

In cuius rei testimonium huic presenti Certificatione
mea sigillum meum apposui: Datum apud D. pra-
dictam, in comitatu pred. 25. die Februario, anno reg-
ni dict. dom. nostra Eliz. Dei gratia, &c. 41.

The returne
of a Certiori.

And if a Certiorari be directed out of the Chancery to the Justice of the peace, for removing this Recognusance, because it was not sent vp together with the Certificate, (as there was no necessarie that it should) then that Writ also may be thus answered.

Upon the backe of the Writ thus:

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

The which Schedule may be thus:

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

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

If the Supplicant be against diuers, and the par-
ty 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 inveniens, may bee certified for him, and the
Writ may be serued for the rest.

And this forme may serue also, where a Certi-
orari is brought to a Justice of the Peace, to re-
move

mooue a Recognusance of the Peace that was ta-
ken by him *Ex officio*, without any such Writ of
Supplicant: as you may reade in the Register fol.
90.

But if the Recognusance be not thus remo-
ued from the Justice of the peace, then may he keep
it till the Certiorari come to him for it.

On the other side, if the Recognusance were ta-
ken by vertue of his Office, then (whether it were
by his owne discretion, or at the suice and desire of and release,
another) hee must send, or bring it in at the next to the Ses-
sions, to the *Custos Rotulorum*: so that the Re-
cognisor may be there called, and if hee make de-
fault, then the same default to bee recorded, as is
appointed by the said Statute 3. H. 7. cap. 1.

And although the partie that prated 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 Justices
may then of discretion bind him ouer: which also
they ordinarily doe in some places, for two or three
Sessions together, by order amongst themselues.

And here againe some difficulties doe arise, that
may make the Justice of Peace sometimes doubt-
full, how to hold, certifie, or send in, the Recog-
nusance. For sundry meanes there are, by which
this Recognusance of the Peace may (before any
forfeiture thereof made) be after a sort discharged,
and therefore let vs consider of them apart, and
withall give some advise what shall bee best to doe
therein.

The

Release of
the Peace by
a Justice of
Peace.

The Justice of peace, that of his owne motion compelleth one to giue Suertie of the Peace vntill a certayne day, may by like discretion before that day release it, Fitz. fol. 10. And if it shoulde 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 Recognusance shoulde be taken, To keepe the peace against A. only, and none other: then may A. release it, either before the same Justice, 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*, & *principi versus A.*: yet may A. after that soxt 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 shoulde haue equall interest with A. in it, yet was it taken specially (say they) for his safetie, as the word *Principi* doth argue plaine. And M. Brooke saith truely, that it was so vled at that time also Peace 17.

But, since the Recognusance 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, whilist (intending to beate B.)

he

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

And now, whether the Recognusance bee at the suit of A. or by the meere motion of the Justice in the behalfe of A. the Queene cannot release or pardon it, before that it be forfated: both for the mischiefe that may come to A. thereby (by Fineux opinion 11. H. 7. 12.) and for that the Recognusance, 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. & 1. H. 7. 10. But, being once forfeited, then shal (and none other) may pardon the forfeiture: for then it is become a proper debt vnto her.

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

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

First for the release of the Justice, thus: *Ego prefatus Thom. Walsingham Miles qui supradictum A. B. ad predictam securitatem pacis inueniendum ex mea discretione compuli, eandem securitatem pacis (quantum in me est) ex mea discretione*

2. die

1. die August. &c. remissi & relaxauit: In cuius rei testimonium, huic præsenti relaxatiōni mea sigillum meum apposui. Dat. &c.

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

Release by
the partie.

Memorandum, quod primo die Augusti &c. præfatus C. D. venit coram me Samuele Lenarde, & gratis remisit & relaxauit (quantum in se est) predictam securitatem pacis, per ipsum, coram me, versus supra nominatum A. B. petitam. In cuius rei testimonium, Ego præfat. Samu. Lenn. &c. Dat. &c.

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

Furthermore, if a man be bound before a Justice of the Peace, to keepe the Peace against all the Queenes people, and to appeare at the next Quarter Sessions: and doe afterward procure a *Supersedeas* out of the 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 graunting of this *Supersedeas* is the Act of the Queene, which is the fountaine of Justice, and controlleth all other derived authoritie. *Fitz. fol. 9.*

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

Certifying
of the Recog-
niscance, and Su-
persedeas.

then M. Fitzh. thinketh, that his appearance at the Sessions shal not be discharged by the *Supersedeas*. In both these cases also, I would advise the Justice of the Peace, to send in as well the Recognisance as the *Supersedeas*, if it come to his hands: for peraduenture the Recognisance was broken before the *Supersedeas* purchased: or, if it were not, yet he shall be excusen, and the Recognisor never a whit the more endangered thereby.

Lastly, the death of the Prince dischargeth 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.

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 before.

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

Thus haue I both bound the party to the peace, and conveyed the Recognisance from the Justice to the *Custos Rotulorum*, readie to be called upon 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 give 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 levied, 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 Iustice of the Peace concerning such forfeitures: to the end, that hee may thereupon compell the offendour accordingly.

The Condition of this Recognusance (of what good forme soeuer you make it) standeth vp on 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 alreadie in this Chapter: concerning the second point, this is generall, that whatsoeuer Act is a breach of the Peace, the doing thereof doth alio 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 meetier 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 upon 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 intreate of the Suertie of good Abearing: which is of great affinitie with that of the Peace, as being prouided for preseruation of the Peace, as that other is: for in the Commission of the Peace, they are both conueied vnder this one tract of speach, (*ad securitatem de pace, vel de bono gestu suo, erga nos & populum nostrum inueniendum*) against such as doe threaten hurt to mens bodies, or Fire to their houses: which things are now commonly preuented by Suertie of the Peace onelie.

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

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

Herewithall also doe certaine Precedents of the Kings Bench agree, which in Suerie 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, & praecepit 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 Suerie of good Abearing, shoulde not be restrained to so narrow bonds.

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 ferty and mainprise of their good Abearing towards the king and his people. So that, if a man be defamed, he may by vertue hereof bee bound to his good behauour, at the discretion of the Wardens and Justices of the Peace. And I once receiued a speciall Writ out of the Chauncearie, directed *Custodibus pacis ac vicecomiti: & co-*

rum

rum cuilibet, and grounded vpon the same Statute, for the binding of a man with Sueries, *quod ipse boni gestus & fama de cetero erit, & quod nihil in contrarium statuti predicti quoniammodo attemptabit &c.* wherein I proceeded as a Minister onely. But the doubt resteth in this, to vnderstande concerning what matters this defamacion 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 offendours (S. against the Peace, Riottors, and Barretors) then it willetth 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 suerie of the good behauour 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 alreadie so offended, and shall also prouide, that others shall not likewise offend. And euens so do they of the Chauncerie vnderstand it, as by their speciall Supersedesas, which I afterwarde received from them upon that Writ (whereof I speake euен now) I did well perceiue.

Moreover, it seemeth to me, that all these statutes, first (1. Mar. Parl. 1. cap. 3.) which gaue this Suerie 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 tyeth to the good behauior al such as disturbe the execution of that Statut, either for the punishment of rogues, or for the relieve or setting on wozke of the poore: It seemeth (I say) that all these Statutes haue this one meaning, that a party (so bounde) may afterwarde forfeit his Recognusance, if he es- soones offend against the said Statutes.

Besides this, you may see (admitteed 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 suspicuous company, then may the Constable arrest him to find suertie of his good Abearing. For, Bawderie is not merelie a spiritual offence, but miscre, 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 childe: to the end that he may be foorth comming when it shall be boyn: for otherwile, there will be no Putative father found, when the two Justices of Peace, shall (after the birth, and by vertue of the Statute. 18. Eliz. cap. 3.) come to take over for his punishment.

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

good Warrant) doe flit out of one shire into another: not onely that euill of Bastardie, but many other mischieves, might be either prevented, or pun- nished thereby.

But, for some advise (by the way) in conceiuing rightly this Suspition, marke what M. Bracton writeth: *Oritur suspicio ex fama, & ex fama & sus- picione, oritur gravis presumptio: Fama vero suspici- onem inducens, oritur debet apud bonos & graves, idque non semel sed sapienter. Oritur etiam suspicio, ex facto precedente, cui standum est donec probetur contrariis: nam qui semel est malus, semper presumitur esse malus, in eodem genere mali.*

Now, the further that this bond of the good Abearing doth exer, the more regard there ought to be taken in the awarding of it: and therefore al- though the Justices of the Peace haue power to grant it, either by their owne discretion, or vpon the Complaint of others, even 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 Justice 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 suer- tie of the good Abearing, (although the common maner be, that two such Justices doe ioyne in that dooing, wherefore also M. Fitzh. hath verie good liking) I will not sticke to set foorth the common

formes, aswell of the Precept, as of the Recognitione for the same: wherein if I shall vse the names of two Justices, you must take that to bee done according to the common fashon, and not of any necessarie in law.

