Henrici nuper regis Anglia quarti anno regni sui decimo tertio tento prouisi & editi.

Certificat. As for the Certificate (which ought to be made to the K. and the Council, in case that by this enquiry, the truth of the fault & ryot be not found) such certificat may bee done in English, by way of a letter, comprehending the truth of the whole matter, with the certaintie of the time, place and other circumstances of the fact or ryot, together with the certaintie of the names of the ryotters, as also of the names of such, who by maintenance, embracery, or otherwise, were any impediment to the finding thereof, with their severall misdemeanors: which certificat or letter is to be directed and sent by the said Iu. of P. and Sheriffe or Vnderheriffe, into the Star-chamber, or K. Bench, &c. within one moneth. See *antea tit. Ryotts.*

A Trauerse to an Indictment of a Ryott, and the Record thereupon.

The Style of the Sessions. **A**lias, scil. ad Sessionem pacis tentam apud Castrum Cantabr. in Com. pr' ad', die Martis proximi ante festum Sancti Mathei Apostoli, anno regni domini nostri Iacobi Dei gratia Anglia, Francia, & Hibern' Regis fidei defensor' &c. coram & alijs socijs suis iusticiar' dicti domini regis ad pacem in comitat' pr' ad' conservand', necnon ad diuersa felon' transgr', & alia malefacta in eod' com' perpetrata audiend' & terminand' assign'; per sacramentum duodecim iurator' extitit presentatum quod I. L. de &c. R. M. de &c. & T. L. de &c. cum diuersis alijs ignotis malefact' & pacis dicti domini regis perturbatoribus, modo guerrino arraiato, uniti & assembleti vicesimo die Iulij in nocte e. iusd' diei, ann. &c. vi & armis, viz. bacul', gladijs, clipeis, pugionibus, falcatris, & alijs armis, tam in vasivis, quam defensivis apud C. &c. riotose & routose, fregerunt & intraverunt, & octo plaustra fani ad valenti' &c. ad tunc & ibid' existent', de bonis & catallis dicti ad tunc & ibid' iniuste & illicite ceperunt & asportaver' contra pacem dicti domi regis &c. Et contra formam stat. inde editi & prouisi, per qd' pr' accept' fuit vic' com' qd' non omitteret &c. quin venire faceret eos ad respond' &c. postea q. sc. pr' ad' die Martis prox. antefestum sancti Mathai Apostoli ann. supradict' coram pr' as. Iustic' veneris pr' ad' I. L. R. M. & T. L. in proprijs personis suis, & habito auditu indictmenti pr' ad' separati dicunt quod ipsi non sunt inde culpab. & de hoc ponunt se super patriam, Et A. M. qui pro dn' o rege in hac parte sequitur similis &c. Ideo veniat inde iurata coru' Iustic' dicti domi regis ad pacem in com' pr' ad' conservand' assign' &c. ad sessione pacis apud &c. die Martis prox. post Epiphaniam dni tunc prox. futuro tenend'. Et qui &c. ad recogn' &c. quia tam &c. idem dies datus est tam pref.

*praf. A.M. qui sequitur &c. quā praf. I.L.R.M. & T.L. &c. Ad quas quidē
 seffiones, tentas apud praf. in com' pr adict' die &c. coram dom' T.
 P.G.N. & H.P. militi' & socijs suis Iustic' dicti dom' regis ad pacē in com'
 praf. conservandā, Necnon ad diversa felon' transgr' & alia malefacta in
 eod' com' perpetrata audienda & terminand. assignat; venerunt tam praf.
 A.M. qui sequitur &c. quā prafati I.L.R.M. & T.L. in proprijs personis The verdict
 suis, Et Iurator' praf. per vicecom' com' praf. ad hoc impannellati & ex-
 acti viz. I.F.I.G. &c. sil' iter venerūt. qui ad veritatem de pr amiff. dicen-
 dū triati & iurati, dicunt super sacrament' suum qd' praf. I.L.R.M. & T.
 L. culpabiles sunt. & eorū quilibet culpabilis est de transgr', contemptu, &
 riotu pr adictis in indictamento praf. superius specificatis, modo & forma
 prout superius vers. eos supponitur, Ideo concessū est per curiam qd' praf. The Judge-
 I.L.R.M. & T.L. capiantur ad satisfaciend' dicti dom. regi de finibus suis, ment.!
 occasione transgressi, contemptus & rioti praf. Qui quidem I.L.R.M. & Cap. 910 sine
 T.L. ad tunc & ibid' present' in cur' petierūt se ad finē cum dicti dom' rege Ponunt se in
 occasione praf. admitti. Et inde ponunt se seperatim in misericord' domini miseriordia
 regis & assessatur finis eiusdem I.L. per Iustic' praf., ad tres lib. sex solid' regni.
 octo denar'; Et finis eiusdem R.M. assessatur ad viginti solid'. Et assessa- Fine assel-
 tur finis eiusdem T.L. ad quinq' libr', bone & legalis moneta Anglia, Ad ted.
 opus & usum dicti domini regis.*

I have inserted this former president, for that it discovereth much matter worthy the Iustices obseruation.

