

*In cuius rei testimonium huic presenti Certificationi mea sigillum meum apposui: Datum apud D. praedictam, in comitatu praed. 25. die Februarij, anno regni dict. dom. nostrae Eliz. Dei gratia. &c. 41.*

The returne  
of a Certiori.

And if a *Certiorari* be directed out of the Chancery to the Iustice of the peace, for remouing this Recognisance, because it was not sent by together with the Certificate, (as there was no necessity that it should) then that Writ also may be thus answered.

Upon the backe of the Writ thus:

*Virtute istius breuis ego Perciuallus Hart unus custodum pacis dom. Reg. in com. Kanc. tenorem securitatis pacis (unde infra sit mentio) dict. domin. Regin. in Cancellariam suam sub sigillo meo distincte & aperte mitto, prout patet in schedula huic breui consueta.*

The which Scedule may be thus:

*Memorandum quod 20. die Iunij, (reciting the whole Recognisance to the end thereof.)*

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

If the *Supplicavit* be against diuers, and the party will release his praier of the peace against one of them, then that release ought to be certified for him, and the Writ must be serued for the rest: or els *non est inuoluntarius*, may bee certified for him, and the Writ may be serued for the rest.

And this forme may serue also, where a *Certiorari* is brought to a Iustice of the Peace, to remoue

mooue a Recognisance of the Peace that was taken by him *Ex officio*, without any such Writ of *Supplicavit*: as you may reade in the Register fol. 90.

But if the Recognisance be not thus remoued from the Iustice of the peace, then may he keep it till the *Certiorari* come to him for it.

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

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

And here againe some difficulties doe arise, that may make the Iustice of Peace sometimes doubtful, how to hold, certifye, or send in, the Recognisance. For sundry meanes there are, by which this Recognisance of the Peace may (before any forfeiture thereof made) be after a sort discharged, and therefore let vs consider of them apart, and withall giue some aduise what shall bee best to doe therein.

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

The



Release of  
the Peace by  
a Iustice of  
Peace.

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

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

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

But, since the Recognisance is made to the Queene, and not to the partie (though for his securitie) and seeing also that by such release, he that ought to remaine bounden shall be at libertie and may doe harme, whilest (intending to beate B.) he

he may collude with A. both to pray and pardon the Recognisance for the peace: I could for my part like better, to maintaine that old, then to imitate this new opinion.

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

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

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

First for the release of the Iustice, thus: *Ego præfatus Thom. Walsingham Miles qui suprascriptum A. B. ad prædictam securitatem pacis innuendiam ex mea discretione compuli, eandem securitatem pacis (quantum in me est) ex mea discretione*  
2. die



*i. die August. &c. remissi & relaxaui : In cuius rei testimonium, huic presenti relaxationi mea sigillum meum apposui. Dat. &c.*

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

Release by  
the partie.

**M**emorandum, quod primo die Augusti &c. prefatus C. D. venit coram me Samuele Lennarde, & gratis remissit & relaxauit (quantum in se est) predictam securitatem pacis, per ipsum, coram me, versus supra nominatum A. B. petitam. In cuius rei testimonium, Ego prefat. Samu. Lenn. &c. Dat. &c.

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

Certifying of  
the Recogni-  
sance, and Su-  
persedeas.

Furthermore, if a man be bound befoze a Iustice of the Peace, to keepe the Peace against all the Queenes people, and to appeare at the next Quarter Sessions: and doe afterwarde procure a *Supersedeas* out of the Chancerie, testifying that hee hath found suertie there against all the Queenes people for ever: this will discharge his appearance at the Sessions: because the granting of this *Supersedeas* is the Act of the Queene, which is the fountaine of Iustice, and controlleth all other deriued authorities. Fitz. fol. 9.

But if that *Supersedeas* should testifie, that hee hath found Suertie in the Chancerie, onely vntill a certaine day (which day is after those Sessions) then

then M. Fitzh. thinketh, that his apparance at the Sessions shal not be discharged by the *Supersedeas*. In both these cases also, I would aduise the Iustice of the Peace, to send in as well the Recognisance as the *Supersedeas*, if it come to his hands: for peradventure the Recognisance was broken befoze the *Supersedeas* purchased: or, if it were not, yet he shall be excused, and the Recognisor neuer a whit the more endangered thereby.

Lastly, the death of the Prince dischargeeth the Recognisance of the Peace 1. H. 7. 2. Cur. So doth the death of the Recognisor: and so also doth the death of him, at whose suite it was taken, if so be, that it were made to keepe the Peace against him alone.

Certifying  
of the Recogni-  
sance, though  
it be discharge  
d by death.

But, although the Mainpernours or Suerties die, yet the Recognisance liueth: for, if the peace be broken after their deaths, their executors shall be charged with it. 21. E. 4. 40. Neither (in the former cases) is the Recognisance discharged by such death, if it were forfeited befoze.

And therefore, here againe my counsell is, to send in the recognisance to the *Custos Rotulorum*: for otherwise, how shall the Iustice of Peace be assured, that hee doth not defraud the Queene of a forfeiture, that was growne vnto her?

Thus haue I both bound the party to the peace, and conueyed the Recognisance from the Iustice to the *Custos Rotulorum*, readie to be called vpon at the Quarter Session: So that I might forthwith proceede to treat of the good Abearing: But, because

Causes of for-  
feiture, so that  
the party shall  
be compelled  
to giue newe  
Suerties.



because I haue tolde you (out of M. Mar. & 21. E. 4. 40.) that if the Recognuſance of the peace be forfeited, and that forfeiture be leuied, ſo that the Recognuſance is utterly determined, yet (of Diſcretion) the partie is to bee compelled to find new Suertie, or elſe to be ſent to the priſon: becauſe it appeareth evidently, that hee hath broken the Peace: I take it now fit, to runne ſwiftly ouer ſome fewe things that may enforme a Juſtice of the Peace concerning ſuch forfeitures: to the end, that hee may thereupon compell the offendor accordingly.

The Condition of this Recognuſance (of what good forme ſoeuer you make it) ſtandeth vpon two points: the one, for appearance at a time: the other, for keeping the peace in the mean while. Of the firſt of theſe I haue ſaid ſomewhat already in this Chapter: concerning the ſecond point, this is generall, that whatſoeuer Act is a breach of the Peace, the dooing thereof doth alſo beget a forfeiture of the Recognuſance that is made for keeping of the Peace. And what acts ſhal amount to a breach of the Peace, I will hereafter ſhew in the next Chapter of this booke, where I ſhall (to another end) haue meete place for it. In the mean ſpace, take thus much heere.

If a man be bound to keepe the Peace againſt A. and doe afterward threaten A. to his face, that he will beate him: he hath forfeited his Recognuſance. And an action of Treſpas lyeth at the common law, againſt him that ſhall threaten one to beate

beate him: as appeareth in diuers Booke caſes 33 H. 6. 18. 37. H. 6. 20. & c. and ſhall ſuppoſe it to be *Contrapacem*. But otherwiſe it is, if A. be not preſent at that threatening, by good opinion 18. E. 4. 28. yet, if (in the abſence of A.) he doth threaten, that he will beate him, and then do afterward lie in waite to beate him: he hath in that caſe alſo broken his Recognuſance 22. E. 4. 35. *Cnr.*

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

And now for cloſing vp of this part (concerning the Preuention of the breach of the Peace) it remaineth, that I increate of the Suertie of good Abearing: which is of great affinity with that of the Peace, as being provided for preſeruati- on of the Peace, as that other is: for in the Commiſſion of the Peace, they are both conueied vnder this one tract of ſpeech, (*ad ſecuritatem de pace, vel de bono geſtu ſuo, erga nos & populum noſtrum inueniendum*) againſt ſuch as doe threaten hurt to mens bodies, or Fire to their houſes: which things are now commonly preuented by Suertie of the Peace onely.

And (2. H. 7. 2.) the Suertie of the good Abearing is ſet forth to reſt in this point chiefly, That a man demean himſelfe wel, in his port, & company, dooing nothing that may bee cauſe of the breach of the peace, or of putting the people in

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



in feare, or trouble: and that it doth not consist in the obseruation of thinges that concerne not the Peace: And that it should differ from Suertie of the Peace, in this, that where the Peace is not broken without an Affray, or batterie, or such like, this Suertie *de bono gestu*, may be broken by the number of a mans company, or by his or their weapons, or harnesse.

Herewithall also doe certaine Precedents of the Kings Bench agree, which in Suertie of the good Abearing (taken at the suite of some one person) doe mingle the words, *Amodo se bene geret erga Dominum Regem, & cunctum populum suum, & precipud erga*. T. B. with those other words that are commonly put in the Recognisance for the Peace, as in the new Booke of Entries, fol. 416. any man may plainly see.

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

For first, the Statute (34. E. 3. cap. 1.) enableth the Wardens of the peace, to take of al the that be not of good fame (where they shalbe found) sufficient suerty and mainprise of their good Abearing towards the king and his people. So that, if a man be defamed, hee may by vertue hereof bee bound to his good behauiour, at the discretion of the Wardens and Iustices of the Peace. And I once receiued a speciall Writ out of the Chancery, directed *Custodibus pacis ac vicecomiti: & co-*

rum

*rum cuiuslibet*, and grounded vpon the same Statute, for the binding of a man with Suerties, *quod ipse boni gestus & fama de cetero erit, & quod nihil in contrarium statuti predicti quouis modo attemptabit &c.* wherein I proceeded as a Minister onely. But the doubt resteth in this, to vnderstande concerning what matters this defamation must be: and that (as I think) may be partly gathered out of the said Statute also. For, after it hath first giuen power to the Wardens of the peace, to arrest and chastise offenders (S. against the Peace, Riottors, and Barretors) then it willeth them to enquire of such as hauing beene robbers beyond the sea, were come ouer hither, and would not labor as they were wont: and lastly, it authorizeth them, to take suertie of the good behauiour of such as be defamed, namely (as I thinke) for any of those former offences: for so it standeth well together, that they shall both punish such as haue already so offended, and shall also prouide, that others shall not likewise offend. And euen so do they of the Chauncerie vnderstand it, as by their speciall *Superfedeas*, which I afterwarde receiued from them vpon that Writ (whereof I spake euen now) I did well perceiue.

Moreouer, it seemeth to me, that all these statutes, first (1. Mar. Parl. 1. cap. 3.) which gaue this Suertie of good Abearing against such as disturbed a Preacher: then (5. Elizab. cap. 21.) that prouideth the same against the takers of fish in ponds, or of Deere in Parkes: After that, (23. Eliz. ca. 1.)

h

which



which granteth it against such as wilfully absent themselves from the Church by the space of 12. months: And lastly, (39.El.ca.4.) which tpeeth to the good behauior al such as disturbe the execution of that Statut, either for the punishment of rogues, or for the reliefe or setting on worke of the poore: It seemeth (I say) that all these Statutes haue this one meaning, that a party (so bounde) may afterwarde forfeit his Recognisance, if he estoones offend against the said Statutes.

Besides this, you may see (admitted by the opinion of the Court 13. H. 7. 10.) that if a man in the night season, haunt a house that is suspected for Bawderie, or vse suspicious company, then may the Constable arrest him to find suertie of his good Abearing. For, Bawderie is not meere lie a spiritual offence, but mixed, and sounding somewhat against the Peace of the lande, 27. H. 8. 14. Fitz. & 1. H. 7. 6.

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

And if this medicine might lawfully be applied to Shoemakers, Tailours, Meauers, and other light persons that (without Testimonial, or other good

good Warrant) doe flit out of one shire into another: not onely that euill of Bastardie, but many other mischiefes, might be either preuented, or punished thereby.

But, for some aduise (by the way) in conceiuing rightly this Suspicion, marke what M. Bracton writeth: *Oritur suspicio ex fama, & ex fama & suspicione, oritur grauis presumptio: Fama uero suspicionem inducens, oriri debet apud bonos & graues idque non semel sed saepius. Oritur etiam suspicio, ex facto precedente, cui standum est donec probetur contrarium: nam qui semel est malus, semper praesumitur esse malus, in eodem genere mali.*

Now, the further that this bond of the good Abearing both extēd, the more regard there ought to be taken in the awarding of it: and therefore although the Iustices of the Peace haue power to grant it, either by their owne discretion, or vpon the Complaint of others, euen as they may that of the Peace: yet I wish rather, that they doe not command it, but onely vpon sufficient cause seen to themselves, or vpon the suit & complaint of diuers, and the same very honest and credible persons.