For, as I would more gladly vse the assistance of a fellow Justice 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 undertake the thing my selfe alone.

The Precept may haue this course.

The precept
of the good
Abearing.

Any one of
theire is suffi-
cient cause.

BRIAN ANNESLEY, and EDMUND STILE, two of the Justices of the peace of our soueraigne Ladie the Queenes Maiestie in the county of Kent, to the Sheriff of the saide countie, to the Constables of the Hundred of Blackeheath, 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. aforesaid, is not of good fame, nor of honest conuersation (but an euill dooer, riotter, barrstor, 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 said soueraigne Ladie wee commaund you and euyer of you, that you cause the saide A.B. to come before vs, or some others of our fellow Justices, to finde sufficient suertie and mainprise as well for his good Abearing towards our said soueraigne Lady, &

alher

al her liege people, vntil the next quarter Session of the peace to bee holden in the said countie, 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 Recognitione hath this forme.

MEmorandum, quod quintodie 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 Instrictariis dict. dom. reg. a. pacem, &c. ad proximam generalem sessionem, &c.* Et quod ipse interim se bene geret erga dom. reg. & cunctum populum suum & pricipue erga I. B. de C. &c. Et quod ipse non inferet, nec interfiri 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 quouscunmodo. videlicet uterque predict. H.C. & I.S. sub pena 100 lib. Et predictus R.G. sub pena 200. lib quas quidem separales summas 100. lib uterque predictorum H.C. & I.S. (ut pradicetur) 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 & levandi. Si contingat prefatum R.G. in aliquo præmissorum deficere, & inde legitimo modo conuinci, &c.

The Recog-
nience for the
Good abear-
ing.

By a simple Recognusance, with this Condition endorced, or underwriten.

Conditio Recognitionis predicta talis est, Quod si predictus R. G. impostorum se bene geret, & pacem Dom. Regine conservabit, erga dictam dominam reginam, & cunctum populum suum, & nullum damnum corporale. &c. Extunc Recognitione predicta pro nullo teneatur, alioquin in suorobore permaneat.

Release of the Good abearing.

I haue knownen it doubted, whether the suertie of the good Abearing (commandied vpon complaint) may be released by any speciall person, or no: because it seemeth more 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 before concerning the Peace, vsing the wordes Securitatem de se bene gerendo, in sted 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, prosecute the preseruation of the peace, by the preventing of such as be riotously assembled, & by handling the Statute of Northampton, which seemeth (by plaine speech) to be prouided for prevention of the breach of the Peace also: but because the first shall haue his proper place, and the latter is commonly put in vse at this day after the Peace broken by forcible entrie, I will spare to speake of any of them, till I come to treat of those matters by themselves.

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, against the person.

Prevention of the breach of the Peace hath appeared, as well in the Suertie of the peace, as of the good Abearing: and therefore mine owne order requireth, that I nowe declare what one Justice of the peace may doe (out of the Sessions) for punishment of such as doe breake the peace.

For, our lawe is no lesse carefull this way to conserue the peace, both by stayng them that doe any way aduenture towardes the breach thereof, and by punishing them that doe actually enter into the verie violation of the same, then it was prouiden to see it preserued before 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 other 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 Justice of Peace to understand, that by what way soeuer he may prevent (or punish) the breach of the peace in one person, the same meanes hee may also use 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 degreez: as by Threats Affray, (or Assault) violent and malicious striking, beating, wounding, maiming, and killing. The matter of menacing & threatening is alreadie handled in the last Chapter.

Affray and Assault.

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

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

Yet may an Affray bee without word or blow giuen: as if a man shall shewe himselfe furnished with armes or weapon, which is not vsually worn and borne, it will strike a feare vnto others that he 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 performed, 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 guiltye 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 misin treatings of the person, batteries, malicious strikings, &c. be breaches of the peace, & do draw after them the forfai- ture of a Recognusance, knowledged for the kee- ping of the peace.

And therefore (for example) if a man doe impi- son another without Warrant: or do thrust him into a water (or riuier) whereby hee is in danger of drowning: or do cauile a woman against her will: to commit Manslaughter, or Burglarie, or Rob- berie

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 herte) he hath broken the peace: Marrow.

But concerning the menacing, assault, or baterie 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 alowed to haue priuately a naturall, and some a civile 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 sufferid (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 outrageously) hee chastise his seruant, the scholemaster his Schollers, or a Gaoler (or his seruant, by his commaundement) his vnruly prisoners, or the Lord his villaine. But these things neuerthelesse must bee done in convenient place, and therefore not in the presence of the Prince, as it is thought, 27. lib. A. 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 therin specially exempt the Maister & Striketh his seruant, with his hand, fist, small staffe, or sticke, in the way of correction for his offence.

Every

Every man also may take his kinlman that is mad, and may put him in a house, and binde & beate him with rods, for the reclayming of him, without the breach of the Peace, 22. lib. A. Pl. 56.

A Constable, or other Officer, or any other, being of their companie, that shall be dviuen to strike any person, for y 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 baterie: 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 iustifiable. And see for this purpose also, D. Stamford. Fo. 13. 14. 15.

Besides this, if a man be enforced to repulle violence (done vnto his owne person, or to the person of his wife, father, mother, childe, master, or seruant, or to his goods being in his possession) either by threatening, or striking againe, his so doing is also iustifiable, as may be seene in Marrow: & 33. H. 6. 18. 19. H. 6. 3. 1. 9. E. 4. 4. 8. & 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 Maioz (or the Bailifes) of a citie, or towne corporate, where he dwelleth.

If one man also kil, or hurt another at fenceplay, 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. Fineux: But M. Br. saith (Corone 228.) that y Judges were of another opinion, in y time of R. H. y 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 Recognusance of the peace: for some others there be, which are (in a degree) against the Peace, so that an Enditement *Contrapaceum* may bee found vpon them, and yet no forfeiture of a Recognusance, 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 Trespass in another mans Coxne, or grasse: or doe Distress 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 therfore come to the pacifying and punishing of the Breach of the Peace, vpon the person, by one Justice of the Peace out of the Sessions.

A Justice of the Peace, is undoubtedlly 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 therfore, it may not bee thought *Heterogenium*, or besides my purpose) if I shall shew what both a priuate man

and

and Constable may doe in this case, yea rather I chose to vter this matter vnder their names, to the ende that I may with that one labour bewray the vnuities, both of them and of the Justice of the Peace himselfe in this behalfe.

The Lawe looketh, that euerie Private person, The dutie of whom it shall happen to bee present at an Affray, a Sander by, Assault, or Batterie, (for now I will with other an Affray, men confound 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 au- thoritie.

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

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

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

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

till

till it be knownen, 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 flie into another mans house, yet may any man (that followeth him upon Huse 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 Fitzh. 395.) that one which stood by, and looked on, whilist a man was slaine, was empsoned till hee made fine, because he did not bestirre him to attack the Murderer.

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

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

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

The Officers
dueting in an
Affray.

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: insomuch as if it be presented at the Sessions of the Peace, that he was present at an Affray, and did not vſe his indeuour to put them in ſunder that fought together, he ſhall be deeply fined for it: Otherwife 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 Affray, the ought the Officer to arreſt & carry the other to the gaole, vntill he ſhal finde ſuertie to appeare at the Gaole deliuery. Fitz. 72. 3. 8. E. 3. 6. & 22. lib. Aff. pl. 56.

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

And yet when the Conſtable hath taken an Affrayor, he may not impſon 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 Justice of the peace doe. For by the Statute (5. H. 4. ca. 10.) the Justice of Peace muſt ſend his prisoners to the common Gaole. And you may

may reade (Britt. fol. 72.) that the Sherise (in his Turne) vsed to enquire of those which made Prisons in their priuate houses.

If one doe make an Affray vpon a Justice of the Peace, Constable, or such other Officer, hee may not onely defend himselfe, but may also appre-hend the offender and send him to the Gaole, till he will find suertie of the Peace, 5. H. 7. 6. And the Justice, 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 makech an Affray doe flie into a house when the Justice of peace (or Constable) commeth to arrest him, they may also (in fresh suit) break 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 dooress to appre-hend 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 Trespass, where the interest is but only to some particular subiect.