Indictments.

IN the forme of Indictments, in cases of Forcible Entry and Ryots, I have heere before set you downe certaine Presidents: Neuerthelesse for that these Indictments bee the chiefe foundation whereupon the whole businesse and triall is after to be grounded and built, I thought it not amisse to obserue here these few generall rules, as well concerning the matter, as the forme, of these, and all other indictments or presentments, to be taken before Iustices of Peace.

First in these Indictments of Forcible entry, and Ryots (as also in all other indictments of felony or trespassse) it is good to say *contra pacem*, or other words to that effect.

Also these words, *vi & armis, viz. gladijs, &c.* are not of necessitie, Lambt. 484 yet it is good to vse them; for these circumstances do either agrauate 37.H. 8.c.8. or diminish the offence. *Stamf. 94.*

But these words, *vi & armis, &c.* are needlesse in an indictment of Forcible Entry, because they are implied in the word Force.

Also in Indictments founded vpon Statutes, it is not needfull, Co. 4. 48. nay,

nay it is not safe to recite the Statute at all: for as the recitall is not necessary; so the misrecitall thereof is fatall to the Indictment, and maketh it voyd: But it is safe and sure to draw the indictment with this conclusion, *scz.*

Dyer 363. *Contra formam statuti in huiusmodi casu prouisi ac editi*, If the indictment be founded vpon one statute: or, *contra formam diuersorum statutorum in huiusmodi casu edit. & prouisor'*, without naming any speciall statute, where many stat. doe concerne one offence.

Plow. 1. & 79. Yet the offence against the stat. must be certainly discribed in the indictment, and the meteriall words in such statute must be fully set downe therein. *Plow. 1. & 79. Lamb. 485.*

Lambt. 469 &c. Also all indictments and presentments (being in the nature of declarations for the K. against the offenders) ought to containe certaintie; and therefore sixe principall things be most commonly requisite in all presentments before the Iust. of P. viz.

1. The names, and surnames as well of the parties indicted, as of the parties offended; with the addition of the degree or mystery, and dwelling place of the partie indicted.

Yet in some cases, an indictment, *quod procuravit personas ignotas, or quod bona cuiusdam ignoti cepit, &c.* or the like, may be good. See plus *Lamb. 470. 476. Br. Indictment. 6. 10. 11.*

Br. Indictm. 24. 41. 42. 2. The time, *scz.* the day and yere when the offence was done.
 3. The place, *scz.* the towne and county, where it was done; as at B. in the countie of C.

Lambt. 478 4. The name or quality of the thing, in which the offence is committed; viz. of dead things, it may be, *bona & catalla*, expressing them certainly: Of liue things, *equum, bovem, ovem, &c.* but not *bona & catalla*. So of entry &c. into lands &c. to expresse certainly, whether it be a house, land, meadow, pasture, wood &c.

5. Also the value or price of the thing, is commonly to bee set downe, to agrauate the fault.

Lambt. 430 6. The manner of the fact, *scz.* the maner and nature of the felony or trespassse. See *Lamb. 480. Br. Indictm. 7. 36.*

Also indictment ought to be framed so nere the truth as may be, and the rather, for that they are to bee found by the Iury vpon their oathes.

Co. 4. 47. Yea, an Indictment, being *vereditum, id est, dictum veritatis*, and a matter of record, ought to set forth all the truth, that by law is requisite; for *de non apparentibus, & non existentibus eadem ratio*: And every part of the indictment materiall ought to bee found by the oath of the Iurors, and is not to bee supplied by auerment; otherwise the indictment will be sufficient.

Processe.

The formes of Processe (vpon Inditments of trespasse) which also the Iustices of P. out of Sessions may in some few cases make out against offenders, as it seemeth.