And here, forasmuch as one Iustice of the peace (alone, and out of the Sessions) may (both by the first Clause of the Commission, and also by the opinion of M-Fitz. & 9. E. 4. 3.) graunt this suertie of the good Abearing, (although the common maner be, that two such Iustices doe ioine in that dooting, wherefore also M. Fitzh. hath verie good liking) I will not sticke to set forth the common



formes, aswell of the Precept, as of the Recognisance for the same: wherein if I shall vble the names of two Iustices, you must take that to bee done according to the common fashion, and not of any necessitie in law.

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

The Precept may haue this course.

The precept  
of the good  
abearing.

**B**RIAN ANNESLEY, and EDMUND STILE, two of the Iustices of the peace of our soueraigne Ladie the Queenes Maiestie in the county of Kent, to the Sherife of the saide countie, to the Constables of the Hundred of Blackheath, and to the Borsholder of the towne of Eltham, in the said Hundred, and to euerie of them, greeting: Forasmuch as A.B. of E. afore-said, is not of good fame, nor of honest conuersion (but an euill dooer, riotter, barrator, and perturber of the Peace of our saide soueraigne Ladie (as wee are giuen to vnderstande by the complaint of sundrie credible persons. Therefore, on the behalfe of our saide soueraigne Ladie wee commaund you and euerie of you, that you cause the saide A.B. to come before vs, or some others of our fellow Iustices, to finde sufficient suertie and mainprise as well for his good Abearing towards our saide soueraigne Lady, &

alher

al her liege people, vntil the next quarter Session of the peace to bee holden in the saide county, as also for his appearance then there. And if he shal refuse so to do, &c. as in the Precept of the peace with a very little (or no change.

The vsuall Recognisance hath this forme.

**M**emorandum, quod quinto die mensis Iul. anno regni Eliz. &c. venit coram nobis Henrico Palmer milite, & Samuele Leonard armigero, vt antea in Recognitione pacis, vsque ad hoc: Quod idem R.G. personaliter comparebit coram Iusticiarijs dict. dom. reg. ad pacem, &c. ad proximam generalem sessionem, &c. Et quod ipse interim se bene geret erga dom. reg. & cunctum populum suum & precipue erga I. B. de C. &c. Et quod ipse non inferet, nec inferri procurabit, per se nec per alios, damnum aliquod seu grauamen prefato I. B. seu alicui de populo ipsius domini reg. de corporibus suis per insidias, insultus, seu aliquo alio modo, quod in lesionem seu perturbationem pacis dicta domina Reg. cedere valeat quouis modo: videlicet vterque predict. H.C. & I.S. sub pena 100 lib. Et predictus R. G. sub pena 200. lib. quas quidem separales summas 100. lib. vterque predictorum H.C. & I.S. (vt predictum) per se, ac predictus R.G. dictas 200. lib. recognouerunt se debere dicta dom. reg. de terris & tenementis bonis & catallis suis & quorumlibet, ac cuiuslibet eorum ad opus ipsius dict. dom. reg. fieri & leuari, Si contingat prefatum R.G. in aliquo premissorum deficere, & inde legitimo modo conuinci, &c.

The Recognisance for the  
Good abearing.

Any one of  
these is sufficient  
cause.



Or by a simple Recognisance, with this Condition endorced, or underwritten.

**C**onditio Recognitionis predicta talis est, Quod si predictus R. G. impoſterum ſe bene geret, & pacem Dom. Regine conſeruabit, erga dictam dominam reginam, & cunctum populum ſuum, & nullum damnum corporale, &c. Extunc Recognitio predicta pro nullo teneatur, alioquin in ſuo robore permaneat.

Release of the  
Good abear-  
ing.

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

And the like imitation may be vſed alſo, for a *Superſedeas* of the good Abearing, if at the leaſt that be grauntable by the Juſtices of the Peace.

I might here without breach of Order, proſe- cute the preſeruation of the peace, by the preuent- ing of ſuch as be riotouſly aſſembled, & by hand- ling the Statute of Northampton, which ſeemeth (by plaine ſpeech) to be prouided for preuention of the breach of the Peace alſo: but becauſe the firſt ſhall haue his proper place, and the latter is com- monly put in vſe at this day after the Peace bro- ken by forcible entrie, I will ſpare to ſpeake of any of them, till I come to treat of thoſe matters by themſelues.

What

What any one Juſtice of Peace out of the ſeſſions may doo concerning the ſtay- ing or puniſhing of the *Breach of the Peace* without a *Multitude*, a- gainſt the perſon.

## CAP. III.

**T**he preuention of the breach of the Peace hath appeared, as well in the ſuertie of the peace, as of the good A- bearing: and therefore mine owne or- der requireth, that I now declare what one Ju- ſtice of the peace may doe (out of the ſeſſions) for puniſhment of ſuch as doe breake the peace.

If or, our lawe is no leſſe carefull this way to conſerue the peace, both by ſtaying them that doe any way aduventure towards the breach thereof, and by puniſhing them that doe actually enter into the verie violation of the ſame, then it was prou- iden to ſee it preſerued befoze it came to any neere ſhew of diſturbance, or greater euill.

But becauſe the breach of the Peace (as the law is taken at this day) whether it be by word, or o- ther act (& that alſo whether it be to the perſon, or his goods, or lands) may be as well committed by one onely, or by two vpon a ſide (both which wee holde to bee done without a multitude, though two in precise ſpeech doe make a number) as by three or moe in one companie (which the Lawe properlie calleth a *Multitude*;) it ſhall bee good



to intreat by it selfe, first of that breach of the peace which may bee committed without a multitude, and then to prosecute the other, if before all wee giue the Iustice of Peace to vnderstand, that by what way soeuer he may p̄uent (or punish) the breach of the peace in one person, the same meanes hee may also vse against any multitude offending therein.

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

Affray and Assault.

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

For, Affray, is deriued of the french *effraier*, which signifieth to terrifie, or bring Feare, which the law vnderstandeth to be a common wrong, and therefore is it inquirable and punishable in the turne of the Sherife, and in a Lecte, 4. H. 6. 10. & 8. Ed. 4. 5. Otherwise it is of an assault, as it seemeth by those very bookes.

Yet may an Affray bee without word or blow giuen: as if a man shall shewe himselfe furnished with armoz or weapon, which is not vsually worn and borne, it will strike a feare vnto others that be not armed as he is: and therefore both the statute of

of Northampton (2. E. 3. cap. 3. made against the the wearing of Armour and weapon) and the Writ thereupon grounded, do speake of it by the words, *effray del pais*, and *in terrorem populi*.

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

Menacing then, Affraies, Assaults, iniurious and violent handlings and misintreatings of the person, batteries, malicious strikings, &c. be breaches of the peace, & do draw after them the forfeiture of a Recognisance, knowledged for the keeping of the peace.

And therefore (for example) if a man doe imprison another without Warrant: or do thrust him into a water (or riuer) whereby hee is in danger of drowning: or do rauish a woman against her will: do commit Manslaughter, or Burglarie, or Robberie

What actes be breaches of the peace, and what not.



berie, vpon the person of another : or do any Treason against the person of the Prince (who as he is the head of his people, so are they also wounded in his hurt) he hath broken the peace : Marrow.

But concerning the menacing, assault, or batterie of the person, this is to bee noted by the way, that it is not in all cases a violation and breach of the peace : for some are allowed to haue priuately a naturall, and some a ciuile power (or authoritie) ouer others : so that they may (in reasonable maner onely) correct and chastise them for their offences, without imputation of any such breach. After the one sort, the parent is suffer'd (with moderation) to threaten and chastise the child within age. By reason of the other sort of power, the master is not punishable, if (not outragiously) hee chastise his seruant, the scholemaster his Schollers, or a Gaoler (or his seruant, by his commaundement) his unruly prisoners, or the Lord his villaine. But these things neuertheless must bee done in conuenient place, and therefore not in the presence of the Prince, as it is thought, 27. lib. Ass. Pl. 49.

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

Euery

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

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

Besides this, if a man be enforced to repulse violence (done vnto his owne person, or to the person of his wife, father, mother, child, master, or seruant, or to his goods being in his possession) either by threatening, or striking againe, his so doing is also iustificable, as may be seene in Marrow : & 33. H. 6. 18. 19. H. 6. 31. 9. E. 4. 48. & 35. H. 6. 50. But a Farmer, or Tenant, cannot iustifie such an Act in defence of his Landlord : nor a commoner in defence of the Maior (or the Bailifes) of a ciitie, or towne corporate, where he dwelleth.

If one man also kil, or hurt another at fencelplay, or at the Tilt, Torneament, or Barriers (in presence of the Queene, and by her commaundement, or licence) it is no breach of the peace : 11. H. 7. 23. Finieux : But M. Br. saith (Corone 22. 8.) that y<sup>e</sup> Judges were of another opinion, in y<sup>e</sup> time of R. H. 8.

because



because such a licence, or commaundement, is against the law.

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

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

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

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

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

A Iustice of the Peace, is undoubtedly for this purpose) endued with no lesse power, then euerie Private man, or any Constable hath: as it is plaine by 14. H. 7. 8. & 9. E. 4. 3. And therefore, it may not bee thought *Heterogenium*, or besides my purpose) if I shall shew what both a private man and

and Constable may doe in this case, yea rather I chose to utter this matter vnder their names, to the ende that I may with that one labour bewray the duties, both of them and of the Iustice of the Peace himselve in this behalfe.

The Lawe looketh, that euerie Private person, whom it shall happen to bee present at an Affray, Assault, or Batterie, (for now I will with other men consound those names) should doe his part to depart them that fight together: and it doeth (to that end) enable him also with some porcion of authority.

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

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

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

Any man also may stay the Affrayers, vntill the fozme of their heat bee calmed: and then may bee deliuer them ouer to the Constable to imprison them, till they find Suertie for the Peace: but he himselve may not commit them to prison, vnlesse the one of them be in perill of death by some hurt: for then may any man carie the other to the Gaole till

The dutie of a stander by at an Affray.

To stay them.



till it be knowen, whether he so hurt, will live or die, as appeareth by the Statute, 3. H. 7. ca. 1.

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

Now, that it is not onely lawfull, but commanded also, that the stander by doe shew his best endeavour in these cases, it appeareth (Corone Fitz. 395.) that one which stood by, and looked on, whilst a man was slaine, was emprisoned till hee made fine, because he did not bestirre him to attach the Murderer.

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

The Officers  
duetie in an  
Affray.

And therefore, if a Constable, or such other Officer, doe see a man endeavouring to make an Affray, he may commaund him to auoid, vpon paine of imprisonment: & if the Affray be great or dangerous, he may make proclamation, and may commaund the parties to prison for a small time, till their heat be passed ouer, and then he must deliuer them without any fine taking.

But if two do vse onely hote words one against the other, the Officer may lay no hands vpon the, vntill they doe also draw weapon, or do otherwise offer to strike: If they once fight together, then may

may the Officer depart them, & if he hap to be hurt in that doing, he shal haue an Action of Trespasse for it: but if any of them be hurt by him in the resistance, no Action lieth for them: For, the Officer ought to doe his best to depart them: inso much as if it be presented at the Sessions of the Peace, that he was present at an Affray, and did not vse his induour to put them in sunder that fought together, he shall be deeply fined for it: Otherwise it is, if he were not present, but were onely told of the Affray. Mar. If any of the parties be in danger, by reason of a hurt receiued in y<sup>e</sup> Affray, the ought the Officer to arrest & carry the other to the gaole, vntill he shal finde suerty to appeare at the Gaole deliury. Fitz. 72. 38. E. 3. 6. & 22. lib. Ass. pl. 56.

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

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

And herein hee differeth from a Gaoler, or the Sherife (who hath the charge of the Gaole) for he may make a Gaole of his house: and so cannot a Constable or Iustice of the peace doe. For by the statute (5. H. 4. ca. 10.) the Iustice of Peace must send his prisoners to the common Gaole. And you may



may reade (Britt. fol. 72.) that the Sherife (in his Turne) used to enquire of those which made Prisons in their private houses.

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

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

Now, if the Constable doe arrest one, that hath hurt another, and doe voluntarily suffer him to Escape, and then he that was hurt dieth thereof within the yere and day, the Constable shall make a great fine, and that to the value of his goods, in the opinion of some, 11. H. 4. 12. and Stanforde 35. But yet the offence shall not haue such Relation

lation to the time of the stroke, as to make the escape to become felonie thereby: *Commentar. Plowden* 263.