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 therof within the pere 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 Re-

lation

lation to the time of the stroke, as to make the es-cape to become felonie thereby: *Commentar. Plow-dens 263.*

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

T seemeth, that (before the trouble-some Raigne of King Richard the second) the common Law permitted a ny person (which had good right (or title) to enter into any land) to win the posses-sion thereof by force, if otherwise he could not haue obtained it.

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

And at this day, if (in a common Action, or en-ditement, of Trespass for entring into land) the defendant will make Title thereunto, the matter of the Force alleaged against him wil 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 villainies, 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 prouide against all such occasions of further sedition, vproare, & breach of the peace, did ordaine among other thinges. Thus, From henceforth none make any entry into any lands and tenements, but in case where entrie is giuen 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 comiit thereof) of imprisonment, and to bee ransome at the kings will.

But because that statute prouided no spechy remede in this point: nor extended to holding with force: nor left any special power therein to the Justices of peace in the countie: whereas the experiance of that unquiet time required a more readie hand to the suppression of such disorder: and Justices 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 sworne 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 Justice 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 entry made, the same should bee taken and put in the next gaole, there to abide, conuictid by the record of the same Justice, till they had made fine & ransome to the king: And that aswel the Sheriff, as all others of the Countie, should attende vpon the said Justices, to go and strengthen the same Justices, 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 remoued before the coming of the Justices: nor made restitution of the possession so forcibly gotten: nor gaue any paine against the Sheriff that did not obey the preceptes of the Justices 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 henceforth 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 Justices of the Peace there by the parties grieved, the Justices (or Justice) so warned shall in convenient time cause the last said statute duele to be executed at the costes of the said partie so grieved.

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 reseised, 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 every of them, sufficient and indifferent persons, dwelling next about the same lands or tenements, wherof every man shal haue lands or tenements of the cleere yerely value of fortie shillings at the least; and the Sherife shall returne twentie shillinges in issues vpon euerie one of them at the first Precept returnable, and at the second fortie shillings, and at the third ffeue pounds, and at euerie day after, the double. And euerie sherife of Countie, and bailife of franchise, that shall not dulye make execution of the saide Precepts, shal forfaict to the king twenty pounds for euery default, and shall moreouer make fine and rauosome 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 grieved, for himselfe, as for the king only by way of Enditement: and vpon such due attainer, hee which sueth for himselfe and for the king, shall haue the one moitie of the saide twenty pounds, together with his costes and expences: and such Processe shal bee against such so indited, or sued, as lieth against any person indited, or sued, by writ of Trespass 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 (having fraunchise) shall haue like power there in the articles aforesaide, as the Iustices of peace, and sherifes in the Countys 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 therinc, haue continued their possession in the same by three yeres 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 ful direction in this busynesse. Besides the whiche, seeing that I haue met with some other notes that doe tend to the explanation of sundrie points thereof, and seeme not vnmeete to be considered, I will not let to bestow them here also.

This Statute (8.H.6.) enableth any one Iustice

of the peace, to giue remedy in this hurt of Forcible entry and holding: and is made as well 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 Justice 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 deeme, and carrie himselfe in the execution of his office against those that shall offend here in.

Two sorts
of Force.

Quen as the Civilians doe handle two sorts of Force: of which they call the one, *vim*, and *vim simplicem, priuatam, sine quotidianam*; and the other *vim armatam atrocem, & publicam*, because the first is void of any fearful outrage, and the latter seemeth to kindle the coales of sedition it selfe: so likewise, our law taketh knowleng 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 fearful shew, and matter of terror (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 Civile Law doth seuer 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 W^t upon the Statute, 5. R. 2. c. 7. was disallowe, 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. Assil. Fitzh. 301. & 21. E. 3. 34. And yet I doubt also, whether any of these be of themselues 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 trespasses whereof I speake last before: yet, whilst the doer of them neither executeth apparent violence against any person, nor is furnished with weapon, nor armed with company, that may offer any dreadful 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 indited vpon this Statute (8. H. 6.) for that hee disseised another, *vi & armis*,

armis (viz. gladijs, &c.) without saying, *manu forti* &c. or *cum multitudine*, &c. the bill (as I thinke) would be insufficent: vñlesle it were holpen by concluding afterward, *contraformam 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 weapones not vñsually borne, 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 moxe, 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 vñue 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, vñeth violence, & throweth out such as he findeth in the place, hee (I say) shal not be excused: because his entrie is not consummata by the onely putting of his foote ouer the threshold, but by the action and demeanour that he offereth when he is come into the house.

And, albeit that of thre (or four) which come (in one companie) to make such a forcible entrie, onely one of them both vñse 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 vñsually do wait vpon him. For whether a man doe actually vñse 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 weight to a violent, (or Forcible) entry.

And I thinke there be no great doubt, but that one person alone, may commit a forcible entrie, if so be that hee doe perfoyme it with offensive weapon, or doe vñse turbulent behaviour 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. Bractons booke, fol. 162: *Est etiam vis armata, non solum si quis venerit cum telis, veru 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 sumperferit, fustes aut lapides, vis dicetur armata. Si quis autem venerit cum armis, armis tamen addeiciendum non vñsus fuerit, & deiecerit, vis armata dicetur esse facta: sufficit enim terror Armorum, vt videatur armis deiecissemus.*

Furthermore, if a man that hath a rent issuing out of the Land, shall distraigne for the same with force, this will counteruaille an Entrie with force:

and

and much more, if he shall by such forcible distresse leue 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 shal make a forcible entrie to the vse of another man (which is not then present with them, but afterwarwe agreeeth thereunto) this shall not charge him for the Force, howsoever 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 towardes the knowledge of detaining, (or holding) with Force also: but yet, because the matter wil best appeare by particularity, I will ensue that also.

If a Justice 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 þ Justice entreth the house, he shal find persons harnesssed, or in other warlike sorte 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, wherin he findeth armes, or weapon for the war, then (as I think) the only suffering of it to remaine there (without þ use thereof) wil not charge him as a Forcible holder.

Againe,

Againe, if a man that is entred into a house, wil bellow 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, shal forcel the way of the disseilee (with force and armes) so that he dare not enter, or approach for feare of death. Seeing that in either case, the lawfull meane of comming to his possession, is quite taken from him: Like as if a man haue a rent or commone 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, shal threaten to kil 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 servant 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 imprisonment punishable by action at large.

We

The duetie of
the Justice.

Complaint
is not neces-
sarie.

Costes.

The right is
not commonly
disputable.

Wee come nowe to the office of the Justice 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 understand therof, by the oathes, and enquire 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 Justice shall (vpon complaint, made vnto him by the partie grieved) go to the place &c. yet, that doth not enforce any necessarie of such a cōplaint: for it is holden (7. E. 4. 18.) that a Justice may Record a forcible entrie and holding, or may enquire of it, and make restitution also (vpon any information, or knowledge thereof whasoever) though no Complaint at all be brought vnto him by any partie grieved therby. And as the Statute saith, that this ought to be done at the Costes of the partie grieved: So Marrow thinketh, that unlesse those costes be tendered before hand, the Justice needeth not to stirre about it.

But, howsoever hee (being then a practiser in the law) might think it good to stand vpon his see: yet I advise our Justice of the Peace to goe forward, as hauing more 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 entreth, or holdeth forcibly. For considering that the said Statute (5. R. 2.) doth without exception prohibite all entrie with force, howsoever the entrie be otherwise

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wise lawfull: and seeing also, that the other Statute (8. H. 6.) permitteth no forcible holding, but onely where thre peeres possession haue gone before: And weighing moreouer, that both they and this other (15. R. 2.) doe altogether labour to represe force and violence, and haue also made the Justice of the peace their minister therein: I see no cause, whi the Justice of Peace (who perhaps haile 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) shoule 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, *Illicit ingressus est, or ubi ingressus non datur per legem:* but the Enditement is for the force in respect of the King, to whom the partie shall make Fine, althoough his right be never 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 Justices 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 Justice 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 neede 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 remouing of the force which they bring, and for the conneying of them to the next Gaole, as persons thereof conuicted by his owne eye, testimonie, and record.

Recording of
the Force.

The forme of which record, may stand vpon two 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.

MEmorandum quod oī aū die mensis Januarij, anno regni Domine nostræ Elizabethæ, &c. Questus est mihi Samsono Lennard, vni Inſtrictiorum dictæ Dom. Regine ad pacem in dicto comitatu conseruandā assignatorum quidam A.B. de Wrotham in dicto comit. Yeoman, quod C.D. de Wrotham predicta, & nonnulla alijs 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 promide petiit a me sibi in hac parte remedium apponi. Qua quidem querimonia & petitione audita, ego prefatus

S.L.

