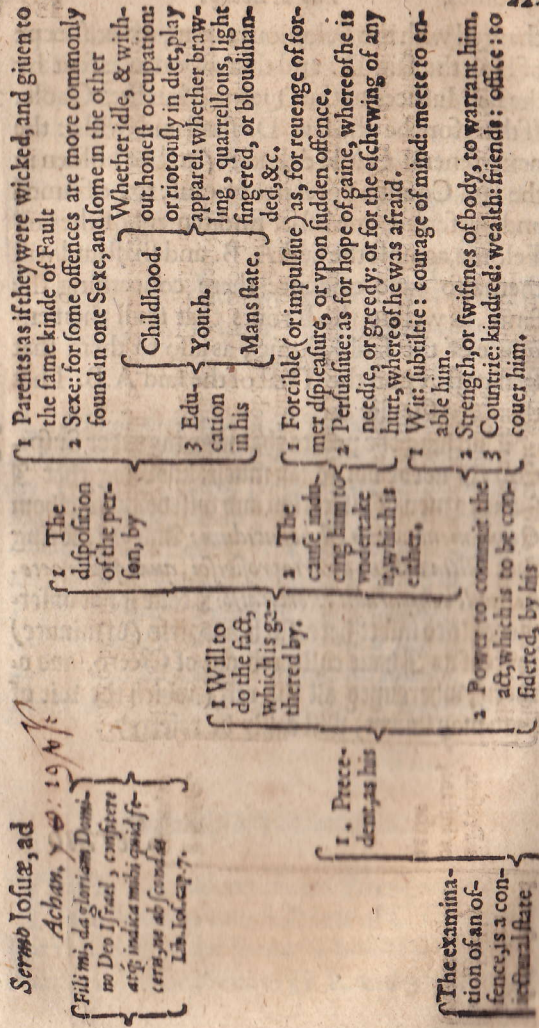


Sermo Iosue, ad

Achab, y. 10. 11.

Fili mi, da gloriam Domini
no Deo Iſrael, confitete
atq; indica mihi quid ſe-
ceris, que ad ſecundam
Lib. Ios. cap. 7.



of a cause: and it is to bee weighed by matter, either

2 Present, or instant, as the

3 Subsequent, as

Time: as being very early or late, which be fit for the doing of euill that will not abide the light.

Place: sufficient to performe the feat.

Place, conuenient & meete for the act, as Wood, Dale, house, or other place of aduantage.

Occasion, rightly taken, as which being omitted, the fact could not follow.

Comparison, as that none but hee, or none so commodiously as hee, could commit the fact.

Hope, to haue it concealed by these aduantages, or to escape with it.

and his being then there.

Common voice and fame, against him, that he did the offence.

Witnesses, that proue it, either probably, or necessarily.

Signes, which discouer him: as by hauing blood, or the goods about him: his flying away: his blushing, or change of countenance: his being in company with other offenders: his offer of composition: the measure of his foot: the bleeding of the dead body, &c.

Confession, as his owne doubtfull, or inconstant speaking: his repugnancie with others speech, &c.

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

Kent.

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

*The distinction
and discourse
of Felonies.*

The Examination of the Prisoner, the bond of the accusors, and the Notes of suspicion, thus bewrayed, It followeth that I enter into the distinction and discourse of the Felonies themselves. For the better understanding whereof, I will

heere deliuer (so shortly as I can) such helpees as haue come to my handes, for the knowledge of all manner of Manslaughters, and other Felonies that epyther were at the Common Lawe, or haue beene since declared by whatsoeuer Statutes.

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

And yet, to proue that I doe not herein swarne, either from the naturall signification of the wordes themselves, or from the auncient vse and acceptation

*The right vse
of the wordes,
Manslaughter
and Felonie.*

tion of them, I say, that first those hainous offences, are called Felonies, because they be committed *Fellio animo*, with a fell, furious, and mischievous mind and intent.

And, that before the Statute (13. R.2. cap. 2.) a pardon of all felonies, was available both for murders, and for some Treasons also: as may appear, Lib. Aff. 22. pla. 49. 1. Ed. 3. 24. Stanford 102. & Comment. 502. And that the Statute of Marlebridge (cap. 25.) speaketh plainly herein, saying: *Locum habeat murdrum, de interfectis per feloniam tantum.*

Again, as touching Manslaughter, that worde (as euerie man may see) doth most aptly, and significantly render unto vs, the Latin *Homicidium*: which word, both *W.* Bracton, and *W.* Stanfords doe rightly vse, as the generall, as well to Murder as to the rest: howsoever vnskillfull men wil needs restraine it (nowe a daies) to man slaughter by Chance-medley alone.