What any one Iustice of Peace out of the Sessions may do concerning the breach of the Peace, without, or with, a multitude, by forcible entrie into landes or tenements &c.

## CAP. IIII.

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

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

And at this day, if (in a common Action, or enditement, of Trespasse for entering into land) the defendant will make Title thereunto, the matter of the Force alleaged against him will rest altogether upon the validitie of his Title, as appeareth 7. H. 6. 13. and 40.



But, after the rebellious tumult, and insurrection of the villaines, and other the base commons which happened the fourth yeere of the Raigne of R. 2. the Parliament (5. R. 2. cap. 7.) thinking it necessary to pprovide against all such occasions of of further sedition, byzore, & breach of the peace, did ordaine among other thinges. Thus, From henceforth none make any entrie into any lands and tenements, but in case where entrie is given by the law, & in such case not with strong hand, nor with multitude of people, but only in peaceable and easie maner: vpon paine (if he be duely convict thereof) of imprisonment, and to bee ransomed at the kings will.

But because that statute pprovided no speedy remedie in this point: nor extended to holding with force: nor left any special power therein to the Iustices of peace in the countie: whereas the experience of that vnquiet time required a moze readie hand to the suppression of such disorder: and Iustices of the peace were (by 13. Rich. 2. Stat. 1. cap. 7.) then newly chosen in al the Counties of England, of the most sufficient Knights, Esquires, and men of Law of the same, and sworn to put in execution all the ordinances touching their offices. Therefore 15. R. 2. cap. 2. it was further enacted. That when such forcible entrie should bee made into lands or tenements, or into benefices, or offices of the Church, and complaint thereof come to any Iustice of the Peace, he should take sufficient power of the Countie, and goe to the place

place where such force was made: & if he found any that held such place forcibly after such entrie made, the same should bee taken and put in the next gaole, there to abide, convicted by the record of the same Iustice, till they had made fine & ransome to the king: And that aswel the Sherife, as all others of the Countie, should attende vpon the said Iustices, to go and strengthen the same Iustices, to arrest such offendours, vpon paine of imprisonment, and to make fine to the King.

But yet againe, sozasmuch as this last Statute did not extend to those that entred peaceably, and then held with Force: nor yet reached to the offendours, if they were remooued before the coming of the Iustices: nor made restitution of the possession so forcibly gotten: nor gaue any paine against the Sherife that did not obey the precepes of the Iustices in this behalfe: it was not onely ordained by a third Act (made 8. H. 6. cap. 9.) That the said former statutes should bee holden and duelie executed. But it was adioyned also thereunto, If any from hencefoorth make such forcible entrie into lands, tenements, or other possessions: or them holde forcibly, after complaint thereof made within the same Countie to anie of the Iustices of the Peace there by the parties griued, the Iustices (or Iustice) so warned shall in convenient time cause the last said Statute duelie to be executed at the costes of the said partie so griued.



And whether the persons (making such entries) bee present or auoyded before the Iustices comming: the same Iustices (or Iustice) in some good towne next to the said tenements, or in some other conuenient place at his discretion, shal haue power to enquire by the people of the same Countie, as well of them which made such forcible entries into landes, or tenements, as of them which helde the same with force: And if it be found before any of them, that any doth contrary to this statute, then the said Iustices (or Iustice) shall doe, the said lands or tenements to be resealed, and shall put the partie (so put out) in full possession of the same. And when the said Iustices (or Iustice) make such inquiry, they shal direct their Precept to the Sherife, commaunding him on the Kings behalfe, to cause to come before them and euery of them, sufficient and indifferent persons, dwelling next about the same lands or tenements, wherof euery man shal haue lands or tenements of the cleere yerely value of fortie shillings at the least; and the Sherife shall returne twentie shillings in issues vpon euerie one of them at the first Precept returnable, and at the second fortie shillings, and at the third five pounds, and at euery day after, the double. And euery sherife of Countie, and bailife of franchise, that shall not duely make execution of the saide Precepts, shal forfait to the king twenty pounds for euery default, and shall moreouer make fine and raunsome to the king. And as well the Iustices

Iustices (or Iustice) aforesaide, as the Iustices of Assises, may here and determine such defaults of sherifes or Bailifes, as well by bill at the suit of the partie griued, for himselfe, as for the king only by way of Enditement: and vpon such due attainder, hee which sueth for himselfe and for the king, shall haue the one moitie of the saide twenty pounds, together with his costes and expenses: and such Proesse shall bee against such so indited, or sued, as lieth against any person indited, or sued, by writ of Trespasse with force and armes against the Peace. And the Maiors, Iustices, or Iustice of the peace, sherifes and Bailifes, that are in Cities, Townes or Boroughs (hauing fraunchise) shall haue like power there in the articles aforesaide, as the Iustices of peace, and sherifes in the Counties haue.

But they which keepe by force their possessions in any lands or tenements, whereof they or their auncestors, or they whose estate they haue therein, haue continued their possession in the same by three yeeres or more, shall not be endamaged by force of this statute.

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

This statute (8. H. 6.) enableth any one Iustice  
A 3 of



of the peace, to giue remedy in this hurt of Forcible entrie and holding: and is made aswell against such as enter with Force and hold then peaceably: & against those that enter in peaceable sort, & then maintaine their possession forcibly: as also against as many, as doe both Enter and Hold in forcible maner. Fitzh. Nat. Br. 148. & 3. E. 4. 19.

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

Two sorts  
of Force.

Then as the Ciuilians doe handle two sorts of Force: of which they call the one, *vim*, and *vim simplicem*, *privatam*, *sive quotidianam*: and the other *vim armatam*, *atrocem*, & *publicam*, because the first is void of any feareful outrage, and the latter seemeth to kindle the coales of sedition it selfe: so likewise, our law taketh knowledge of two maners of Force: whereof the one is rather intellectual then actuall, and may therefore be termed, a Force in the consideration of law, which accounteth al that to be *vis*, which is contrary to *ius*. But the other is apparant by the act it selfe, which alwaies carrieth some feareful shew, and matter of terrour (or trouble) with it.

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

the former onely, and *armis* to this later.

And therefore, if I do but hawke, or walke, (for my pastime, or recreation) ouer another mans ground, he may haue his action of Trespas against me, *Quare vi & armis &c.* For, though I meant no harme to him, or his, yet (in iudgement of law) I might not (in such case) passe vpon his ground without licence. But this is not that force, that needeth the helpe which is provided by these statutes: for 34. H. 6. 26. a Wit vpon the statute, 5. R. 2. ca. 7. was disallowed, because it contained *vi et armis* only.

Againe, if a man doe enter vpon the freehold of another, and do there fish the waters with an angle, or cut downe the grasse with a sick, or fell the trees with an axe, or take away any of his goods in his absence: this is accounted a disseisin with Force and armes: Lib. Ass. 11. pl. 26. 11. H. 4. 16. Assis. Fitzh. 301. & 21. E. 3. 34. And yet I doubt also, whether any of these be of themselves Forcible entries, of that nature which these statutes doe take in hand to punish. For, albeit they haue in them more actual Force, then those other trespass whereof I spake last before: yet, whilst the doer of them neither executeth apparant violence against any person, nor is furnished with weapon, nor armed with company, that may offer any dreadfull disturbance, I see not how these Statutes (which haue for their only marke, strong hand, and multitude of people) can hurt, or so much as hit him.

So that, if a man were indicted vpon this Statute (8. H. 6.) for that hee disseised another, *vi &*



*armis* (viz. *gladijs, &c.*) without saying, *manu forti* &c. or *cum multitudine, &c.* the bill (as I thinke) would be insufficient: vnlesse it were holpen by concluding afterward, *contra formam statuti predicti*, or by som other matter that implied so much. Therefore,

*Paulo maiora canamus.*

Forcible entrie.

If one, or mo persons, shal come weaponed (especially with weapōs not vsually bozne, as bows, bills, guns, or such like) to a house, or land, and shall violently enter thereinto; this is a forcible entrie within the meaning of these statutes: much moze, if he or they shall there offer violence, or feare of harme, to the person of any that is in possession thereof: and most of all, if hee or they shall forcibly and furiously expell, and vnye another out of such his possession.

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

And, albe it that of thre (or foure) which come (in one companie) to make such a forcible entrie, onely one of them doth vse force, and violence, yet are all the rest also guilty of this force with him.

Fitzh. Imprison. 22.) Neither is it denied (10. H. 7.

H. 7. 12.) to be a forcible entrie, when the master entreth, being attended with a greater number of seruants, then vsually do wait vpon him. For whether a man doe actually vse force in his entrie, or do come so readily appointed, and arayed for it, that other men may reasonably be afraide that he intendeth to make his way by force rather then he will faile of his desired purpose, it seemeth to weigh to a violent, (or Forcible) entrie.

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

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

Furthermoze, if a man that hath a rent issuing out of the Land, shall distraine for the same with force, this will counteruaile an Entrie with force: and



and much more, if he shall by such forcible distresse leuie a rent, that is not due to him, but to another man 20. H. 6. 11. & Lib. Ass. 43. pl. 6. For action vpon the Statute of Forcible entrie lieth for a rent: 22. H. 6. 23.

But now, if diuers persons shall make a forcible entrie to the vse of another man (which is not then present with them, but afterwarde agreeth thereunto) this shall not charge him for the Force, howsoeuer he may become a disseisor by it: for (as it is said, 2. H. 7. 16.) a forcible entrie cannot be adiudged against a man, without an actual entrie be also made by him.

Forcible holding.

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

If a Iustice of the Peace come to the house (that is supposed to be holden with Force) and there findeth but one person, which obstinately keepeth the doore shut against him, and wil not suffer him to enter: this is a Forcible holding, Marrow. So is it, if when y<sup>e</sup> Iustice entreteth the house, he shall find persons harnessed, or in other warlike sort appointed, or hauing such furniture lying ready in the house to be used by them: Marrow. But if a man shall Peaceably enter into a house, wherein he findeth arms, or weapon for the war, then (as I think) the only suffering of it to remaine there (without y<sup>e</sup> vse thereof) wil not charge him as a Forcible holder.

Againe,

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

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

¶



The duetie of  
the Iustice.

Complaint  
is not neces-  
sarie.

Costes.

The right is  
not commonly  
disputable.

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

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

But, howsoeuer hee (being then a practiser in the law) might think it good to stand vpon his fee: yet I aduise our Iustice of the Peace to goe forward, as hauing moze regard of his credite, oathe, and dutie.

Neither ought he to stagger, or stay at all, about the right or wrong, of his Title that entreceth, or holdeth forcibly. For considering that the said statute (5. R. 2.) doth without exception prohibite all entrie with force, howsoeuer the entrie be other-  
wise

wise lawfull: and seeing also, that the other Statute (8. H. 6.) permitteth no forcible holding, but onely where threë yeeres possession haue gone before: And weighing mozeouer, that both they and this other (15. R. 2.) doe altogether labour to repressse force and violence, and haue also made the Iustice of the peace their minister therein: I see no cause, why the Iustice of Peace (who perhaps shal want sufficient learning in the law to discerne of the right, or title, and yet may be both a fit person to remoue the force, and able enough to restore the possession) should be tied to the discussion of the right or title, of either of the parties.

And this I gather vpon the opinion of all the Court (9. H. 6. 19.) which was the very next yere after the making of the last of these statutes: where it is said, that the Action vpon the Statute 8. H. 6. is for the right onely, and must alway say, *Illicite ingressus est*, or *vbi ingressus non datur per legem*: but the Enditement is for the force in respect of the King, to whom the partie shall make Fine, although his right be neuer so good, and sound.

And thereupon, the booke 22. H. 6. 18. admitteth this case: that if A. shall disseise B. of his land, and B. doe enter againe, and put out A. with force: A. shall be restored to his possession by the helpe of the Iustices of the Peace, although his first entrie were utterly wrongfull: and, (notwithstanding the same restitution so made) yet B. may well haue an Assise against A. or may enter peaceably vpon him againe.

And



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

Recozding of  
the Force.

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

The record of the Force.

Kanc.