S.L. immediatè ad dictam domum mansionalem personaliter accessi ac in eadem domo adiunc inueni prefatum C.D. & quosdam E.F. & G.H. &c domum illum vi & armis manu forti, & armata potentia, viz. arcubus & sagittis, gladijs, pugionibus, galeis & Loricis tenentes contra formam Statut: in Parlamento Dom. Rich. nuper Regis Anglie secundi, anno regni sui decimo quinto tento, prouisi: ac contra formam diversorum aliorum Statutorum. Ac propterea ego prefatus S.L. predictos C.D. E.F. & G.H. adiunc & ibidem arrestavi, proximeque gaole dictæ Domine Reg. apud Maidstone in dicto comitatu duci feci, ut de dicta manu forti tentione per vi sum & recordum meum conuictos, ibidem moratuos quousque fines dictæ Domine Regine pro transgressionibus suis predictis fecerint. Datum apud Wrotham prefactam sub sigillo meo die & anno supradictis.

Per me prefatum, Sa.Len.

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

George Chowne, one of the Justices 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 countie, 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. conuicteth of the said forcible holding, by mine owne viewe, testimonie, and recorde: commanding you in her Maiesties name, to receive 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. Hereofaile 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.

Enquirie of
the Force and
restitution of
possession.

But now, soasmuch 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 Justice of Peace, but onely upon the finding of the same putting out by the othes of the Enquirors: let vs also consider what is the duty of the Justice in these two points,

of

Concerning the Eqnuirie, Marrow notes these few things: First, that it is no cause to impeach the Enquirie, though the Justice 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 Justices comming: Secondly, that albeit the letter of the Statute is, that each Iurour of this inquierie 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 Justice of the Peace ought to make vpon such a presentment) can bee stayed, saue onely either by remouing of the recorde into the Bench of the Queene, or by alleadging threes yeres quiet possession: Thirdly, that if the Sherife shall returne smaller issues vpon the Enquirours then the Statute doth appoint, yet the party shal never take aduantage of it.

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

statute, this putting out must of necessity (saith M. 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 actuall entry cannot be made, Marr.

Moreover, it is not enough that the putting out be found, vntille the Enditement doe also containe *ad hoc 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 needless.

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 byeth after the time

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

And in some cases (sayeth 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 another Enquirie, that the same A. was seised, vntill by me disseised with force: nowe either of vs may pray restitution, and shall haue it against the other: because it is by severall Inquisitions, whereof the Justices (supposed to be severall) cannot take muellall understanding: and then shall he be in the worse case, that hath the first restitution: for the other shall haue him remoued, by his restitution that commeth 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 yeres of land, that is expulsen by force, shall be holpen by these Statutes, it hath beene a good question. For, on the one side it is saide, that albeit the preamble of the Statute (15. Ric. 2.) hath the woorde (possessions)

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 bee 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 offendours are to be punished by imprimis and Fine: all which they graunt may bee done in the behalfe of a Lessee for yeeres: but seeing that severall branch of the statute 8. H.6. (which doth directlie prouide the restitution) omitteþ 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 vnderstood of them onely, that haue inheritance, or freeholde at the least. So that, if such a Lessee (or any Copiholder) will bee abed by way of restitution, the Enquiry must (by this opinion) finde the Lessor (or the Lord) to be foizibly put out, and expulseth: that by his restitution, the Lessee or Copiholder, may be restoroz 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 Justice of the Peace. And (to accompane him herein) who can denie, that the same inconuenience (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 Justice shall cause

cause the said lands and tenements to be reseised, and shal put the partie (so put out) in ful possession of the same. Upon which words it followeth: First, that if he which expulseth by force a Lessee for yeeres, do contrary to this Statute (as it is granted that he doth) then that Lessee ought to be restoroz to his possession by this branch: and secondly, If they will haue the like of the law to rest onely in the bare letters, and sillables thereof, (a thing which wise men doe condemne, and cal *verborum accupium*) then the words bee, that he shall put in full possession, which word possession agreeith better with a lease for yeeres (as themselves say) then with a freehold, or inheritance, for which the word seisin is altogether vsed. 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 Justice.

After the entrie, or deteining with force shal be thus presented, the Justice of the Peace may either by himselfe, or by direction of this precept to the Sherife (under 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 countie to afflict 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 Justice of the Peace (before whom the Enquirie was taken) to die before Restitution be deliuered by him, it may be doubted, whether his fellow Justices (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 D. Marrow that they may: grounding himselfe (as I thinke) vpon the same equitie, by which the Justices 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 *Supersedeas* to stay the Restitution: because no Justices 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 supreme authoritie in these cases of the Crowne.

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

Againe, whether (after such a presentment) the partie charged may be admitted to his Trauerse before the same Justice of the Peace: if not, then where, or before whom, this trauerse is to be made by tendered, I wil not take vpon me to resolute.

This

Trauerse.

This seemeth (vpon consideration of both the statutes) to be plaine, that such persons as the Justice of Peace doth finde, and see, continuing the force at his comming to the place, them hee may immediatly commit to the Gaole, as conuict of that offence, notwithstanding any their gaineslaying whatsoeuer. But vpon the inquirie, I see not that the Justice 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.

Againe, touching the Assessment of the fines Assessment
of the fine. or ransomes, vpon the offendourz, so committed by the Record of the Justice of peace, and by his warrant conueyed to the Gaole, some men do thinke, that the same Justice 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 onelie appointed Judge ouer this offence, and onelie hath the custody of that Record, and knoweth best both how to moderate the imprisonment, and to rate the fine, according to the quātity of their trespass and offence: And, as he is bound by his oath and dutie (in their opinion) to estreat all issues, and amerciamentes growing to the Queene by his inquirie

enquirie: So, ought he also to estreate, and sende this into the Eschequer: that from thence the Sheriff may bee commaunded to leuie it to her Maies-ties 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 al-
so, 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 endamaged by force of that Statute. And here the booke (14.H.7.28.) stayeth me with one other quellion: for there it is saib, that albeit in an Action upon this Statute, it be a good Barre for the defendant to pleue his three yeres possession, though it were altogither by force: yet (upon an enditement) twenty yeres possession by force shall neither be any plee against the Queene, nor shall hinder the partie grieved from his restitution out of the Kings bench. Upon this authoritie, some haue conceiued this general opinion: that the continuance of three yeres 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 wordes of the Prouiso, and the reason of inserting the same, be truely weyed, that opinion will not fall out altogither so reasonable, as it hath the shewe to be faire, and plausible. For the wordes are, that such an one shall not bee en-
damaged

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

Againe, when this Statute had in generall termes brought (within the penaltie of 15.R.2.) all such as shold detaine any lands or tenements with Force after þ they had peaceably entred into the same: yet was it thought iust, and conuenient, to exempt from that punishment all such, as (ha-
ving entred in peaceable maner) had also continu-
ed their possession three yeres together without a-
ny 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 Impris-
onment, and fine, and to debarre the partie of his Restitution by the hand of a Justice of the Peace.

And hereupon Master Marrow wryteth, that If the three yeres possession be found by the En-
quirie, then the forcible deteinors shall haue the aduantage thereof against the King also: which opinioñ I take to be very reasonable, not generally understood, but especially, and where (as I said) the deteinors did enter peaceably. For so was the opinion of Hales and Portman, Justices 6. & 7.
E.6. Report Dalison: & so likewise was the iudge-
ment 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 detainer also (though sundrie yeares continued) I doe easily agree that such a violent holder shoulde be denied the protection of this Prouiso, not onely in respect of the Queene vpon an Inditement, 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 continual possession of three yeares doe immediately follow a peaceable, or forcible entrie. Continual I say, because Judge Brooke (Tit. Forcible entrie 29.) seemeth to hold, that if that possession by three yeares haue not bin continual, and without interruption, then (if he reenter) he cannot hold or detaine with force, bee his right or title never so good, and lawfull. See Collect. Diar. 141. 14.

For the resolution of some part of this Question and for remedie of a speciall inconuenience that grew thereby, the Parliament 31. El. Reg. cap. 11. (having first written and allowed of that Prouiso in the Statute 8. H. 6.) lapeth downe a Law in these words following: Whereas now of late, diuers of her Maiesies 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 Inditementes of Forcible entrie, of forcible keeping of possession, found against them by meanes of the oathes of such Entrers,

Entrers haue beeene remoued and put out of their dwelling houses and other their possessions, which they haue quietly helde by the space of three yeares 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 remedy 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 occupatio, or hath beeene in quiet posession, 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 trauerse 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 Judges, or Iustices before whome the same shall bee tried: the same costes and dammages to be recouered and leuied, as is vsual for costes and dammages contained in Judgements vpon other Actions. 31. Elizab. cap. 11.