NOte, that as the authoritie of making Processe vpon Inditments, is giuen by expresse words in the Commission, to the Iust. of P. in their Sessions; so is it giuen by expresse words, in some statutes, to the Iu. of P. (yea to one Iustice of peace) out of their Sessions to make out Processe, vpon Inditments found (before them) against offenders; or vpon information against them, as if they were indicted of trespasse in Sessions; as you may see here *tit. Forcible Entry, & tit. Sheriffes antea.*

Also in some other cases, and by some other stat. this authority of making out Processe (against offenders) by the Iust. of P. out of their Sessions, seemeth to be implied of congruence, or rather of necessity; as where any statute doth giue power or authority to the Iustices or Iustice of peace, out of their Sessions, to inquire, heare, and determine (as *hic tit. Ryots. tit. Transportation, tit. Tyle, and tit. Weights.*) In these, and in all other such cases, where the Iust. may enquire, heare, and determine, there after indictment or presentment of the offence, the said Iust. may make out Processe against such offenders, to cause the offenders to come and answer; for vnlesse the offenders doe come in, either *gratis*, or by Processe, the Iustices cannot proceede to heare and determine. Againe, in the former cases of Transportation, Tyle, and Weight, as also in all other cases where any Statute doth giue power to the Iust. of peace, out of their Sessions, to heare and determine, either vpon the confession of the offenders, or vpon examination of witnesses (wherof see *antea tit. Heare and Determine &c.*) In all such cases, it seemeth the Iust. of P. may graunt out their Warrant against such offenders to appeare before them, to answer to their said offences; And therupon may proceede to examine, heare and determine the offence, as being conuict thereof vpon such confession or examination, without any Indictment or Processe.

Now these Processe seeme to bee as followeth.

First, if the offender be absent, a *Venire facias* shall be awarded by the Iust. or Iustices of P. vnder his or their owne *Teste*: And if therevpon the offender be returned sufficient (and maketh a default) then a *Distringas* shall be awarded, which *Distringas* shall go forth *infraite*, till the offender come in: But if a *Nihil habet*, &c. be at the first returned

Lambt. 377
501.

1. Venire
facias.
2. Distringas,
or Capias.

ned, then after the *Venire facias*, a *Capias*, then an *Alias*, and after a *Pluries* shall go forth, and after that an *Exigent*, till the party be taken or yeeld himselfe, or else be outlawed.

And these are the ordinary Processe vpon all inditments of trespasse against the peace, or of other offences against perill statutes, not being felony, or a greater offence. But this processe is commonly grounded vpon an inditment, and is onely to cause the offender to come in, and to make his answer, and therefore if the offender bee present, and confesse such inditment, information, or offence, then needeth there no Processe at all, for he shall be forthwith committed to prison (commonly) there to remaine vntil he hath paid his fine, or giuen sureties for it. *1. H. 7. 20. & Br. Imprif. 100.*

Also these Processe shall be alwaies directed to the Sheriffe (who is the immediate minister and officer of the K. to execute all Processe) except the Sheriffe himselfe, or his officers be parties: But if the Iust. of P. be to grant out Processe against the Sheriffe, Vnder-sheriffe, or their officers, offending contrary to the stat. *8. H. 6. ca. 9. or 11. H. 7. c. 15.* which you may see here *pag. 46. & 108.* It seemeth such processe shall be directed to the Coroners of the county, and shall be serued by them; And so are diuers books, as *2. H. 6. 12. 8. H. 6. 30. 9. H. 6. 11 & 18. Ed. 4. 7.* and others; And so also the oath of the Iust. of peace seemeth to binde them.

Note also, that this processe ought alwayes to be made in the name of the King: and for that the King is a partie, it must also bee with a *Non omittas propter aliquam libertatem, &c.* But the teste thereof may be vnder the name of the Iust. of peace.

If the offender be within any Liberty or Franchise, yet the Sheriffe is to enter the Franchise, and to execute the processe himselfe, (and not to write to the Bayliffe of the Franchise, because the King is a partie.) See *41. Ass. p. 17. Br. Franch. 18. 31.*

The formes of these processe, to be made by the Iu. of peace, out of the Sessions, seeme to be as followeth.

The *Venire facias* thus.

Iacobus Dei gratia Anglia, Scotia, Francia & Hibernia Rex, fidei defensor &c. vic' com' Cantubr' salutem. Præcipimus tibi, quod non omittas propter aliquam libertatem in balliuua tua, quin venire facias A. B. de C. in dicto com' tuo yeoman, coram R. M. milite & M. D. armig' duobus Iustici' nostror' ad pacem conseruand', Necnon ad diuersa felonias transgress. & alia malefacta in dicto comitat' perpetrata audiend' & terminand' assignatis apud Lynton in comitat' tuo die Maij proximi futur' ad respondend' nobis super quibusdam articulis super ipsum A. B. presentatis, & habeas ibi tunc hoc præceptum. Teste R. M. apud Lynton die &c.