**M**emorandum quod octauo die mensis Ianuarij, Anno regni Domine nostre Elizabethæ, &c. Quæstus est mihi Samsoni Lennard, vni Iusticiariorum dictæ Dom. Regine ad pacem in dicto comitatu conseruandâ assignatorum quidam A.B. de Wrotham in dicto comit. Yeoman, quod C.D. de Wrotham predicta, & nonnulla alij pacis dictæ Dom. Regine perturbatores ignoti, in domum mansionalem ipsius A.B. in Wrotham predicta, manu forti ingressi sunt, & ipsum A.B. inde disseisuerunt, ac eandem manu forti & armata potentia adhuc tenent: ac proinde petijt à me sibi in hac parte remedium apponi. Qua quidem querimonia & petitione audita, ego præfatus S.L.

S.L. immediatè ad dictam domum mansionalem personaliter accessi ac in eadem domo adtunc inueni præfatum C.D. & quosdam E.F. & G.H. &c. domum illam vi & armis manu forti, & armata potentia, viz. arcubus & sagittis, gladijs, pugionibus, galeis & Loricijs tenentes contra formam Statuti in Parlamento Dom. Rich. nuper Regis Angliæ secundi, anno regni sui decimo quinto tento, prouisi: ac contra formam diuersorum aliorum Statutorum. Ac propterea ego præfatus S.L. predictos C.D. E.F. & G.H. adtunc & ibidem arrestaui, proximaque gaole dictæ Domine Reg. apud Maidstone in dicto comitatu duci feci, ut de dicta manu forti tentione per visum & recordum meum conuictos ibidem moraturos quousque fines dictæ Domine Regine pro transgressionibus suis predictis fecerint. Datum apud Wrotham predictam sub sigillo meo die & anno supradictis.

Per me præfatum, Sa. Len.

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

**G**eorge Chorne, one of the Iustices of the Kanc. Peace of our Soueraigne Lady the Queens Maiestie within her said Countie of Kent, to the keeper of her Maiesties gaole at Maidstone in the said county, and to his deputie & deputies there, and to euery of them greeting: Whereas vpon complaint made vnto me this present day by A.B. of Wrotham, in the said Countie Yeoman, I went



went immediatly to the dwelling house of the said A.B. in *Wrotham* aforesaid, and there found C.D.E.F. and G.H. of *Wrotham* aforesaid Labourers, forcibly, and with strong hand, and armed power, holding the said house, against the peace of our said Soueraigne Ladie, and against the forme of the Statute of Parliament thereof made in the 15. yeere of the reigne of the late K. Richard the second. Therefore I send you (by the bringers hereof) the bodies of the said C.D. E.F. & G.H. convicted of the said forcible holding, by mine owne viewe, testimonie, and recorde: commanding you in her Maiesties name, to receiue them into your said Gaole, and there safely to keepe them, vntil such time as they shal make their fines to our said Soueraigne Ladie for their said Trespasses, and shall be thence deliuered by the order of the law of the land. Hereoffaile you not, vpon the perill that may follow thereof. Yeouen at *Wrotham* aforesaid, vnder my seale, the day and yere abouesaid.

By me the said G.C.

Enquire of  
the Force and  
restitution of  
possession.

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

of Enquire, and Restitution.

Concerning the Enquire, Marrow noteth these few things: First, that it is no cause to impeach the Enquire, though the Iustice do not go to see the place where the force is: and yet the words of the statute are, Whether the persons be present, or auoided before the Iustices comming: Secondly, that albeit the letter of the Statute is, that each Iurour of this inquirie ought to haue lands, or tenements of the cleere yerely value of fortie shillings: yet if any of the Presentors haue not so much land, the presentment is good for the Queen: but then (saith hee) the partie shall haue no restitution by it, if that matter be shewed at the time of the restitution to be made. Howbeit I my selfe do not well perceiue, how the restitution (that the Iustice of the Peace ought to make vpon such a presentment) can bee stayed, saue onely either by remoouing of the recorde into the Bench of the Queene, or by alleadging three yeres quiet possession: Thirdly, that if the Sherife shall returne smaller issues vpon the Enquirors then the Statute doth appoint, yet the party shal neuer take advantage of it.

Furthermoze, though in some cases for the restitution of the offendours (by imprisonment, and fine) it be not altogether requisite to be found, that the partie griued is actually throuen out of his possession by them, insomuch as the onely holding with force will suffice for that purpose: yet (in other cases) for the hauing of the restitution by the

It

statute,



Statute, this putting out must of necessity (saith D. Marrow) be found by the Enquirie.

And therefore, if the truth of the case be, that after the death of A. an other man abateth (or entereth) into his land forcibly, before the heire of A. hath gotten any actual possession indeed: the heire of A. shall haue no restitution (as Marr. saith) because he had but a possession in Lawe onely. So, if it be presented, that you were seised, vntill that A. entred vpon you with Force: you shall neuer haue restitution by it, because it may be that he entred forcibly, & that yet you were not put out of possession by him, Marrow. But if it be found that you were seised, vntill that A. put you out with force: or vntill that A. put you out, & that he holdech in with force, then you shall be restored to your possession, Marrow.

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

Moreouer, it is not enough that the putting out be found, vntill the Enditement doe also containe *adhuc extra tenet*, that he yet holdech the other out of his possession: without the which, it may bee thought that the other hath gotten in againe, and then restitution shall be needles.

Againe, this restitution ought to be made to him that was put out, and to none other: So that, if the father be put out by force, and dyeth after the

time

time of Enquirie, and before restitution, his heire shall not haue restitution vpon it, Marr.

And in some cases (saith Marr.) there may bee a mutuall (or crosse) restitution awarded: as, if it be found by one Enquirie, that I my selfe was seised vntill that A. disseised me with force: and by an other Enquirie, that the same A. was seised, vntill by me disseised with force: now either of vs may pray restitution, and shall haue it against the other: because it is by seuerall Inquisitions, whereof the Iustices (supposed to be seuerall) cannot take mutuall vnderstanding: and then shall he be in the worse case, that hath the first restitution: for the other shall haue him remooued, by his restitution that cometh after. So, (by his opinion) if it bee found, that I my selfe was seised, vntill disseised by A. with force, whom also B. disseised with like force: Here if A. getteth restitution against B. then may I also haue my restitution against A. But if I first obtaine my restitution, then hath A. lost the aduantage of his: because it appeareth by the selfe same Inquisition, who had the first possession. And if it happen two Joyntenants of land to be put out with force, and the one of them onely will sue for restitution, hee ought to haue it made vnto him, Marrow.

But whether a Lessee for yerres of land, that is expelled by force, shall be holpen by these Statutes, it hath bene a good question. For, on the one side it is saide, that albeit the preamble of the Statute (15, Ric. 2.) hath the word (possessions) which

Restitution to  
a Lessee for  
yerres.



which may extend to a Lease for yeeres, because that of such a lease a man is said to bee possessed, euen as he that hath an inheritance, or freehold, is said to be seised: and although also the puruiew of the statute (8. H. 6.) useth the same worde (possessions) also, yet that (say they) is but onely where the force is to be remooued, and where the offenders are to be punished by imprisonment and Fine: all which they graunt may bee done in the behalfe of a Lessee for yeeres: but seeing that seuerall branch of the statute 8. H. 6. (which doth directlie prouide the restitution) omitteth that word possessions, therefore (say they) none shall haue restitution but such onely as be put out of lands or tenements: and those words must be understood of them onely, that haue inheritance, or freeholde at the least. So that, if such a Lessee (or any Copyholder) will bee aided by way of restitution, the Enquirie must (by this opinion) finde the Lessor (or the Lord) to be forcibly put out, and expelled: that by his restitution, the Lessee or Copiholder, may be restored also.

But on the other side Marrow maketh no doubt, but that such a Lessee for yeeres may haue restitution by the hand of a Iustice of the Peace. And (to accompanie him herein) who can denie, that the same incontinencie (which these Lawes doe labour to remooue) followeth not equally in either case: Besides that, the verie words of that special branch are these, If it be found that any doth contrarie to this Statute, then the said Iustice shall

cause

cause the said lands and tenements to be resealed, and shal put the partie (so put out) in full possession of the same. Upon which words it followeth: First, that if he which expulseth by force a Lessee for yeeres, do contrarie to this statute (as it is granted that he doth) then that Lessee ought to be restored to his possession by this branch: and secondly, if they will haue the life of the law to rest onely in the bare letters, and sillables thereof, (a thing which wise men doe condempne, and cal *verborum ancipitum*) then the words bee, that he shall put in full possession, which word possession agreeth better with a lease for yeeres (as themselves say) then with a freehold, or inheritance, for which the word seisin is altogether used. But the common opinion swayeth to the other side: therefore leauing this to the iudgement of the better learned, I wil returne to the office of our Iustice.

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

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

And it is certaine, that if the presentment bee sent into the kings bench, the partie may haue his



restitution awarded out of that Court by the equitie of this statute: as it is holden 7. E. 4. 18. & 4. Hen. 7. 18. But if it happen that Iustice of the Peace (before whom the Enquirie was taken) to die before Restitution be deliuered by him, it may be doubted, whether his fellow Iustices (hauing the presentment brought vnto them) may at their Quarter Sessions award the restitution: because the Statute seemeth to referre it to them onely before whom the Enquiry was made. It is (I know) the opinion of M. Marrow that they may: ground- ing himselfe (as I thinke) vpon the same equitie, by which the Iustices of the Kings Bench are enabled to doe it: Howbeit it may appeare (Collect. Dier 187) that the law is otherwise taken, both therein, and also in the graunting of a *Superfedeas* to stay the Restitution: because no Iustices can doe the one or other, but they onely that were present at the Session when the Enditement was found, except those of the Kings Bench, who (for the supposed presence of the Prince) do carrie a supream authority in these cases of the Crowne.

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

*Trauerse.*

Again, whether (after such a presentment) the partie charged may be admitted to his Trauerse before the same Iustice of the Peace: & if not, then where, or before whom, this trauerse is to be made or tendered, I will not take vpon me to resolve.

This

This seemeth (vpon consideration of both the statutes) to be plaine, that such persons as the Iustice of Peace doth finde, and see, continuing the force at his coming to the place, them hee may immediately commit to the Gaole, as convict of that offence, notwithstanding any their gaine saying whatsoeuer. But vpon the inquirie, I see not that the Iustice of Peace hath any other power committed vnto him (by 8. H. 6.) then to make the restitution only, which also it seemeth that he may make, notwithstanding this offer of Trauerse. And if he wil not so doe, the safest way (in mine opinion) is, to deliuer, or certifie the presentment into the Kings bench: & so, to referre the further proceeding therein to their further power & authoritie.

Again, touching the Assessment of the fines or ransomes, vpon the offendours, so convicted by the Record of the Iustice of peace, and by his warrant conueyed to the Gaole, some men do thinke, that the same Iustice hath sufficient authoritie to put them to their Fines, and vpon pledges (found for the payment thereof) to deliuer them out of prison againe, when hee by his discretion shall thinke it good. For (as they say) hee is the onely appointed Iudge ouer this offence, and onely hath the custody of that Record, and knoweth best both how to moderate the imprisonment, and to rate the fine, according to the quantity of their trespass and offence: And, as he is bound by his oath and dutie (in their opinion) to estreat all issues, and amerceamentes growing to the Queene by his

*Assessment  
of the Fine.*

R 4

enquirie



enquirie: So, ought he also to estreate, and sende this into the Eschequer: that from thence the Sherife may bee commaunded to leuie it to her Maiesties behoofe.

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

Continuance  
of three yeres  
possession.

Nowe must I conclude, as doth this Statute (8.H.6.) with this prouiso: that such as keepe their possession by force, after that they haue the continuance of three yeres possession, shall not be endammaged by force of that Statute. And here the booke (14.H.7.28.) stayeth me with one other question: for there it is said, that albeit in an Action vpon this Statute, it be a good Barre for the defendant to plede his three peeres possession, though it were altogether by force: yet (vpon an enditement) twenty yeres possession by force shall neither be any plee against the Queene, nor shall hinder the partie griued from his restitution out of the Kings bench. Vpon this authoritie, some haue conceiued this general opinion: that the continuance of three peeres possession will in no case protect a man against the Queene, but only against the partie in his priuate action by way of Barre.

Howbeit, if the words of the Prouiso, and the reason of inserting the same, be truly weyed, that opinion will not fall out altogether so reasonable, as it hath the shewe to be faire, and plausible. For the wordes are, that such an one shall not bee endammaged

damaged by force of the Statute: and there is no doubt, but that he is deeply endammaged, which is both imprisoned, fined, and put out of his land, that he hath so long and quietly possessed.