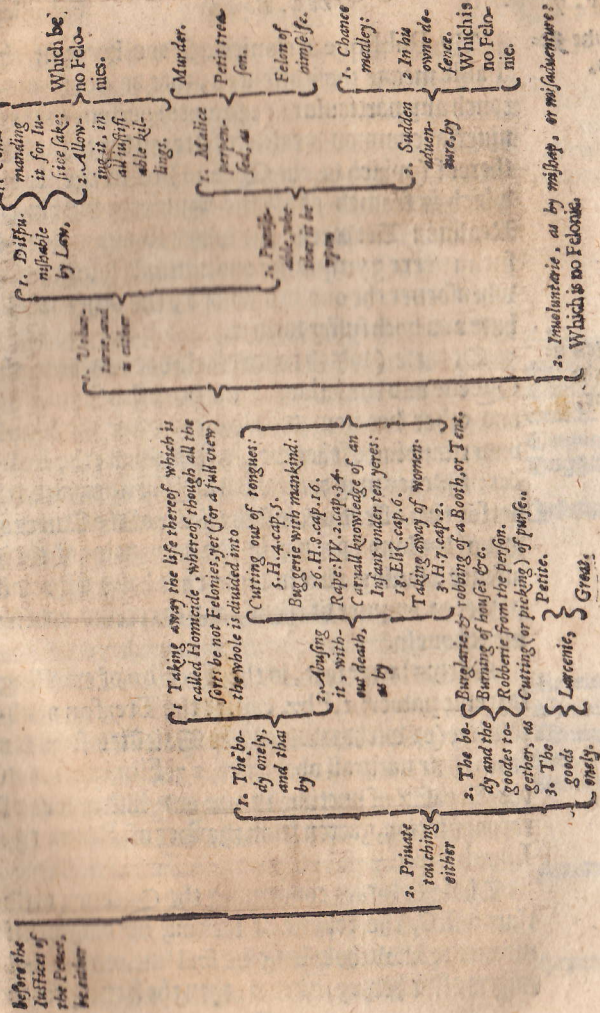
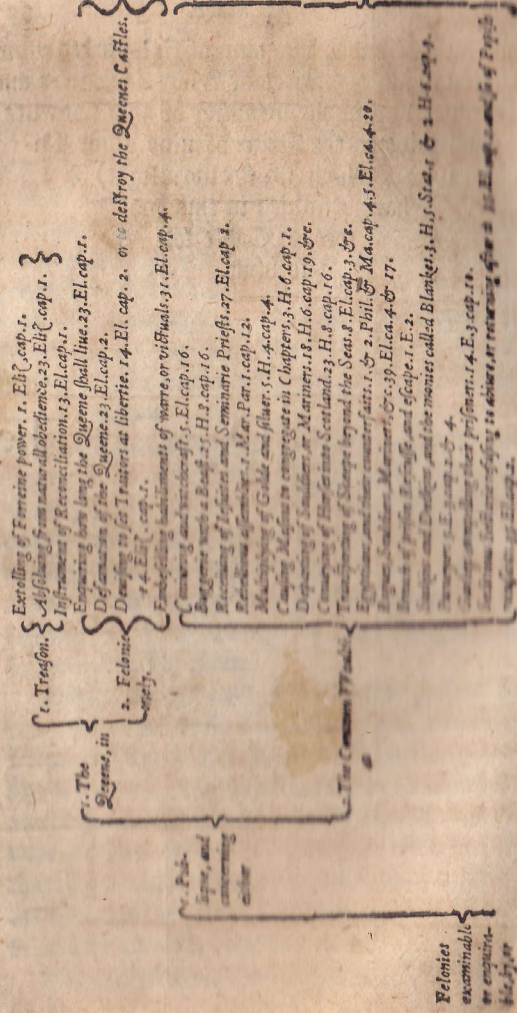
Neither doe I doubt, but that this present Statute, when he saith, Man-slaughter, and other Felonies) doeth thereby make Manslaughter a sort of Felonie, (for so the word other doth imply) and doth also therewithall comprehend Murder vnderneath it: seeing it cannot bee thought, but that this Statute requireth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

This excusation thus prepared, I will nowe aduen-

adventure (vnder the name of Felonie) to runne thorough all the sortes of Man-slaughters and Felonies within the meaning of this Statute, according to the Order of mine owne Division: which (for the moze light) I haue bestowed in this pro-
tect (or Table) following.