The

The Distringas thus.

Iacobus Dei gratia Anglia, Scotia, Francia, & Hibernia Rex, fidei defensor &c. vic' com' Cantabr' salutem. Præcipimus tibi, quod non omittas propter aliquam libertatem in balliva tua, quin eum ingrediaris & Distringas A. B. de C. in com' tuo yeoman, per omnia terras & tenementa &c. Et quod de exitibus eorum respondeas &c. Et quod habeas corpus eius coram &c. Iustic' &c. ad respondend' &c. seste &c.

The writ of Capias thus.

Iacobus Dei gratia Anglia &c. vicecom' Cantabr. salutem. Præcipimus tibi quod non omittas propter aliquam libertatem in balliva tua, quin eum ingred' & Capias I. D. de A. in com' tuo yeoman, &c. si invent' fuerit in balliva tua, & eum salvo custod' fac' : Ita quod habeas corpus eius coram R. M. milite, & M. D. armig', duobus Iustic' nostror' ad pacem conservand', Necnon ad diversa felonias transg', & alia malefact' in eodem com. tuo perpetrat' audiend' & terminand' assign' apud L. in com' tuo die Martis prox. futur' ad respondend' nobis de divers' transg' contempt' & offensis de quibus ipse indictat' existit : Et habeas ibi tunc hoc breve, Teste R. M. apud Lynton sexto die Ia. &c. anno regni nostri &c.

Ad quem diem Willielmus Wendye, miles, vicecom' comit' pr' ad retorn', quod ipse non est inventus in balliva sua, & ipse non venit, Ideo pr' acceptum est sicut alias &c.

The Capias alias.

Iacobus &c. vic' &c. Præcipimus tibi sicut alias tibi præcipimus, quod non omittas &c. verbatim ut supra.

Ad quem diem &c. ut supra, & ipse non venit, Ideo pr' accept' est vic' sicut pluries &c.

The partie may appeare gratis, and so avoid the attachment or arresting of his body; and that is the cause, that the Entrie is made, & ipse non venit.

The Pluries Capias.

Iacobus &c. vic' &c. salutem, præcipimus tibi sicut plur' tibi præcipimus, quod non omittas &c. ut supra.

Ad quem diem Willielmus Wendye, miles, vicecom' pr' ad retorn', quod pr' ad C. D. non est inventus in &c. & ipse non venit, Ideo pr' accept' est quod exigi facias &c.

The Exigent.

Iacobus &c. vic' &c. salutem, præcipimus quod exigi fac' C. D. de A. in Comitatu tuo yeoman, quousq' secundum legem & consuetudinem regni nostri Anglia vilagatur si non comparuit, & si compar', tunc eum capi.

capias & salvo custodiri fac'. Ita qd' habeas corpus eius coram R. M. milite & M. D. duobus Iustic' ad pacem nostram conservand'. Necnon ad diversa felon' transgref. & alia malefact' in eodem com' tuo perpetrat' audiend' & terminand' assign' apud L. in com' tuo die Septemb. prox. futur' ad respond' nobis de diversis transg' contempt' & offensis de quibus ipse indictatus existit, & habeas ibi tunc hoc breve, teste R. M. apud L. octavo die Septemb. anno regni nostri &c.

Ad quem diem Will'us Wendye miles, vicecom' com' pr' ad retorn', qd' ad com' ten' tum apud Cantabr. die anno regni dom. requis nunc &c. Et sic ad quatuor alios com' tunc prox. sequen' ibid' ten' pr' ad C. D. exactus fuit, & non comparuit, Ideo vilagat' fuit.

These Processe are sent out, to the end, that either the partie shall come or be brought in to make his answer, and to be iusticed by the law; or else that (for his contumacy) he shall be outlawed, and so to be deprived of the benefit of law: But the power of the Iu. of P. endeth with the Vtlary; for they can make no Capias Vilagatum, but must certifie the Vtlary into the K. Bench.

Lambt 503

Lambt 508

Also all such processe (as well of Capias &c. as of Vtlary) may be stayed by a Supersedeas issuing from other Iust. of P. (out of Sessions,) testifying, that the partie hath come before them, and hath found sureties for his appearance to answer to the indictment, or to pay his fine &c. See here 326.