Againe, when this Statute had in generall termes brought (within the penaltie of 15.R.2.) all such as should deteine any lands or tenements with Force after y they had peaceably entred into the same: yet was it thought iust, and conuenient, to exempt from that punishment all such, as (hauing entred in peaceable maner) had also continued their possession three yeres together without any forcible detainer of the same. And therefore, it seemeth to mee, that such persons be not onely to take the benefite of that prouiso, in actions vpon the Statute to be commenced against them: but also to vse the aduantage of the same against an Enditement for the Queene, to auoide the Imprisonment, and fine, and to debarre the partie of his Restitution by the hand of a Iustice of the Peace.

And hereupon Master Marrow writeth, that If the three yeres possession be found by the Enquirie, then the forcible deteinors shall haue the aduantage thereof against the King also: which opinion I take to be very reasonable, not generally vnderstoode, but especially, and where (as I said) the deteinors did enter peaceably. For so was the opinion of Hales and Portman, Iustices 6. & 7. E.6. Report Dalison: & so likewise was the iudgement of all the Court, 22.H.6.8.

Neuertheles, the case being put (as it is in that Booke,



Booke, 14. H. 7. 28.) both of a wrongfull, and forcible entrie at the first, and then of a forcible deteining also (though sundrie yeares continued) I doe easily agree that such a violent holder should be denied the protection of this Prouiso, not onely in respect of the Queene vpon an Enditement, but also in regard of the partie grieved touching either his action or restitution.

So that the difference will rest in this (as I thinke) whether that continuall possession of three yeares doe immediately follow a peaceable, or forcible entrie. Continuall I say, because Judge Brooke (Tit. Forcible entrie 29.) seemeth to hold, that if that possession by three yeares haue not bin continuall, and without interruption, then (if he reenter) he cannot hold or deteine with force, bee his right or title neuer so good, and lawfull. See *Collect. Diar.* 141. 14.

For the resolution of some part of this Question and for remedie of a spectall inconuenience that grew thereby, the Parliament 31. El. Reg. cap. 11 (hauing first written and allowed of that Prouiso in the statute 8. H. 6.) layeth downe a Law in these words following: Whereas now of late, diuers of her Maiesties subiectes, hauing entries made vpon their possessions (hauing had such long & quiet possession for disturbing of such Entrers, and for keeping of their possession against such Entrers by colour of Enditementes of Forcible entrie, of forcible keeping of possession, found against them by meanes of the oathes of such Entrers,

Entrers haue beene remoued and put out of their dwelling houses and other their possessions, which they haue quietly helde by the space of three yerres together, or longer time, next before such Inditements found against them, against the true meaning and intent of the saide Prouiso or clause contained in the said Act: For remedie of which inconuenience, and for true declaration & explanation of the Law therein, Be it ordeined, declared, & enacted by the authoritie of this present Parliament, that no restitution vpon any Inditement of forcible entry, or holding with force be made to any person or persons, if the person, or persons so indited hath had the occupatiō, or hath beene in quiet possession, by the space of three yeares together next before the day of such inditement so found, and his her or their estate, or estates therein not ended nor determined: which the partie shall and may alleadge for stay of restitution, and restitution to stay vntill that bee tried, if the other will deny or trauesse the same. And if the same allegation bee tryed against the same person or persons so indited, the same person or persons so indited to paye such costes and dammages to the other partie, as shall bee assessed by the Iudges, or Iustices before whome the same shall bee tried: the same costs and dammages to be recouered and leuied, as is vsuall for costes and dammages contained in Iudgements vpon other Actions. 31. Elizab. cap. 11.

And



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

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

**G**eorgius Riuers, vnius Iusticiariorum Domina Reg. ad pacem in comitatu Kanc. conseruandam assignatorum vicecomiti eiusdem Comitatus salutem: Ex parte dictæ Dom. Reg. tibi mando & precipio, quod venire facias coram me apud Ightham in comitatu prædicto xx die Septembr. proximo futuro xxiiij probos, sufficientes, & legales homines de vicineto de Ightham prædict. quorum quilibet xl. sol. terrarum & tenementorum vel reddituum per annum ad minus ultra repisas, ad inquirendum super sacramentum suum pro dicta Domina Regina, de quodam ingressu manu forti facto in messuagium cuiusdam A. B. apud Ightham prædict. contra formam statuti in Parlamento Domini H. nuper Regis Anglia sexti, anno regni sui octauo tento, editi, ut dicit: Et videas quod super quemlibet Iuratorum per te in hac parte impanellandorum xx. solid. de exitibus ad præfatum diem retueris: & hoc nullatenus omittas sub pana xx. lib. quam noueris te incursum, si in executione præmissorum tepidus aut remissus fueris: Et habeas ibi tunc hoc præceptum. Teste me præfato G. R.  
x. die

x. die Martij Anno regni Domina nostra Elizab. Dei gratia Angl. Franc. & Hib. Regina, fidei defensoris, &c. 41.

And upon default of apparance of these Iurozs, an alias may be awarded, and after that pluries infinite, till they come: but so, that at the day of the second writ r. s. must bee returned, at the third writ C. s. and at euery day after, the double, as before hath been touched.

The Enquirie (or Verdict) of the  
Iurozs.

**I**nquisitio pro dom. Regina capta apud Ightham in comitatu Kanc. xxix. die Iulij, anno regni Domina nostra Elizabethæ, Dei gratia, Angliæ, Franciæ, & Hyberniciæ Regina, fidei defensoris, &c. xli. Per sacramentum, A. B. C. D. E. F. &c. coram Henrico Palmer Milite, vno Iusticiariorum dictæ domine Regine ad pacem in dicto comitatu conseruandam, necnon ad diuersa felonias, transgressiones, & alia malefacta in eodem comitatu perpetrata audiendū & terminandum assignatorū: Qui dicunt super sacramentū suum prædictum, quod C. D. de Ightham præd. Yeoman, diu legitime & pacifice seisitus fuit in Dominico suo ut de seodo de, & in vno messuagio &c. cum pertinentijs in Ightham prædict. & possessionem ac seisinam suam prædict. sic continuauit, quousque A. B. de &c. & alij malefactores ignoti primo die Septembr. ultimo elapso, vi & armis, videlicet, cum baculis, gladijs, arcibus & sagittis, in messuagium prædict. &c. intra-



uerunt, ac ipsum C. D. inde disseisuerunt, & manu forti expulerunt, & eundem C. D. sic disseisitum & expulsum ab eodem messuagio, &c. à prædicto, primo die &c. usque ad diem captionis huius inquisitionis cum huiusmodi fortitudine & potentia armata extrà tenuerunt, & adhuc extrà tenent, in magnam pacis dicti dom. Regina perturbationem, ac contra formam Statuti in parlamento domini Henrici nuper Regis Anglia sexti, anno regni sui octauo tento, in tali casu editi & promissi: ubi nullus eorū, nec aliquis alius cuius statum ipsi aut aliquis eorū habuerūt, aut habuit, aliquid in eodē messuagio, &c. aut in aliqua inde parcella habuerunt, aut habuit, infra tres annos proximos ante ingressum suum prædictum, neque alio tempore præcedente ad notitiam Iuratorum prædictorum.

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

**H**enricus Palmer Miles, unus Iusticiariorum, &c. assignatorum: Vicecomiti eiusdem comitatus Salutem: Cum per quandam Inquisitionem patriæ coram me captam apud Ightham in comitatu prædicto, 29. die Iulij, &c. super sacramentum A. B. C. D. E. F. &c. ac per formam Statuti de ingressibus manu fortis ad illis in tali casu promissi compertum fuit quod A. B. &c. & alij &c. primo die Septembr. &c. in quoddam messuagium &c. C. D. &c. in Ightham prædict. vi & armis ingressi sunt, ac ipsum C. D. inde tunc manu forti disseisuerunt & expulerunt, & prædictum

dictum C. D. sic expulsus à prædicto messuagio &c. à præd' primo die Septembr. &c. usque ad diem captionis Inquisitionis præd' manu forti, & cum potentia extrà tenuerunt, prout per Inquisitionem prædictam plenius liquet de Recordo, Ideo ex parte dicti dom. reg. tibi mando & præcipio, quod (ad hoc debitū requisitus) una cum posse comitatus tui (si necesse fuerit) accedas ad messuagium & cetera præmissa, ac eadem cum pertinentijs resseisiri facias, & præfatū C. D. ad, & in, plenam possessionem suam inde prout ipse ante ingressum prædictum fuerat seisitus, restitui, & mitti facias, iuxta formam dicti statuti & hoc nullatenus omittas, periculo incumbente. Teste me præfato &c.

I come (at length) to the performance of that promise which I made concerning the statute of Northampton: for that also is of late dates frequently put in vze for the punishment of Forcible Entries.

That Law (in effect, and for this purpose) is thus: No man whatsoever (except the Kings seruants and Ministers, in his presence, or in executing his precepts, or their offices, and such as shall assist them: and except it bee vpon crie or proclamation made for armes, to keepe the Peace, and that in places where such actes doe happen) bee so hardy to come before the kings Iustices, or other his ministers doing their offices with force and armes: Nor bring any force in affray of the countrey: nor goe, nor ride armed, by night, or by day in Faires or Markets, or in presence

The executi  
on of a Wric  
vpon the Sta  
tute of North  
ampton.



presence of the Iustices or other ministers, nor in any place elsewhere, vpon paine to forfait his armour to the king, and his body to prison at the kings pleasure, 2.E.3.cap.3.

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

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

At his comming to the place, where the force is supposed by this Writ, hee may cause three Oyes for silence to be made, with this, or such an other Proclamation.

THE

THE Queenes Maiesties Iustice of her peace straightly charge, and in her Maiesties name commandeth, all and euerie person to keep silence, whilst her Maiesties writ vpon the Statute made at Northampton in the second yeare of king *Edward* the third, her noble progenitor (deliuered to the said Iustice) be read, and proclamation be thereupon made accordingly.

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

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

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

*God save the Queene.*

This done, the Iustice may enter, and search whether there bee any force of armour or weapon woꝛne or boꝛne against this proclamation: or otherwise he may enquire thereof by a Iurie, for so the



the Writ it selfe doth warrant him to do : and if any such bee found, he ought to imprison the offenders, and to seize and apprice the armor and weapon so found with them. But if (vpon the proclamation made) they doe depart in peaceable manner, then hath bee no warrant by the Writ to commit them to prison.

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

Upon the Writ it selfe these words may be endorsed.

*Executio istius Brevis patet, in quadam schedula eidem Breui consuta.*

And the Scedule may be thus.

**E**Go Rogerus Twysden armiger, unius custodum pacis Dom. Reg. in comitatu Kanc. certifico, in Cancellariam dict. dom. reg. quod virtute istius Brevis mihi primo deliberati, decimo die Aprilis, anno, &c. publice proclamari ex parte dict. Domina Regine feci, apud B. cuius in dicto Breui sit mentio, prout in dicto breui precipitur: Et quod quidam A. C. & D. E. de F. in comitatu predicti Labourers, predictionem proclamationem pernipendentes, post proclamationem predictam ibidem sic factam armati inierunt, ac armatam potentiam ibidem duxerunt, scilicet duas galeas, unum arcum, & decem sagittas, duos gladios, & totidem pugiones, in perturbationem pacis dict. dom. reg. ac terrorem populi sui, necnon in contemptum Statuti in dict. Breui specificati, manifestum: Ac proinde dict. A. C. & D. E. una cum armaturis suis predictis arrestantur.

*arrestantur ac seisi sunt & eorum corpora ad proximam prisonam dict. dom. reg. in comitatu predicto duci feci ibidem moratura donec aliud a dicta domina regina pro ipsorum deliberatione habuerit in mandatis. Armaturis etiam eorum predictis appretiari feci, per A. B. C. D. & E. F. de B. predicti. Yeomen, ad hoc iuratos: qui dicunt super sacramentum suum predictum quod predict. duas galeas valent decem sol. Et quod dict. arcus & 10. sagittarum valent 6 sol. Et quod gladij predicti valent 20. solidi. Et quod dict. pugiones valent 5. sol. & sic quod armatura predicta valent in toto 41. solidi. de quibus paratus sum respondere secundum tenorem dicti Brevis. In cuius rei testimonium, huic presenti certificationi mea sigillum meum apposui Dat. apud B. predicti die & anno supradictis.*

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

For not onely by the plaine wordes of the Statute of Northampton, the Wardeins of the peace, haue power (within their Wardes) and are commaunded to execute this acte vpon a paine: But also by good implication in the Commission it selfe, euery Wardein of the Peace hath the Statute of Northampton committed to his charge. So that both in the matter and manner, the doing is all one, sauing that (if he do it as a Iudge) hee needeth not to make any proclamation (the statute being a prohibition in it selfe) nor yet to send any



Certificat into the Chancerie, but onely to make his owne Record of that which he shall do in this behalfe, and thereout to send some estreit into the Eschequer, that the Queene may be answered of the Armour, or of the value thereof.