And

And now, these things thus perused and passed ouer, I will for the more complete furniture of the Justice of Peace in this service (against for- bidden force) arme him with a fewe Precedents, for helpe in his Enquirie, and making of Resti- tution.

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

Gorgius Rivers, unus Iusticiariorum Domine Reg. ad pacem in comitatu Kanc. conseruandam assignatorum vicecomiti eiusdem Comitatus saltem: Ex parte dicta Dom. Reg. tibi mando & pre- cipio, quid venire facias coram me apud Ightham in comitatu predicto xx. die Septembr. proximo futuro xxxiiij probos, sufficientes, & legales homines de vicineto de Ightham predict. quorum quilibet xl. sol. ter- rarum & tenementorum vel redditum per annum ad minus ultra reprisas, ad inquirendum super sacra- mentum suum pro dicta Domina Regina, de quodam ingressis manu forti facto in messuagium cuiusdam A. B. apud Ightham predict. contra formam statuti in Parlamento Domini H. super Regis Anglia sex- ti, anno regni sui octauo tento, editi, ut dicit: Et videas quod super quemlibet Iuratorum perte in hac parte impanellandorum xx. solid. de exitibus ad pre- fatum diem returnes: & hoc nullatenus omittas sub pena xx. lib. quam noueris te incursum, si in execu- zione premisorum tepidis aut remissis fueris: Et ha- beas ibi tunc hoc preceptum. Teste me prefato G. R.

x. die

x. die Martij Anno regni Dominae nostrae Elizab. Dei gratia Angl. Franc. & Hib. Reginae, fidei defen- soris, &c. 41.

And upon default of appearance of these Iuroz, an alias may be awarded, and after that pluries in- finite, till they come: but so, that at the day of the second Writ r. s. must bee returned, at the third wxit C. s. and at every day after, the double, as be- fore hath beene touched.

The Enquirie (or Verdict) of the
Iuroz.

Inquisitio pro dom. Regina capta apud Ightham in comitatu Kanc. xxix. die Iulij, anno regni Dominae nostra Elizabetha, Dei gratia, Anglia, Francia, & Hybernia Regina, fidei defensoris, &c. xli. Per sacra- mentum, A. B. C. D. E. F. &c. coram Henrico Palmer Milite, uno Iusticiariorum dicta domina Regi- na ad pacem in dicto comitatu conseruandam, necnon ad diversa felonias, transgressiones, & alia malefacta in eodem comitatu perpetrata audiendū & terminan- dum assignatorū: Qui dicunt super sacramentū suum predictum, quod C. D. de Ightham pred. Yeoman, dux legitimè & pacificè seisinus fuit in Dominico suo ut de feodo de, & in uno messuagio &c. cum pertinen- tiis in Ightham predict. & possessionem ac seisinam suam predict. sic continuauit, quousque A. B. de &c. & alij malefactores ignoti primo die Septembr. ulti- mo elapo. vi. & armis videlicet, cum baculis, gladiis, arcibus & sagittis, in messuagium predict. &c. intra- heribz

uerunt, ac ipsum C. D. inde disseisuerunt, & manu
forti expulerunt, & eundem C. D. sic disseisitum &
expulsum ab eodem messuagio, &c. a predicto, primo
die &c. usque ad diem captionis huins inquisitionis
cum huinsmodi fortitudine & potentia armata extra
tenuerunt, & adhuc extra tenent, in magnam pacis
dict. dom. Regine perturbationem, ac contra formam
Statuti in parlimento domini Henrici nuper Regis
Anglie sexti, anno regni sui octavo tento, in tali casu
editi & promisi: ubi nullus eorum, nec aliquis alius cuius
statutum ipsi aut aliquis eorum habuerunt, aut habuit, ali-
quid in codice messuagio, &c. aut in aliqua inde parcella
habuerunt, aut habuit, infra tres annos proximos ante
ingressum suum predictum, neque alio tempore prece-
dente ad notitiam Iuratorum preditorum.

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

Enricus Palmer Miles, unus Iusticiariorum,
H. &c. assignatorum: Vicecomiti eiusdem comita-
tus Salutem: Cum per quandam Inquisitionem pa-
tria eorum me captam apud Ightham in comitatu
predicto, 29. die Iulij, &c. super sacramentum A. B.
C. D. E. F. &c. ac per formam Statuti de ingressibus
manni fortis aliis in tali casu promisum fuit
quod A. B. &c. & alij &c. primo die Septembr. &c.
in quoddam messuagium &c. C. D. &c. in Ightham
predicti. vi & armis ingressi sunt, ac ipsum C. D. inde
tunc manu forti disseisuerunt & expulerunt, & pre-
dictum

dictum C. D. sic expulsum a predicto messuagio &c.
a pred' primo die Septembr. &c. usque ad diem cap-
tionis Inquisitionis pred' manu forti, & cum potentia
extra tenuerunt, prout per Inquisitionem predictam
plenus liquet de Recordo, Ideo ex parte dict. dom.
reg. tibi mando & praecepio, quod (ad hoc debit' requi-
sus) una cum posse comitatus tui (si necesse fuerit)
accedas ad messuagium & cetera premissa, ac eadens
cum pertinentijs resisiri facias, & prefatu C. D. ad,
& in, plenam possessionem suam inde prout ipse ante
ingressum predictum fuerat secessus, restitu, & mitti
facias, iuxta formam dicti statuti & hoc nullatenus
omitias, periculo incumbente. Teste me prefato &c.

I come (at length) to the performance of that The executi-
promise which I made concerning the Statute or of a Wrie
of Northampton: for that also is of late dates vpon the Sta-
tute of Northampton,
frequently put in vse for the punishment of Forci-
ble Entries.

That Law (in effect, and for this purpose) is
thus: No man whatsocuer (except the Kinges
seruants and Ministers, in his presence, or in ex-
ecuting 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
Justices, or other his ministars 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

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, vslēth to haue at this day a Writ directed out of the Chancery, either to the Sherise onely (as M . 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 vntill that some other commandement be giuen concerning them) and that their armour and weapon shall be prize, and the same aunswere to the vse of the Queenes Maestie .

But, sozasmuch as that Justice 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 .

T H E

T H E Queenes Maesties Justice of her peace straightly chargeth, and in her Maesties name commandeth, all and euerie person to keep silence, whilst her Maesties 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 .

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

God save the Queen .

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

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the Writ it selfe doth warrant him to do : and if any such bee found, he ought to imprison the offendours, and to seize and apprise the armoy and weapon so found with them. But if (upon the proclamation made) they doe depart in peaceable maner, then hath hee no warrant by the Writ to commic 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 eisdem Brevi consuta.

And the Schedule may be thus.

Ego Rogerus Twysden armiger, unus custodum pacis Dom. Reg. in comitatu Kanc. certifico, in Cancellarium dict. dom. reg. quod virtute istius Brevis mibi primo deliberati, decimo die Aprilis, anno, &c. publicè proclamari ex parte dicta 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, predictam proclamationem peruipendentes, post proclamationem predictam, ibidem sic factam armati inserunt, ac armatam potentiam ibidem duxerunt, scilicet duas galeas, unum arcum, & decem sagittas, duos gladios, & totidem pugiones, in perturbationem pacis dictæ domini. reg. ac terrorem populi sui, necnon in contemptu Statuti in dicto Brevi specificati, manifestū: Ac proinde dicti A. C. & D. E. unā cum armaturis suis predictis

arrestans

arrestans ac seipius & eorū corpora ad proximā prisōnam dictæ dom. reg. in comitatu predicto duci feci ibidem moritura donec aliud à dicta domina regina pro ipsorum deliberatione habuero in mandatis. Armaturas etiam eorum predictarum appretiari feci, per A. B. C. D. & E. F. de B. predicti. Yeomen, ad hoc iuratos: qui dicunt super sacramentum suum pred. quod pred. due galeas valent decem sol. Et quod dict. arcus & 10. sagittas valent 6 sol. Et quod dict. gladii 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 præsenti certificati me & sigillum meum apposui Dat. apud B. pred. die & anno supradictis.