The Com.
mission.
14. H. 7. 8.
Br. Pearce.
6. 7.

Note that this authority of the Iust. of peace, in sending out these processe (being out of their Sessions) is beyond the bounds of their commission; And againe by the commission, one Iu. of P. alone cannot graunt a Capias, nor other processe, but two Iu. of P. at the least must doe it, and that sitting the court, and in their Sessions; And yet neuertheless, in these former cases, the statutes (expressly, or by necessary implication) giuing such authoritie to the Iust. of P. or to one Iust. alone, and that out of the Sessions, are a sufficient warrant and commission to the Iust. of P. therein, as it seemeth.

Trauerse.

Lambt 523

After that such processe (or any other processe ad respond') bee awarded against the party, it seemeth hee may come in and yeeld himselfe to pay his fine; or else he may offer his trauerse to the indictment found against him before the Iu. of P. & the Iu. ought to allow him his trauerse against it: which trauerse is to take issue vpon the chiefe matter of the indictment, or to deny the point of the indictment.

But although the Iust. of P. haue power in some cases as aforesaid (out of their generall sessions) to take indictments, and after such indictment found to award proces ad respond' against offenders, and to heare and determine thereof; and the offenders also haue liberty to come in, and to speake, and answer for themselves, and may offer their

See Lambt.
522. 523.

their traufferse, and that the Iu. of P. are to allow of, and to receive the same, yet *quere*, whether the Iust. of P. (out of their general Sessions) may trie such traufferse being tendred to them, without which triall all the rest may seeme idle; Or that vpon the traufferse tendred, they must certifie, or send the Inquisition or indictment so found before them, into the K. Bench, or vnto their quarter or generall Sessions of the peace, there to bee tried and determined: how soeuer, it is safest (after such traufferse tendred) to certifie, or deliuer such inquisition or indictment into the K. Bench, or to their next quarter Sess. and so to referre the triall of the traufferse, and further proceedings therein to them. See hereof *titulo Ryot*, and *Forcible Entry*.

Certiorari.

The Returne of a Certiorari, sent to remooue an Inditement, may bee thus.

First, vpon the backefide of the Writ of *Certiorari*, endorse these, or the like words:

Executio istius brevis, patet in quadam Scheda eidem breui annexa.

And that Scedule may be thus.

Ego Michael Dalton, vnus Custodum Pacis, ac Iusticiar' Domini Regis, ad pacem in dict' comitatu Cantubr. conservand' necnon ad diversa felonias, transgres. & alia malefacta in eode' Comi perpetrata audiend' & terminand' assignator', virtute istius Brevis mihi deliberati, in dict' amentum tangentibus, in Cancellar' dicti domini regis, distincte & aperte sub sigillo meo certifico. In cuius rei testimonium ego pro p'af. M.D. huius presentibus sigillum meum apposui. Datum die mensis Anno regni &c.

Then take the Record of the Inditement, and close it within the Schedule, and seale and send them vp both together.

Now to shew what is further meete for the Iustices of Peace to know, concerning this Writt of *Certiorari*, and their certifying or Returne thereof.

After an Inditement found before Iu. of P. a *Certiorari* is procured by the meanes of some party indited or grieued, therby to remooue such Inditement from the said Iust. & to conuey it to Iust. of a higher authority, to the end the party may either traufferse such Inditement aboue, or may there auoid it for insufficiency of forme or matter.

And this *Certiorari* is the K. Writ, issuing sometimes out of the Chancery, and sometimes out of the K. Bench, and may be directed to any Court of Record, or Officer of Record, (as to a Iu. of peace, Fitz. 245. 2. Sheriffe,

Sheriffe, Coroner, or Escheator) to be certified of any record, which is before any of them: and first, an *Alias*, then a *Plur*, and lastly an *Attachmet* lieth against them that should send it (if the record be not certified accordingly) or it seemeth a *Subpana* is vsed at this day.

If it be returnable into the Chancery, then are the words, *In Cancellaria nostra*, and if into the Kings Bench, then the words are, *Nobis mittatis*.

Fitz. 245. b. The *Certiorari* may be sometimes to remoue and send vp the Record it selfe, and sometimes but onely the Tenor of the Record, (as the words therein be) and it must be obeyed accordingly.