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

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

## CAP. V.

**O**ur Parliament, seeing well that the assemblie of many for breach of the Peace, offereth moze daunger and hurt, both generally to the common wealth wherein it happeneth, and particularly to him against whom it is bent, then the force of any one or two turbulent persons can bring, haue no lesse carefully endeouored to suppress the one, than wisely

wisely foreseene to preuent and punish the other. And therefore not onely the Commission giueth power to enquire of Conuenticles against the Peace, but sundry Statutes also haue deuised many meanes & paines to meet with, & to punish the same: whereas before, they were punishable onely, as other trespasses, though sometimes by a greater, and sometimes by a smaller fine, as the case it selfe required consideration.

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

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

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

But forasmuch as all these conuentions may be without any apparant shew of Assembly against the peace (though otherwise they be finable offences vnder the name & calling of Conuenticles, as Mar. thinketh) I will leaue the, and resort to those other that the commission saith to be done, *vi armata*,



and that do bring manifest terror vnto the subiect. Of these some consist of a number of people, gathered together disorderly for the cause of some one or of a few persons, and do not breed any generall or present daunger to the Estate or Government, and yet be against law, and be called Riots, Routs, and assemblies against the law: against which the Statutes 13. H. 4. cap. 7. 2. H. 5. cap. 8. & 19. H. 7. cap. 13. were specially provided: and befoze that the penaltie of the statute of Northampton, 2. E. 3. cap. 3. was laid vpon them by 2. R. 2. ca. 6.

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

They of the first kind be, as I haue said commonly called Vnlawfull Assemblies, Routs and Riots: concerning the proper difference betweene euerie of which, all men doe not altogether agree. And therefore (reiecting all diuersity of opinions)

I

I will follow that which I take to be most probable, & at this day most commonly receiued. Wherein neuerthelesse I submit my pen to the experience of the Star chamber, as to the best guide and direction, that in this case the Iustice of Peace can haue to follow.

An vnlawfull Assemblie, is the companie of three or moe persons, disorderly comming together, forcibly to commit an vnlawfull acte, as to beate a man, or to enter vpon his possession, or such like.

Assemblie

A Rout (saith Marrow) in such a company so assembled, for their owne common quarrell as where the inhabitants of a Township come forcibly together to throw downe a hedge, ditch, or pale in claiming their Common: or to beate a man that hath done vnto them some publike offence, or displeasure. But the Statute (18. Ed. 3. Stat. 1.) speaking of Routes that are brought into the presence of the Iustices: and the Statute (2. R. 2. ca. 6.) that treateth of ryding in great Routs to make entry into landes, to beate men, or to carrie awaye their wiues, &c. doe seeme to vnderstand the worde Rout in a moze ample & large meaning. And therefore I will describe it thus: A Rout is a disorderred assembly of three or moe persons moving forward to commit by force an vnlawfull acte. If it is a Route, whether they put their purpose in full execution or no, if so bee that they doe go, rde, or moue forward after their first meeting Bro. Riot 4. & 5. And thereby it seemeth to me to bee

Rout

L 4

the



the very same, which the *Germaines* do yet call Rot, that is a troupe, or band of men, that do ride or go forward.

Riot.

A Riot is thought to be, where three or more persons, be disorderly assembled to commit with force any such vnlawfull act, and do accordingly execute the same. This I think to be deriued from the French word Riotter, signifying to scold (or hawle) because such manner of actes be commonly accompanied with words of hawle.

And thus (vpon the whole reckoning) an vnlawfull assembly is the first degree or beginning: a Rout, the next step, or proceeding: and a Riot the full effect and consummation of such a disorder and forbidden action.

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

But howsoever that stand, two speciall things there are, that be common and must concur, both in the vnlawfull assembly, rout, and riot, the one, that three persons (at the least) be gathered together: for so it is commonly holden at this day, as I haue learned: the other, that their being together doe breed some apparant disturbance of the Peace, eyther by signification of Speech shew of Armour, turbulent Gesture, or actuall and expresse Violence: so that eyther the peaceable sort of men be vniquieted and feared by the Fact, or the lighter sort and busie bootes be emboldened by the Example.

Things that  
be considera-  
ble in Riots,  
Routs, &c.

And in these matters, not onely the Fact it selfe but also the Manner of doing the same, falleth sometime iustly into consideration: in so much as the

the lawfulness, or vnlawfulness of the thing it selfe that is done or intended, doth not alwaies excuse or accuse the parties to a Riot, route, or vnlawfull assembly, but so, that the Manner and Circumstance of the dooing, must also bee brought into iudgement with it.

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

The maner.

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

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



a Riot, Marrow.

Furthermoze, the intention and purpose, of those that bee assembled, is woorthie the weighing. For, to vse harnesse on Midsummer night in London, or on May day in the countrie (for sport onely) is no such offence; seeing no terrour followeth of it: and the woordes in *terrorem populi*, seeme to bee materiall in an Inditement of this kinde.

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

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

And if many bee assembled, and none of them knoweth to what ende, it can make no Route, nor Riot (as M. Marrow thought) till the intent be knownen. For if the maister intend to make a Riot, and take his usuall seruants with him, not forgetteling them what hee intendeth to doe, and then committeth an outrage with them, this is no Riot, in

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

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

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

But, if a number of women (or children, vnder the age of discretion) doe flocke together for their owne cause, this is none assemble punishable by these statutes, vnlesse a man of discretion moued them to assemble for the dooing of some unlawfull act, as M. Marr. writeth.

Yet I remember wel, that (not many yeres ago) sundry women were punished in the Star Chamber, and



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

Finally, Marrow noteth, that if the Maior and Communitie of a towne doe assemble and make a route in their common quarell, this offence shall be iudged and punished in their Naturall persons, and not in their body politike.

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

The power of  
one Iustice of  
the Peace in  
Riot, &c.

One Iustice of the Peace, can neither make enquire of a rout or riot when it is done, nor assesse any fine, nor yet awarde any procelle for it, nor otherwise meddle with it (in the verie nature of a rout or riot) but onely as a Trespasse against the Peace, or vpon the statutes of Northampton or of Forcible entries, whereof I haue befoze treated.

And therefore, if he heare of any rout, or of any intention of a riot, he alone (or with his seruants) may goe to the place, and such as hee findeth riotously assembled and armed, he may arrest to finde Suertie of their Good abearing, and may commit them to Warde, if they refuse to giue it, and may take their weapons from them: And if he come to the place, and doe not find them yet commeth thither, he may leaue his seruants there, to make such arrest when they shall come: So also, if he be sicke,

hee

hee may sende his seruants to the place to arrest them.

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

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

So that (vpon the whole matter) one Iustice of the Peace alone may doe somewhat to prevent a Rout or a Riot, befoze it be done, and for the stay of it whilest it is in doing, but nothing (in effect) to punish it as a Riot, or Rout, when it is committed and done. For (as Iudge Fineux saith) in that case of Sir Tho. Greene, the Statute (which I take as I said to be that of 34. of E. 3. rather then 13. H. 4. which by expresse words requireth the presence of two Iustices at the least) was giuen as a hastie remedy, and for to prevent a mischief being imminent and befoze the eye: & therefore the Law

shall



shall largely construe the authoritie of a Iustice of Peace in that behalfe: So that hee shall neither need to make any Precept in writing, nor to expect the comming of his Companions nor to be present in his owne person, but may vse all reasonable meanes for prevention and stay of the euill. And yet the ordinarie power of punishing Routs, and Riots, resteth not in his hand alone, but rather belongeth vnto two Iustices of the Peace, as it shall hereafter appeare.

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

Rebellious  
and vnlawful  
assemblies.

The statutes (1. Mar. Parli. 1. cap. 12: & 1. Eliz. cap. 17.) doe make three degrees of Riotous and Seditious assemblies, in certaine speciall cases: the first, consisting of the common number of three persons, and being vnder the number of twelve: the second of twelve persons or more: and the third of fortie persons and upward: All which are to be punished diuersly, according to the number, intent, act, and obstinacie of the parties assembled: wherein there is some imitation of an ancient Lawe that the King Ina made against theues, whose degrees in offence he also seuerely punished by their number, saying thus: Deofas pe hat þoððe reofan menn; fram reofan hloþ of rið 7 þrit wīg 7 rýððan he ne; that

that is, Theues we call them, vntill the number of seuen men: from seuen, a Troupe, vntill 35. and an armie, aboue that number. But I will proceede.

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

And he also may (at his discretion) assemble her Maiesties subiects to take them: and may take them indeede if they disobay: and shall be unpunished for the hurting, maiming, or killing of any of them, if they make resistance. He also is to take the declaration of any person, that (being moued to any such assemblie) will within 24. houres after reueale the same vnto him.

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

What



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

## CAP. VI.

Statutes lying close in the Commission.

**B**Efore that I shall descende to shewe such further parts of power as bee giuen to one Iustice of the Peace by latter Statutes, it shall not bee amisse to take in my way, that remnant of his authoritie which lieth closed in the first *Assignamus* of the Commission, and hath not been yet fully applyed to the practise.

The whole consisteth of such members as I haue already shewed, namely, of the Statute made at Winch. 13. E. 1. of the Statute made at Northampton, 2. E. 3. ca. 3. the Statute made at Westminster, 5. E. 3. cap. 14. and the Statute made at Cambridge, 12. Ric. 2.

Of that Statute at Northampton I haue heretofore said what I thought. Concerning Winchester and Westminster, and the rest I say shortly now, that by the forme of the commission one Iustice of the peace may put the articles of them in execution: first, by commaunding fresh suit, hue and crye, and search, to bee made by the Sherifes, Bailifes, and others, after thefts and robberies: by

enioynning watches to be kept for arresting of suspected persons, and of night-walkers: and highwayes to be enlarged: Then by seeing, that two Constables be chosen in each Hundred and Franchise: by forbidding Faires and Markets to be holden in Churchyards: by compelling such as be betwene the age of fifteene yerres and threescore, to be swozne to the peace, for that also is in the Articles vpon the Statute of Winton: and lastly, by charging the Constables to arrest such as shall be suspected to bee Drawlatches, Wastors, or Robertsmen, that is to say, either mitching, or mightie theues: for the meaning must remaine, howsoever the word be gone out of vse.

And I do not thinke, that any other maner of execution of these lawes (by one Iustice of Peace) ought to be gathered by the general wordes of the first *Assignamus*.

I know, that M. Fitz. (in his Nat. bre. fol. 82.) saith, that albeit a Iustice of the Peace hath none expresse authoritie within his Commission to take a Recognisance of the Peace, yet of Congruence it followeth, that he may take it, because hee hath authoritie in plaine wordes, to cause the Peace to be kept, and to compell men to finde Suretie for the same: and it is a rule of law, *Concessio uno aliquo, etiam id concedi videtur, sine quo prius concessum haberi nequit*: but how farre these things may bee drawen, I will not determine, remembering that this also is another rule, *In generali concessione non veniunt ea, que quis non esset verisimiliter*



**Duties to the  
Iustices of  
Peace.**

*militet in specie concessurus.*

This (to bee plaine) I doe not like, that one Iustice of the Peace should take vpon him to binde an offendor against any penal Law, (being within the power of Iustices of the Peace, but yet neither comprehended in the Commission, nor committed to the charge of any one of them) to appeare at the Sessions, to answer to his fault. For, although I haue seene sundrie old Precedents of Attachmēt made from one Iustice of the Peace against Labourers, to be before the Iustices at their Sessions, to answer to their contempts: yet I am not perswaded, that the like may be don against the offendors of other statutes, vnielſe it be specially therein so appointed: no more then it might haue beene done in that case of Labourers it selfe, had not the Statute of Labourers (25. E. 3. cap. 6.) expressely commanded it.

And I doubt not, but they of the late Parliament were also of this mind with me: For, if they had thought it generally lawfull so to do, they woulde not haue so specially prouided for it, as you shall anon see in the notes of the Statutes 5. El. touching Seruants, and (23. Eliz.) against Slauderous newes, and against the taking of Pheasants and Partridges.