By this you haue seene, what one Justice 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 Judge and without any Writ brought unto 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 commanded to execute this acte upon a paine: But also by good implication in the Commission it selfe, euerie Wardein of the Peace hath the Statute of Northampton committed to his charge. So that both in the matter and maner, the doing is all one, sauing that (if he do it as a Judge) 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 Justice, 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 Justice 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 *Riot, Rone*, or other vnlawfull

Assembly, &c. and what any one Justice of
of the Peace may doe therein out of
the Sessions.

Cap. v.

Our 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 endeououred to supprese the one, than wisely

wisely foreseen to prevent and punish the other. And therefore not onely the Commission giueh Conuenticles power to enquire of Conuenticles against the Peace, but sundry Statutes also haue devised 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.

Champerties also, Maintenances, Conspiracies, Confederacies, & giuing of Liueries, (other then to Meniall seruants and Officers, be concatened 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 A- uowment & protection, & do receiue of them rents (or other giftes) yearly in the name of Chyuate **Chyuate**, (or rather Cheifage) because they seeme to take vpon them to be their Chiefe, heads, or leaders.

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

and that do bring manifest terror unto 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 gaainst 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 before that the penaltie of the Statute of Northampton, 2. E. 3. cap. 3. was laid upon them by 2. R. 2. ca. 6.

But others there bee, that do sauor of a more generall disobedience, and be (in regard of the number, or quarrell) a very Seede of Rebellion if not the Weedet 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 soorth as the Justices of Peace haue interest in them) I will intreate, but yet severally, and so, as either one, or moe of these Justices haue to do with them, and that out of the Sessions.

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

I will follow that which I take to be most probable, & at this day most commonly received. 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 Justice of Peace can haue to follow.

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

A Rout (saith Marrow) in such a company so assembled, for their owne common quarrell as ~~Rout~~ where the inhabitants of a Township come forctly together to thow downe a hedge, ditch, or pale in claiming their Common: or to beat 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 Justices: and the Statute (2. R. 2. ca. 6.) that treateth of ryding in great Routs to make entry into landes, to beat men, or to carrie awaye their wiues, &c. doe seeme to understand the worde Rout in a more ample & large meaning. And therefore I will describe it thus: A Rout is a disordered assembly of three or moe persons moving forward to commit by force an vnlawfull acte. For it is a Route, whether they put their purpose in full execution or no, if so bee that they doe go, ride, or move forward after their first meeting ~~Bro.~~ Riot 4. & 5. And thereby it seemeth to me to bee

the very same, which the *Germaines* do yet cal Riot, 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 unlawful act, and do accordingly execute the same. This I think to be derived from the French word Riotter, signifying to scolde (or bawle) because such manner of actes be commonly accompanied with words of bawle.

And thus (upon the whole reckoning) an unlawful 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 disorderly and forbidden action.

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

But howsoever that stand, two speciall thinges there are, that be common and must concurre, both in the unlawful 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 apparent 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 unquieted 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 fultly into consideration: in so much as

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

And therefore (saith M. Marrow) the maner of the doing of a lawfull thing, may make it unlawful: 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 lawful, but meet, and necessarie also to go to the church and Sessions: yet, to go in such a shewe, it is altogether needless, disorderly, and against the Law.

So, if three (or mo) 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 wil not be moued without a good many) whereto I pretend right, though in law it be an other mans.

And so also to doe an unlawful 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 spighte of him that hath it, or that he wil haue it, though he die for it, or such like: his doing may then become

a Riot,

a Riot, Marrow.

Furthermore, the intention and purpose, of those that bee assembled, is woorthe the weighing. For, to vse harnesse on Midsummer night in London, or on May day in the countrey (for sport onely) is no such offence; seeing no terrorre followeth of it: and the woodds *in terrorrem 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 hym) doe assemble compainie with force, it will be no unlawfull assemblie: for his house, is his Hold and Castle. But, if he be onely threathned, that he shall be beaten if he goe to the Market, then may hee not assemble company for his aise: 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 vsuall seruantes with him, not foretel-ling them what hee intendeth to doe, and then committeth an outrage with them, this is no Riot.

in them: for although hee shall be punished, they shall bee excused. But otherwise it is, if he make them priuie 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 conuictum*, yet this is no Riot, but a sodaine affray, because they had no such intention: But if (in that affray) they shall betake themselves to sundrie parts, it may become a riot, as Marrow thinketh: for then it is not the first, but a new assemblie (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 assemblie punishable by these statutes, vnsle a man of discretion mooued them to assemble for the dooing of some unlawfull act, as M. Marr. writeth.

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

and that worthily: because, putting off that shamefastnesse which be semeth 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 Communaltie 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 beholde what power one Justice of the Peace hath ouer them.

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

One Justice of the Peace, can neither make enquirie 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 Trespass against the Peace, or upon the Statutes of *Northampton* or of *Forcible entries*, whereof I haue before 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 Suretie of their Good abearing, and may commit them to Ward, 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 commen therer, he may leauie his seruants there, to make such arrest when they shall come: So also, if he be sick,

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

So that (vpon the whole matter) one Justice of the Peace alone may doe somewhat to prevent a Rout or a Riot, before it be done, and for the stay of it whilst it is in doing, but nothing (in effect) to punish it as a Riot, or Rout, when it is committed and done. For (as Judge 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 Justices at the least) was giuen as a hastie remedy, and for to prevent a mischiefe being imminent and before the eye: & therefore the Law shall

shall largely construe the authoritie of a Justice 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 bee 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 Justices 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 policie to prevent, as in seueritie to punish them.

Rebellious
and vnlawfull
assemblies.

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The statutes (1. Mar. Parli. 1. cap. 12: & 1. Eliz. cap. 17.) doe make three degrees of Riotous and Seditious assemblies, in certaine speciaall cases: the first, consisting of the common number of three persons, and beeing vnder the number of twelue: the second of twelue persons or moxe: and the third of fortie persons and upward: All which are to bee 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 theeuers, whose degrees in offence he also seuered & punished by their number, saying thus: *Deofar
pe hat hōdðe reofan menn; ffrom reofan
hloþ of rif; I þpir vige; I ryðdan hefey*
that

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

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

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

What

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

C A P . VI .

Before that I shall descende to shewe such further parts of power as bee given to one Justice of the Peace by later Statutes, it shall not bee amisse to take in my way, that remnant of his authoritie which lieth closed in the first *Assigauimus* 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 Westminister, 5. E. 3. cap. 14. and the Statute made at Cambride, 12. Ric. 2.

Of that Statute at Northampton I haue heretofore said what I thought. Concerning Winchester and Westminister, and the rest I say shorlie now, that by the forme of the commission one Justice of the peace may put the articles of them in execution: first, by commaunding fresh suit, hue and crie, and search, to bee made by the Sherifes, Bailifes, and others, after chefts and robberies: by enioy-

Statutes ly-
ing close in the
Commission.

enioyning watches to be kept for arresting of suspected persons, and of night-walkers: and highwaies to be enlarged: Then by seeing, that two Constables be chosen in each Hundred and Franchise: by so bidding Faires and Markets to be holden in Churchyards: by compelling such as be betweene the age of fifteene yeres and threescore, to be sworne to the peace, for that also is in the Articles upon the Statute of Winton: and lastly, by charging the Constables to arrest such as shall be suspected to bee Drawlatches, Walkers, or Roberts-men, that is to say, either miching, or mightie theues: for the meaning must remaine, howsoever the word be gone out of use.

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

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

militer in specie concessurus.

Advice to the
Justices of
Peace.

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

And I doubt not, but they of the late Parliamēt 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 a none see in the notes of the Statutes 5. El. touching Seruants, and (23. Eliz.) against Slanderous newes, and against the taking of Pheasants and Partriges.

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

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

And therefore, it were better (as I weene) that such offendours were first indited, & then that Processe were orderly awardeed against them, vntill that either they yelde themselves, or were taken, or outlawed: the which maner of dooing, as it is better warranted of the twain: So doth it recompence the delay of the punishment with the weighe of the paine, and shall profit more then the former.

There is one other thing also, wherof I thought meet to admonish our Justice 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 devised by them, nor done without color: for they haue such a precedent in the olde booke of Justices of the peace, Fol. 41: and there is no doubt, but that if a Felonie be done, euerie man may arrest whomsoeuer he suspecteth of it. But for all that, the whole Court (14. H. 8. 18.) condemmeth such precepts: because, if the Baillife, which serueth the warrant, haue suspition in the partie, hee may of himselfe (without the warrant) arrest him: and if he haue not, then is the warrant of a Justice of Peace no warrant to arrest him, vntesse he be invited before,

What
(notes)

What other things one Justice 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 Justice of the peace.