Plo. 393. If there bee variance betweene the *Certiorari*, and the Record, which is to bee remooued, the Iustices need not to certifie such Record. *Lamb. 500.*

Cr6p. 132. a. & 133. b. A Iustice of Peace may deliuer (or send) into the Kings Bench, an Inditement found before him; or a Recognizance of the Peace taken by him; or a force recorded by him, without any *Certiorari*: But if a Iustice of Peace hauing a Record in his hands, be discharged of his Office, now hee cannot certifie it without a *Certiorari*, although hee bee made a Iustice of the Peace againe. See 8. H. 4. fol. 5. *Br. Record. 64.*

6. Ed. 4. 5. If a *Certiorari* be to send vp the Inditement of A. in which inditement some others be indired together with the same A. yet need not the Iust. of P. to make certificat concerning any but A. For although they be named ioyntly, yet be they indited seuerally, and the K. may pardon A. without forgiuing the other. *6. Ed. 4. 5.*

6. H. 7. 16. Br. Iudg. 17. If a *Certiorari* shall come to the Iustices of Peace, to remooue an Inditement, and the partie sueth not to haue it remooued, but suffereth it to lye still, yet it seemeth, the Iustices of Peace ought (*ex Officio*) to send it away, because the Writt containeth in it selfe a commaundement to them so to doc, and so is a *Superfedeas* of it selfe to the Iustices of Peace, to stay their other proceedings. See *antea titulo, Forcible Entry.*

Lamb. 497. And albeit the *Certiorari* bee a *Superfedeas* of it selfe, yet may the party vpon the *Certiorari* purchased, haue a *Superfedeas* also, directed to the Sheriffe, commaunding him that he arrest him not, vpon that Record before the Iust. of P. *Fitz. fol. 237.* In which place also he doubteth whether the Iu. of P. themselues ought not of duetie to award their owne *Superfedeas*, to the same effect, after that the Writt of *Certiorari* is brought to their hands.

Lamb. 498. If a *Certiorari* come to the Iust. of P. to remooue an Inditement, and in truth the Inditement was not taken till after the date of that *Certiorari*, yet if the Inditement bee remooued thereby, it is good enough, for that they both be the Kings Courts, (*1. Rich. 3. 4.*) and in such a case it is now vsuall to remoue it.

All

All the higher Courts at Westm. may write to the Iust. of P. to certify their Records, that do make for the trial of causes depending in them; as you may reade 19. H. 6. 19. where they of the Common place did send to the Iust. of P. for an Indictment, because in a Writ of Conspiracy (brought before them, it was materiall to haue it. Lambc. 571

In some cases the Iust. of P. may certify a Record (by him made, or found before him out of sessions) without any Writ of *Certiorari* therefore to him directed. *Vide antea tit. Forcible Entry.*

In other cases he must of dutie certify his proceedings, but may spare to certify the Record, until a *Certiorari* come to him for it. See hereof *antea tit. Suretie for the Peace.*

For the manner of the Writ of *Certiorari*, to remoue Records from one Court to another, or from the Iust. of P. or other Officers of Record, to any the higher Courts at Westm. &c. there are diuers formes and sorts thereof, as you may see in *Fitzh. Na. Br. fol. 242. &c.*

I will onely set you downe here one forme for all, and so will conclude.

The forme of a Certiorari out of the Chauncery, to certifie a Recognifance, taken by a Iustice of Peace in the Countrey, for the keeping of the Peace, &c.

Acobus Dei gratia Anglia, Scotia, Francia, & Hibernia Rex, Fidei Fitz. N. Br. 81. c. 143.
 defensor, &c. Custodibus pacis nostrae in Comitatu Cantebriq. & eoru
 cui libet salutem: Volentes certis de causis Certiorari, super tenorem
 cuiusdam securitatis pacis, vel boni gestus quam A. P. Armiger, nu-
 per inuenit coram vobis, vel aliquo vestrum, de eo quod ipse damp-
 num vel malum aliquod R. S. aut alicui alij de populo nostro de cor-
 pore suo nec faceret, nec fieri procuraret quovismodo: vobis mandamus,
 quod tenorem securitatis pacis, siue boni gestus prae dicti, nobis in Cancel-
 lar' nostro in Octabis Purificat' beatae Mariae prox. futur' vobiscumq. tunc
 fuerit, sub sigill' vestro, vel vnius vestru' distincte & aperte sine dilatione
 mittatis, Et hoc sub pena centum libr' nullatenus omittatis, nec aliquis ve-
 strum omittat. Teste me ipso apud Westmonast. die Novembrii,
 Anno regni nostri decimo quinto.

The Returne hereof, see *antea titulo, Suretie for the Peace.*

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