And surely much harme followeth of it: for it falleth out most commonly in experience, that those Iustices which be most buſie to take such bonds, be no lesse ready to release them: and so playing fast and loose, they keepe (as it were) priuie Sessions within

within their own houses, in which, both the Queen looſeth her Fine, and the common-wealth an example: and if the offendor loose also, then that (be like) falleth to the share of him that worketh the deliuerance.

And therefore, it were better (as I weene) that such offendors were first indicted, & then that Proceſſe were orderly awarded against them, vntill that either they yelued themselves, or were taken, or outlawed: the which manner of dooing, as it is better warranted of the law: So doth it recompence the delay of the punishment with the weight of the paine, and shall profit more then the former.

There is one other thing also, wherof I thought meet to admonish our Iustice of peace in this place. Many of them doe vse to giue out their Precepts to attach persons suspected of Felony, to the ende to haue them brought before them: which thing is neither newly deuised by them, nor done without color: for they haue such a precedent in the olde booke of Iustices of the peace, Fol. 41: and there is no doubt, but that if a Felonie be done, euerie man may arrest whomsoever he suspecteth of it. But for all that, the whole Court (14. H. 8. 18.) condemneth such precepts: because, if the Bailiffe, which serueth the warrant, haue suspicion in the partie, hee may of himselfe (without the warrant) arrest him: and if he haue not, then is the warrant of a Iustice of Peace no warrant to arrest him, vnielſe he be indicted before.

¶ 2 What



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

## CAP. VII.

Any one  
Iustice of  
the peace.



Singing the whole power of one Iustice of the Peace (as well in the very businessse of the Peace it selfe, as in the execution of some statutes implied in the Commission) hath now at length bene rehearsed: It is convenient to summe vp such other parts of authoritie also, as other statutes haue put into his handes: which done, wee will no longer treat of one Iustice alone, but will associate some other vnto him.

Conseruator  
of Rivers.

Every Iustice of the peace is a Conseruator of Rivers within his countie: and (when he may attend it) ought to suruey the Weares in rivers, that they be of reasonable widnes: and shall suruey the offences of taking of Salmons in any waters (out of the countie of Lancaster) betweene the natiuitie of the virgin Marie, and S. Martins day, & (there) betweene the feast of S. Michael and the purification of the said virgin: and of taking yong Salmons at mill pooles, or other places, from the midd of Aprill till Epiphonie summer, and of casting nets into any waters, (by which the frie of any fish may be taken)

taken) and may punish the same by burning of their nets and engines. Westmonast. 2. cap. 47. 3. R. 2. cap. 19. & 17. R. 2. cap. 9.

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

Apprentices  
seruantes and  
Labourers.

Upon information to any Iustice of Peace, of Hunting,  
any



any unlawfull hunting by night, or with painted faces, or other disguising (in Forrest, Parke, or Warren) of any person to bee suspected thereof: that Justice may make a warrant to the Sherife, Constable, Bailife, or other Officer, to take the partie, & to haue him before him, or any other Justice of the Peace in that countie, who may examine him of that hunting, and of the doers in that behalfe: and if he do wilfully conceale that hunting, or any person with him defectiue therein, then the same concealement shall bee Felonie in such concealor: but if he confesse the trueth of all that hee shall be examined in that behalfe, then his offence of hunting shall be but Trespasse, and punishable at the next generall Sessions of Peace there, 1. H. 7. cap. 7.

Unlawfull  
games.

Euery Justice of the Peace, may (as wel within Liberties as without) enter into any common house or place, where any playing at the bowles, coits, closh, cailes, halfe bowles, tennis, vice, cards, tables, or at any other game prohibited by any former Statute (of which sort bee foote-ball, and casting of the stone, by 12. Rich. 2. 10.) or playing at any unlawfull game (alreadie inuented, or hereafter to bee inuented) shall bee suspected to be used against this Statute: and may arrest as well the keepers of such places, as the Players there, and imprison them vntill those keepers find Sureties to the Queenes vse (to be bound by a Recognisance, or otherwise) no longer to occupy any such play or place: and that the persons founde there

there playing, be in like sort bound by themselves, or with sureties (at the discretion of the taker) no more to play, or haunt, at, or to any of the said places, or at any of the said games. And euery Justice of the Peace, finding or knowing any person (not excepted by this Statute) to vse any unlawfull game, contrarie to this Act, may commit him to warde, there to remaine without Baile or Mainprise, vntill hee become bound by Obligation to the Queenes vse (in a summe to bee thought reasonable to that Justice) that hee shall not from thenceforth vse such unlawfull games, 33. H. 8. cap. 9.

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

If any Souldiour, seruing the Queene in her warres, doe sell, giue away, wilfully purloine, or change, alter, or put away, any horse, gelding, mare, or harnesse, wherewith he shal be set forth, or which (being taken from any other souldiour) shall be appointed vnto him, and doe escape the punishment, which the Lieutenant, high Admirall, the Kings Deputie, the Viceadmirall, Warden, and Captaine, and their Deputies, in their absence

Souldiours  
selling horse,  
or harnesse.



absence may lay upon him, by this Statute: then upon complaint and due prooofe of the offence to be made by the owner, his executors or administrators, to any Justice of Peace, where such offence shall bee found, he shall by him be committed to ward, (there to remaine without Baile or Mainprize) till he shall haue satisfied the owner, his executors, or administrators, of such horse, gelding, mare, or harnesse so sold, giuen away, &c. vntlesse he bring with him before the same Justice sufficient testimonie from the saie Lieutenant, or any of the persons aboue named (in writing vnder their Seale) testifying, that the saide horse or harnesse was lost in the Queenes seruice against the will of that Souldiour, or was taken by any of them from him for any reasonable respect, and appointed to some other to serue with all, 2. & 3. Ed. 6. cap. 1.

Agnus Dei.

If any person (to whom any *Agnus Dei*, Crosse, Picture, Beade, or such superstitious thing from the See of Rome, or the authoritie thereof, shall be offered or deliuered) doe disclose the name and dwelling (or place of resort) of such offerer or deliuerer, to any Justice of the Peace of that Shire, where hee to whom such offer or deliuerie is, shall be resident: then the Justice must (within foure teene dayes next after) declare the same to some one of the Queenes priue Counsell, 13. Elizab. cap. 2.

Slanderous  
newes.

Euery Justice of Peace may (within one moneth after the speaking or reporting, &c.) commit  
to

to ward, any person, being vehemently suspected of saying or reporting of any slanderous newes or tales, against the Queenes maiestie, (vntlesse he do put in Sureties to appeare at the next Quarter Sessions, or Gaole deliuerie) there to remaine, till he shall find Sureties for such his apparance. And may also (within one moneth after such speaking, or reporting) receiue the accusation thereof, and put the same, and the names of the witnesses in writing, and certifie it at the next Quarter Sessions, or Gaole deliuerie 23. Eliz. cap. 2.

If any offendour (contrarie to the statute provided against the disturber of any Preacher) shall be arrested & brought before a Justice of the Peace, then he (upon due accusation thereupon had by the said arrestor, or other person) shall forthwith commit the partie so taken to safe custodie, by his discretion 1. Ma. Parl. 1. ca. 3. But enquire, if all this Statute be not repealed by 1. Eli. cap. 2. in general words at the latter end thereof.

Disturbe  
Preacher.

Euery Justice of the Peace may (within one moneth after the arriual) seaze all the goods of any outlandish persons (calling themselves Egyptians) that shall come into this realme: and may also keepe the one moitie thereof to his owne vse, making account to the Queene in the Exchequer for the other moitie. And euery person that can proue by two credible witnesses before him that so seizeth, that any of those goodes were craftily or feloniously taken from him, shall be incontinently restored thereto before the partie that so seized them,



them, upon paine of the double value thereof to be forfeited to such pꝛouer, 22. H.8. cap. 10. But note that (after the moneth) the offence is made Felonie, and then it seemeth, the Queene is to haue the goods wholly, 1. & 2. Phil. & Mar. cap. 4.

**Inrolment.**

If any one Iustice of the Peace doe toyne with the Clarke of the Peace, in taking the Inrolment of an Indenture of bargain and sale of landes, tenements, or hereditaments, lying in that countie where he is Iustice, it is sufficient, as it seemeth by the words of the Statute, 27. H.8. cap. 16.

**Worke of wape.**

Euery Iustice of the Peace may examine and search (by his discretion) such as do sell or set forth to be sold, any Candles, or other workes of wape, at higher price then after the rate of foure pence the pound, ouer the common price of plaine ware, betweene merchant and merchant: and may also punish them by forfeiture of the worke set forth to sale, and of the value of that which is solde, and by fine to the king, 11. H.6. cap. 12. as it seemeth by the large words of that Statute.

**Assise of fewell**

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

Minister, then a Iudge in that case.

If any person (aboue thirteene yeares of age) do by the space of twelue monethes, forbear to repaire to some Church, Chappell, or vsuall place of common pꝛaier, contrarie to the tenour of the Statute (1. El. cap. 2.) then any Iustice of Peace of the Countie where such offendour shall dwell or bee, may make Certificat thereof in writing into the Kings Bench, to the ende that the offendour may thereupon bee bounde in 200. li. at the least, with sufficient suerties to the good behauiour, for that his so long obstinacy, besides the other penalties 23. El. cap. 1.

Any Iustice of Peace within that Countie, in which any Iesuite, Seminarie, priest, or other priest, Deacon, or Religious, or Ecclesiasticall person (mentioned in this Statute) shall arrive or land, may within three daies after, take the submission, oath, and acknowledgement of him, touching his obedience to the Queenes maiesty, and to her lawes and ordinances provided in causes of religion 27. El. cap. 2.

And euery subject, hauing vnderstanding that any such Iesuite, Seminarie, Priest, or other the abovesaid, shall be within any the Queenes dominions, contrarie to the meaning of this Statute, ought to discouer the same vnto some Iustice of the peace (or other higher officer) within 12. daies after such his knowledge, vnder the paine of a Fine and imprisonment: And that Iustice of Peace ought (within 28. daies after such discouerie made vnto him)

Repaire to the Church.

Iesuists and Seminaries &c.



Whelants &amp; Partriches.

him) to giue information thereof to one of the Queenes priuie Counsell, vnder the paine of 200. markes 27. El. cap. 2.

Euerie Iustice of Peace may examine offences against the statute made for preservation of Whelants & Partriches, and against hauking in cozne (if the same offences be not before lawfully heard, or determined otherwise) & may take bond of y<sup>e</sup> offendor with good suerties for his apparance at the next generall Sessions of the peace, to answer to the saide offence, and to pay the penaltie, or to receive the punishment due therfore: and may also after couiction and punishment of such offendor in taking or killing Whelants or Partriches, take like bond of him and suerties, that (for the space of two yeares) he shall not offend against the said statute 23. El. cap. 10.

Plaints in the County Courts.

It seemeth that one Iustice of the peace, may (vpon complaint of the partie grieved) examine the Sherife, Vndersherife, and Plaintife, concerning the taking or entring of plaints in their countie Courts and Bookes against the Statute: and if he find thereby any fault or offence committed, that shall stand for a sufficient couiction and attainour, without any further enquire or examination: So may he also examine the Bailife of the Hundred, for not warning of the Defendant in such a plaint, according to his precept from the Sherife or Vndersherife, and if thereby he find any default or offence, that also shall stand for sufficient condemnation. And the saide Iustice must

certific

certifie those examinations within a quarter of a yeare into the Eschequer, 11. H. 7. cap. 15.

The Certificat of one Iustice of peace (ioyned with the Customer of the place) of the unlading and selling of cozne, graine, or cattell, carped by water from one place to another of this realme, vnto the Customer and Controller of the place where the same was imbarked, is sufficient and inough vpon the statute of foreswalling, 5. Ed. 6. ca. 14. & 13. El. cap. 25.

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

Sanctuarie person.

No person shall (after that hee shall bee robbed) bring any action vpon any the Statutes concerning Huy and Cry, except hee shall first (within twentie dayes next before such action brought) be examined vpon his corporall oath before some one Iustice of the Peace of the Countie wherein the robbery was committed (inhabiting within or neere the Hundred where the robbery was committed) whether he doe know any of them that did the Robberie: and if vpon such examination he do confesse that hee knoweth any of them, then also shall he (before such action bee brought) enter into Recognisance before the same Iustice effectually to prosecute such persons (so knownen) by

Robbery.