Seing the whole power of one Justice of the Peace (as well in the very busynesse of the Peace it selfe, as in the execution of some statutes implied in the Commission) hath now at length beene rehearsed: It is conuenient to summe vp such other parts of authortie also, as other Statutes haue put into his handes: which done, wee will no longer treate of one Justice alone, but will associate some other vnto him.

Conseruator of Rivers.

Euery Justice of the peace is a Conseruator of Rivers within his countie: and (when he may attend it) ought to suruey the Wernes in riuers, that they be of reasonable widnes: and shall suruey the offences of taking of Salmones in any waters (out of the countie of Lancaster) betweene the nativity 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 yoong Salmones at mil pooles, or other places, from the midst of Aprill till Midsummer, 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 Justice of the Peace may take vpon Apprentices him to heare and oder the concouersies, between seruantes and masters and seruants, touching their departure and may allow of the reason, and sufficiencie of the cause, for which a master may put away his retaineed 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 Artifters, and persons) as be meete to labou) by his discretion, to serue by the day, for the getting, cutting, inning, or carryng thereof, according to the skill and qualitie of the person: and may vpon his refusall) imprisone him in the stockes, 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 vntil he be contented so to be boind. And he also may by his discretion vpon the complaint of the Apprentice, take oder betweene his master and him, & for want of conformitie in the master, may binde him to appeare at the next Sessions before the Justices, 5. Eliz. cap. 4.

Upon information to any Justice of Peace, of hunting,

any unlawfull hunting by night, or with painted faces, or other disguisling (in Forest, Parke, or Warrein) of any person to bee suspected thereof: that Justice may make a warrant to the Sherife, Constable, Baillife, 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 deserte therein, then the same concealement shall bee Felonic in such concealer: but if he confesse the trueth of all that hee shall be examined in that behalfe, then his offence of hunting shall be but Trespass, and finable at the next generall Sessions of Peace there, 1. H. 7. cap. 7.

Unlawfull
games.

Querie 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, dice, cards, tables, or at any other game prohibited by any former Statute (of which sorte bee foote-ball, and casting of the stone, by 12. Rich. 2. 10.) or playing at any unlawfull game (alreadye 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 impison them vntill those keepers find Sureties to the Queenes use (to be bound by a Recog- nusance, or otherwise) no longer to occupy any such play or place: and that the persons founde

there

there playing, be in like sorte bound by themselues, 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 every Justice of the Peace, finding or knowing any person (not excepted by this Statute) to use 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 use (in a summe to bee thought reasonable to that Justice) that hee shall not from thenceforth use such unlawfull games, 33. H. 8. cap. 9.

Any one Justice of the peace (by the large words *Title*, of the Statute) may enquire, haire, 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 seachers 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, ex-
change, alter, or put away, any hozle, gelding, mare, or harnesse, wherewith he shal be set forth, or which (being taken from any other souldiour) shall be appointed unto him, and doe escape the punishment, which the Lieutenant, high Admirall, the Kings Deputie, the Viceadmirall, Wardein, and Captaine, and their Deputies, in their

Souldiours
seruing horse,
or harnesse.

absence may lay upon him, by this Statute: then upon complaint and due证明 of the offence to be made by the owner, his executors or administrators, to any Justice of Peace, where such offendour shall bee found, he shall by him be committed to warde, (there to remaine without Baile or Mainprise) till he shall haue satisfied the owner, his executors, or administrators, of such horse, gelding, mare, or harness so sold, giuen away, &c. vnsle he bring with him before the same Justice sufficient testimonie from the saie Lieutenant, or any of the persons aboue named (in writing under their Seale) testifying, that the said horse or harness was lost in the Queenes service against the will of that Gouldour, 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 deliuerned) doe disclose the name and dwelling (or place of resoxt) of such offerer or deliuerner, to ante Justice of the Peace of that Shire, where hee to whom such offer or deliuerie is, shall be resiant: then the Justice must (within fourteene dayes next after) declare the same to some one of the Queenes priuie Counsell, 13. Elizab. cap. 2.

Slanderous newes.

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

to

toward, any person, being vehemently suspected of saying or reporting of any slanderous newes or tales, against the Queenes maiestie, (vnsle he do put in Suerties to appeare at the next Quarter Sessions, or Gaole deliuerie) there to remaine, till he shall find Suerties for such his appearance. And may also (within one moneth after such speaking, or reporting) receiue the accusation thereof, and put the same, and the names of the witneses 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 generall words at the latter end thereof.

Euerie Justice of the Peace may (within one moneth after the arriuall) seaze all the goods of any outlandish persons (calling themselves Egyp- tians) that shall come into this realme: and may also keepe the one moitie thereof to his owne use, making account to the Queene in the Eschequer for the other moitie. And euerie person that can prove by two credible witnesses before him that so seizeth, that any of those goodes were craftly or feloniously taken from him, shall be incontinently restored thereto before the partie that so seised them,

Disturbe
Preacher.

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

Inrolment.

If any one Justice of the Peace doe sygne with the Clarke of the Peace, in taking the Inrolment of an Indenture of bargaine and sale of landes, tenements, or hereditaments, lyng in that countie where he is Justice, it is sufficient, as it seemeth by the wordes of the Statute, 27. H.8. cap. 16.

Worke of
ware.

Every Justice 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 Clare, at higher pricke then after the rate of fourre pence the pound, ouer the common pricke of plaine ware, betweene merchant and merchant: and may also punish them by forfaiture of the woz he 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 wordes of that Statute.

Assise of fewel

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

Minister

Minister, then a Judge in that case.

If any person (aboue sixtene yeares of age) Repaire to the Church. do by the space of twelue monethes, forbear to re-paire to some Church, Chappell, or vsuall place of common praier, contrarie to the tenour of the Statute (1. El. cap. 2.) then any Justice of Peace of the Countie where such offendour shall dwelle 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 leaft, with sufficient suerties to the good behauiour, for that his so long obstinacy, besides the other penalties 23. El. cap. 1.

Any Justice of Peace within that Countie, in which any Jesuite, Seminary, pries, or other priest, Deacon, or Religious, or Ecclesiasticall person (mentioned in this Statute) shall arriuue or land, may within three daies after, take the submission, oath, and acknowledgement of him, touching his obedience to y^e Queenes maiesty, and to her lawes and ordinances prouided in causes of religion 27. El. cap. 2.

And euerie subiect, hauing understanding that any such Jesuite, Seminary, Pries, or other the abouesaid, shall be within any the Queenes dominions, contrarie to the meaning of this Statute, ought to discouer the same vnto some Justice of the peace (or other higher officer) within 12. daies after such his knowledge, vnder the paine of a Fine and imprisonment: And that Justice of Peace ought within 28. daies after such discouerie made vnto him)

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

Phesantes &
Partriches.

Euerie Justice of Peace may examine offences against the Statute made for preseruation of Phesantes & Partriches, and against hauking in corne (if the same offences be not before lawfully heard, or determined other wise) & may take bond of h offendour with good suerties for his appearance at the next generall Sessions of the peace, to answere to the saide offence, and to pay the penaltie, or to receive the punishment due therfore: and may also after coniiction and punishment of such offendour in taking or killing Phesantes 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 Justice of the peace, may (upon complaint of the partie grieved) examine the Sherife, Vndersherife, and Plaintiff, concerning the taking or entring of plaints in their countie Courts and Booke against the Statute: and if he finde thereby any fault or offence committed, that shall stand for a sufficient coniiction and attaintour, without any further enquirie 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 finde any default or offence, that also shall stand for sufficient condemnation. And the saide Justice must certifie

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

The Certificat of one Justice of peace (ioyned with the Customer of the place) of the vnlading selling Corne, and selling of corne, 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 imbarke, is sufficient and inough vpon the Statute of foystalling, 5. Ed. 6.ca. 14. & 13. El. cap. 25.

One Justice of Peace may take out of sanctuary certaine persons abiured thither, and others being ~~Sanctuary~~ person, 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 indictment is found, till they be tryed, 22. H.8. cap. 14.

No person shall (after that hee shall bee robbed) Robbery, 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 Justice of the Peace of the Countie wherein the robberye was committed (inhabiting within or neere the Hundred where the robberye 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 Justice effectually to prosecute such persons (so knownen) by Endite-

Malt.

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

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 advise of any Justice of peace within that shire, he shall cause the same to be sold, to such persons, and at such reasonable pricess (under the common pice of the market) as to his discretion shall seeme convenient.

Malt.

The partie convicted and committed to prison, by the Justices of peace, for not obeying this restraint of converting Barley into Malt, must there remaine three daies, and after that vntill hee shall become bound in Recognusance of sixtie pound to the Queenes use before any Justice of the peace, to obey such his restraint 39. El. cap. 16.

Watermen.

Euerie Justice of the peace (as it seemeth) within the shires next adiopning to the riuer of Tha-
mis, within his severall iurisdiction hath power (upon complaint made unto him) by the ouersers and rulers of the Watermen and Whirrmen (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 ouersers or rulers (if there be just cause) and also by his discretion to punish those ouersers and rulers, that shall vniuersally punish any person, 2. & 3. Phil. & Mar. cap. 16.

Stolen horse Any Justice of Peace (within sixe monethes af-

ter the sale in market ouert, of any stollen horse, mare, gelding, colt, or fillie) may take the claime, and heare the proofe of the right proprietarie thereof, 31. Eli. cap. 12.

Any one Justice of the peace may within three monethes after the coniunction of any seditious ^{Seditious} Se-
caries (described in the Statute 35. Eliz. cap. 1.) require the submission of him to conformatie, and in default of such submission, may require him to abiure this Realme, 35. Eli. cap. 1.

Euerie Justice of peace also may giue notice to ^{Not to come} any person to forbeare to relieue, or keepe such as ^{to Church.} shall obstinately refuse to come to the Church by the space of a moneth together. 35. El. cap. 1.

Any Justice of the peace may appoint any person ^{Rogue,} to be openly whipped naked vntill 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 Turdie Beggar. And shall cause such person so whipped to be forthwith sent frō 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 yeaer, there to Labour: Or (not being knowne where such person was borne, or so dwelt,) then to the Parishes through the which such

such person last passed without such punishment. and such Justice shall under his hand & seale make a Testimoniall witnessing such punishment, and the day and place thereof, and mentioning þ 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 shal by the Officer of the Village (through which hee or she last passed without punishment) bee conueyed 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 Almes house of that place or countie. 39. El. ca. 4.

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

Kent.

John at Stile, a sturdie vagrant beggar, of lowe
personage, red-hayred, and haing the naile of
his right Thomb clouē, was the *sixt* day of *April*
in the *fortie & one* yeaire of the Raigne of our so-
veraigne Ladie *Queene Elizabeth* openly whip-
ped 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 *Sale* in
the

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

By the occasion of this Testimoniall (or passe)
I thought it seruiceable to aduertise, that it is
needfull, both in this, and in all other Testimoni-
als, Certificats, Safe-conduits and Pasleports
whatsoever, to annotte and specifie expressely, some
assured marks of the partie, as his stature, colour
of haire, complexion, or (if it may be) some ap-
parant scarre, 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 use of
the same to others, in abuse of him that made it.

And by occasion also of this power giuen to one
Justice for correction of Rogues, I trust that I
may (without offence to any) make publique use
of those graue resolutions and advises, that being
in the hands of suudie men abroad, are commonly
ascribed to her Majesties Justices at Westmin-
ster, and doe tend much to the right execution of
this and the other Statute (39. Elizab. Reg.) con-
cerning Rogues and the poore, which onely (of all
our lawes) haue most Christianly and civilly gi-
uen over 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

us of the present burthen, but also destroy the very
hood of this vnreuel people.

Thus they stand in my Copie, *viz.*

ARogue affirmeth that he was borne in such a towne in such a Countie: then ought he to be sent thither, if it may not otherwise appeare that he was borne else where: and if he were not borne 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 appeare not where he was borne, or if he vnreuel affirme that he was last dwelling in such a towne, 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 towne where that house is, and so of an Inmate.

4 The Wife and children (under 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 borne, 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 children (under seauen yeares) bee placed at the place of Birth of the Parents, 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 children once settled 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 servant in another towne.

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

7 If any (not being Rogues) shal trauaile with their children 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 only in charitie, except they become wandring Beggers.

8 If the Parents bee able to worke, and may haue worke, they are to find their children by their Labor, and not the parish: But if they bee ouer burthened with children, it shall bee a verie good way, to procure some of them to be placed Apprentices, 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 themselues to labour, if they be able & can get wozke if they cannot, the Ouerseers must set the to labor: And so of the that haue 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 theselues houses anew if they be not impotent.

10 Such persons as be of any Parish, and haue able bodies to wozke, and be no wanderers abroad out of the Parish, though they refuse to wozke at such wages as is taxed (or commonly giuen) 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, upon 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 relieve of the poore, and finable: And if any haue beeene 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 fiftie pounde, and hee that is so to be sene, is to bee offered to the Churchwardens and Ouerseers.

13 To

Logwood.

3

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

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

15 None, may be suffered to take relieve at any mans doore, though within the same parish, unlesse it bee by the order of the Ouerseers, 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 understood 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 relieve of the poore, as well as others that inhabite within the Parish.

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

20 If there be but one Church-wardein in the parish, he sufficeth with the other fower overseers. Upon Information giuen to any Justice of the

Peace,

M 3

Peace, against any person suspected to offend this Statute, concerning Logwood (alias Blockewood) such Justice may by his Warrant, or other Commandement, 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 Examinats, and to send thither the said Examinations also. And if such Suspect shall refuse to be so bound, then may such Justice send such Suspect to the next Gaole, there to remaine, till he, or she shall become so bounden, 39. El. cap. 11.

Northen
cloth.

Examinati-
ons of felons.

Euerie Justice of the Peace, of any of the Countie, on the North side of the Riuier of Trent, hath some power in searching out the deceite of Straining or Streatching thole countrie Clothes, Kerries, Cottons, &c. contrarie to the Statute, 39. Eli. cap. 20.

Euerie Justice of the Peace, before whom any person (arrested) for manslaughter, or Felonie, or suspicion thereof) halbe brought, ought (before he commit him to prison) to take the examination of such prisoner, and the Information of thole that bring him, and to put the same (or so much thereof, as shall be materiall to prove the Felonie) in writing within two daies after: and to take bond of all such as do declare any thing (materiall to prove the offence) to appeare at the next generall gaole deliuerie, and to give evideunce there against the offendour

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

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

And heere againe, am I fuly occasioned to draw the thredes of my speech a good deale further, before I can conclude this parte concerning the power of any one Justice 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 suspition, or to prove 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 discerne the from other factes that carrie onely some resemblance of them: & also the better understand, 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 Justices of Peace, doe vse to take this Information (of the bringers) upon their oathes, and some others do receive it without any oath at all: Let vs see, what is wont to be said on either side, that euerie man may the better see

see what way to incline and follow.

They which make this Information or Examination (for this Statute doeth use both the wordes indifferently) without any oath, doe say, that if the makers of this Statute had meant that an oath shoulde be taken, then would they haue expressed so much: euē 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 ali 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 Justices of the higher Courts; and do alleadge that whereas the Statute (5. H. 4. cap. 8.) did ordaine (without any mention of oath) that in an action of debt vpon the arrerages of an account, the Justices shoulde haue power to examine the Attorneys, and others: the Justices of the Bench do use in that case to minister an oath vnto the examinates, as it appeareth, 19. H. 6. 4. & 35. H. 6. 5.

The like (say they) is dayly done and practised in all the Examinations of Summoners, Viewers, 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.) giving 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 althoough it shoulde happen them to die before the prisoner haue his Trial, yet may their information bee giuen in Evidence, as a matter of good credite: whereas otherwise, it woulde bee of little or no weight at all, and thereby offendours shoulde the moe easilly escape.

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

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

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, forfitaile to the Queene for not performing the Condition of the same.

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

Kane.

*M*Emorandum quod tertio die Aprilis anno regni domine nostre Elizabethae, Dei gratia, &c. 41. D. E. de Brasted, in comitatu predicto Yeoman, personaliter coram me Tho. Potter, uno Insti- ciariorum &c. ad pacem, &c. assignatorum constitutus, apud Brasted predicto recognosuit se debere dict. dom. Regin. decem libras bona & legalis monetae Angl. de bonis & catallis terris & tenementis suis fieri & leuari ad opus dicta domina Regina heredium & successorum suorum, si defecerit in conditione indentata.

Th. P.

And with such a Condition.

THE Condition of this Recognusance is such: where as 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 xx. 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 give evidence 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 Suspition, I neede not so say much, knowing that I speake to men of discretion and wisedome, to whom *Omne mendacium est pellucidum*: And yet, seeing that *Initia debent ab arte proficii, quanquam certa faciliter comparabit exercitatio*: I take it not unseemly to insert here, such a Briefe (or minute) thereof as I haue collected out of Cicero, and others, whereunto all the rest (which the wit of man may inuenire) will easily be referred.

The causes
of suspition.

Sermo