Endite.



ment, or otherwise, according to the due course of the lawes of this realme, 27. El. cap. 13.

Malt.

If any Bailife or Constable, of any Borough, or other towne, shall find any Malt, made contrarie to the Statutes (2. & 3. E. 6. cap. 16. & 27. El. ca. 14.) then, with the aduise of any Iustice of peace within that shire, he shall cause the same to be sold, to such persons, and at such reasonable prices (vnder the common price of the market) as to his discretion shall seeme conuenient.

Malt.

The partie convicted and committed to prison, by the Iustices of peace, for not obeying this restraint of conuerting Barley into Malt, must there remaine thre daies, and after that untill hee shall become bound in Recognisance of forty pound to the Queenes vse before any Iustice of the peace, to obey such his restraint 39. El. cap. 16.

Watermen.

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

Stolen Horse

Any Iustice of Peace (within sixe monethes af-

ter the sale in market ouert, of any stolen horse, mare, gelding, colt, or fillic) may take the claime, and heare the prooffe of the right proprietarie thereof, 31. El. cap. 12.

Any one Iustice of the peace may within three monethes after the conviction of any seditious Sectaries (described in the Statute 35. Eliz. cap. 1.) require the submission of him to conformitie, and in default of such submission, may require him to abiure this Realme, 35. El. cap. 1.

Seditious  
Sectarie.

Euerie Iustice of peace also may giue notice to any person to forbear to relieue, or keepe such as shall obstinately refuse to come to the Church by the space of a moneth together. 35. El. cap. 1.

Not to come  
to Church.

Any Iustice of the peace may appoint any person to be openly whipped naked untill his or her bodie be bloudie, that shall be taken Begging, wandring or misordering him or her selfe, and is declared by the Statute (39. Eliz. cap. 4.) to be a Rogue, Vagabond, or sturdie Beggar. And shall cause such person so whipped to be forthwith sent fro Parish to parish by the Officers of euerie the same, the next straight waye to the parish where such person was Borne, if that may be knownen by the parties confession, or otherwise: and if not, then to the Parish where such person last dwelt before that punishment by the space of one whole yeare, there to Labour: Or (not being knowne where such person was borne, or so dwelt,) then to the Parishes through the which such

Rogue.



such person last passed without such punishment. and such Iustice shall under his hand & seale make a Testimoniall witnessing such punishment, and the day and place thereof, and mentioning the place to which such person is limited to go and by what time, at his or her perill. And in case such place of birth, or last dwelling bee not knownen, then such person shall by the Officer of the Village (through which hee or she last passed without punishment) bee conveyed to the house of correction of the limite wherein that village is, or to the common Gaole of that place or Countie, there to remaine in worke till such person bee placed in seruice for one yeares continuance: Or (not being of able bodie) till such person shall bee placed in some Almshouse of that place or countie. 39. El. ca. 4.

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

*Kent.*

**I**ohn at Stile, a sturdie vagrant beggar, of lowe personage, red-hayred, and hauing the naile of his right Thomb clouē, was the sixt day of April in the fortie & one yeare of the Raigne of our soveraigne Ladie *Queene Elizabeth* openly whipped at *Dale* in the said Countie, for a wandring Rogue, according to the Lawe: and is assigned to passe forthwith from parish to parish by the Officers thereof, the next straight way, to *Sal* in the

the Countie of *Middlesex*, where (as hee confesseth) hee was borne (or dwelled last by one whole yeare &c. if the case be such) and he is limited to be at *Sal* aforesaid, within tenne daies now next ensuing, at his perill.

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

And by occasion also of this power giuen to one Iustice for correction of Rogues, I trust that I may (without offence to any) make publique vse of those graue resolutions and aduises, that being in the hands of iudicious men abroad, are commonly ascribed to her Maiesties Iustices at Westminster, and doe tend much to the right execution of this and the other Statute (39. Elizab. Reg.) concerning Rogues and the poore, which onely (of all our lawes) haue most Christianly and ciuilly giuen order in that behalfe, and are therefore with so much the more care and diligence to bee put in vse amongst vs, as they will not onely deliuer



bs of the present burthen, but also destroy the very  
hood of this unruly people.

Thus they stand in my Copie, viz.

**A** Rogue affirmeth that he was bozne in such a  
towne in such a Countie: then ought he to be  
sent thither, if it may not otherwise appeare that  
he was bozne else where: and if he were not bozne  
there in truth, then is he to be said an incorrigible  
Rogue, and is to bee sent thence to the house of  
correction in the Countie to which he is sent; and  
if there be none there, then to the Gaole, until the  
next Sessions, there to be dealt with according to  
the Statute.

2 The same course is to bee obserued, if it ap-  
peare not where he was bozne, or if he vnruly af-  
firme that he was last dwelling in such a town, in  
such a Countie, by the space of a yeare, & was not.

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

4 The Wife and childzen (vnder seauen yeares  
of age) being vagrant, must go and be placed with  
the Husband; if the Husband be dead, then with  
the Wife where she was bozne, or dwelt. And the  
vagrant Children (aboue seauen yeares of age)  
must bee sent to the place of their Birth; and if the  
vagrant parents with their childzen (vnder seauē  
yeares) bee placed at the place of Birth of the Pa-  
rents, or at the place of last dwelling (as the case  
shall

shall fall out) if afterward the parents or either of  
them die, or runne away, yet the childzen once set-  
led must remaine there still, and may not be sent to  
their place of birth, though after they grow aboue  
the age of seauen yeares.

5 The Wife being a vagrant Rogue, ought  
to be sent to the Husband, though he be but a ser-  
uant in another Towne.

6 The Rogue whose place of birth (or dwell-  
ing) cannot be known, hath wife and childzen vnder  
seuen yeares of age: they must goe with the  
husband to the place where they were last wilfully  
suffered to passe without punishment: where the  
childzen must be relieved by the worke of their pa-  
rentes, though the Parentes be committed to the  
house of Correction.

7 If any (not being Rogues) shal trauaile with  
their childzen through a Towne, and the Father  
or Mother die, or runne away, the Towne is not  
bound to keepe them where they die, nor to send  
them away, but onely in charitie, except they be-  
come wandring Beggars.

8 If the Parents bee able to worke, and may  
haue worke, they are to find their childzen by their  
Labor, and not the parish: But if they bee ouer  
burthened with childzen, it shall bee a verie good  
way, to procure some of them to be placed Appre-  
ntices, according to the Statute.

9 No man is to be put out of the Towne where  
he dwelleth, nor to bee sent to their place of Birth  
(or last habitation) but a vagrant Rogue, nor to



be found by the Towne, except the partie be impotent, but ought to set themselves to labour, if they be able & can get worke if they cannot, the Overseers must set the to labor: And so of the that have or shal haue houses, when their estates be expired: And seruantes whose times of seruice are ended, though they cannot get houses, for they must provide themselves houses anew if they be not impotent.

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

11 Such as will Remoue or put any out of their parish, that bee not to bee put out, this is against the Statute, concerning the reliefe of the poore, and finable: And if any haue beene so sent, they may be sent backe againe.

12 If any bee sent to a Towne whereto hee ought to be sent, and is refused (being a Sturdie or an impotent Rogue) the persons refusing shal forfeite five pounde, and hee that is so to be sent, is to beee offered to the Churchwardens and Overseers.

13 To

13 To send the Rogues by a generall Passport without conueying them from Parish to Parish, is a let to the conueying of Rogues according to the Statute, and so a forfait of five pound vpon them. And to go with such a Passport, is but still to continue a Rogue, to be punished by whipping.

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

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

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

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

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

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

20 If there be but one Church-warden in the parish, he sufficeth with the other former overseers.

Upon Information giuen to any Iustice of the Peace,

R 3

Peace,



Peace, against any person suspected to offend this Statute, concerning Logwoode (alias Blockewood) such Iustice may by his Warrant, or other Commaundement, cause to come before him, and examine (by Oath, or otherwise) the seruants, or workemen of such Suspect, or other persons, able to disclose the offence: & upon finding the same, to bind with suertie, to the next Gaole deliuerie, or Quarter Sessions, of that countie, as well such Suspect, as Examinate, and to send thither the said Examinations also. And if such Suspect shall refuse to be so bound, then may such Iustice send such Suspect to the next Gaole, there to remaine, till he, or she shall become so bounden, 39. El. cap. 11.

Northen  
cloth.

Euery Iustice of the peace, of any of the Counties, on the North side of the Riuer of Trent, hath some power in searching out the beete of Straining or Strecthing those countrie Clothes, Kerfies, Cottons, &c. contrarie to the Statute, 39. Eli. cap. 20.

Examinati-  
ons of felons.

Euery Iustice of the Peace, before whom any person (arrested) for manslaughter, or Felonie, or suspicion thereof) shall be brought, ought (before he commit him to prison) to take the examination of such prisoner, and the Information of those that bring him, and to put the same (or so much thereof, as shall be materiall to proue the Felonie) in writing within two daies after: and to take bond of all such as do declare any thing (materiall to proue the offence) to appeare at the next generall gaole deliuerie, and to giue euidence there against the offender.

offendor, 2. & 3. Phi. & Mar. cap. 10.

Here you may see (if I be not deceiued) when the examination of a Felon began first to be warranted amongst vs. For at the common Law, *Nemo tenebatur prodere seipsum*, & then his fault was not to be wrong out of himselfe, but rather to be discovered by other meanes and men.

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

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

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

Examination  
upon oath.



see what way to incline and follow.

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

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

The like (say they) is dayly done and practised in all the Examinations of Summoners, Viewers, Sherifes, Clearkes, and other Officers, that do happen in the higher Courts at Westminster. And M. Brooke (in Examination 32.) is of the opinion, that euerie examination is to be handled vpon oath. And therefore (belike) the Statute (2. E. 6. cap.

cap. 13.) giuing power to the Ordinarie to examine a man for his personall tithe, excepteth an oath, as though otherwise he might haue required it of him.

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

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

The Bond (spoken of in this Statute, and in some others) seemeth to bee meant of a Recognisance acknowledged vnto the Queenes vse, and conditioned for the performance of that which the Statute appointeth. For (as before hath bene said) euen as in the case of Suertie of the Peace and Good Abearing, the Iustice of the Peace taketh vsually a Recognisance, and is warranted so to doe, being made a Iudge of Record as touching matters of the Peace, though he hath no full words

The taking  
of the bond.



words for it either in any statute, or in the Commission: So, being authorized by this Statute to deale in this matter, he may bee well said to haue therein implied (by good Congruence) a power to record the acknowledging of a summe of money, forfeitable to the Queene for not performing the Condition of the same.

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

*Kane.*

**M**emorandum quod tertio die Aprilis anno regni domine nostre Elizabethæ, Dei gratia, &c. 41. D. E. de Braffted, in comitatu predicto Ycoman, personaliter coram me Tho. Potter, uno Iusticiariorum &c. ad pacem, &c. assignatorum constitutus, apud Braffted predict. recognouit se debere dict. dom. Regine. decem libras bone & legalis monete Angl. de bonis & catallis terris & tenementis suis fieri & leuari ad opus dictæ domine Regine hæredum & successorum suorum, si defecerit in conditione inderata.

Th. P.

And with such a Condition.

**T**HE Condition of this Recognisance is such: whereas one A. B. late of G. Labourer, was this present day brought before the said Iustice by the aboue bound D. E. and was by him charged

charged with the Felonious taking of xxx. sheepe of him the said D. and thereupon was sent by the said Iustices to the Queens Maiesties Gaole: If therefore he the said D. shall and will at the next general Gaole deliuerie (to bee holden in the said Countie) preferre or cause to be framed and preferred, one bil of Enditement of the said Felonie, against the said A. B. and shall and will then also giue euidence there concerning the same, as well to the Iurours that shall then enquire of the said Felonie, as also to them that shal passe vpon the Trial of the said A. B. That then, &c. Or else &c.

Touching the points that may ingender Suspicion, I neede not so say much, knowing that I spake to men of discretion and wisdom, to whom *Omne mendacium est pellucidum*: And yet, seeing that *Initia debent ab arte proficisci, quanquam cetera facild comparabit exercitatio*: I take it not vnseruiceable to insert here, such a Brieffe (or minute) thereof as I haue collected out of Cicero, and others, whereunto all the rest (which the wit of man may inuent) will easily be referred.

The causes  
of suspicion.

Sermo