O The

The Division of those Felonies, wherein Justices of the Peace are authorized.



Publike Felonies.

By Publike Felonies, I doe heere in this Table meane those offences, that do not so much touch any particular (or private) person, as the vniuersal common wealth it selfe: either in the head thereof (which is the Queene) or in the bodie, which is framed of all the Subjects within the Realme: Betweene the which twaine, there is such a neere sympathie and mutual feeling, that whensoever the one is offended, the other is also hurt and both suffer with it.

Felonies against the Queene.

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

Of this latter sort, is the Treason of extolling forreine power: 1. Eliz. cap. 1. the Treason of absolving (or withdrawing) her Maiesties subjects from their naturall obedience, 23. Eliz. cap. 1. and the Treason of putting in vze any instrument of reconciliation, gotten from the See of Rome 13. Elizab. cap. 2.

Those Felonies concerning the Queene, arise thus: first, the felonye of seeking by unlawfull meanes to know how long she shal liue, or who shal raigne after her, 23. El. ca. 1. then the setting forth

in writing of any false and slanderous matter to the defamation of her 23. El. cap. 2. and the devising to set at libertie anie person endited of treason concerning the Queenes person: or to take or keepe from her, or to destroy, any of her owne castles 14. El. cap. 1. & 2. And the embezzeling of any her habiliments of war, or of any Victuals provided for her Souldiours, Mariners, Gunners, or Pioners, 31. El. cap. 4.

Hitherto of Felonies concerning the head of the common wealth: now follow those that are against the bodie of the same. Coniuration of wicked spirits and witchcrafts, against the law of God & the statute, 5. El. cap. 16. The sinne of Buggerie committed with a beast, against God, nature, and the law, 25. H. 8. cap. 16. Receiuing of Iesuits, or Seminarie priests, contrarie to the statute 27. Eliz. ca. 2. The refusal of seditious Sectaries, and of Popish recusants, to abiure the realme, and their returne after abiuration made, against the statutes 35. Eliz. ca. 1. & 2. Rebellious assemblies against the Law, 1. Mar. Parli. 1. cap. 12: practising in the Arte of Multiplication of Gold or silver, condemned by the Act, 5. H. 4. cap. 4. The causing of Masons to congregare themselves in Chapiters, restrained by a special law 3. H. 6. cap. 1. The departing of souldiours, Mariners, or gunners, from their Captaines, prohibited by the statutes 18. H. 6. ca. 19. 2. & 3. E. 6. ca. 2. 4. & 5. Phi. & Ma. cap. 3. & 5. Eliz. cap. 5. The conueying of horses into Scotland, and the second offence of transporting

Felonies against the Common wealth. Coniuration. Buggerie. Iesuits.

Rebellious assemblies. Multiplication. Masons.

Souldiours. Horses.

Sheepe.

Egyptians.
Rogues
Souldiers.
Mariners.

sheepe beyond the seas, against the lawes, 23. H. 8. cap. 16. 8. El. ca. 3. & 1. Eli. cap. 8. The disguising life of the Egyptians, the returning of a dangerous Rogue, that was banished: and the idle wandering of Souldiers & Mariners, together with the forging of any Testimoniall, or carrying the same when they know it to be forged, forbidden by the Acts 1. & 2. Phil. & Mar. cap. 4. 5. El. ca. 20. and 39. Eli. cap. 4. & 17. All these (I say) be Publike Felonies, whereby the vniuersal common wealch, doth (or may) receiue detriment, & for which hardly any one singular person can commence his private sute, or action.

Breach of
prison.

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

For Imprisonment is the putting of a person from his owne libertie, into the custodie of the law, to aunswere to that which is objected: and therefore to breake the prison, is to flie from the trial of law, and is worthily aduinged a Publike felonie.

Out of this one fact, there groweth sometimes a treble offence and felony: namely, one in the prisoner himselfe, which is most properly called the breach of prison: another in him that helpeth the prisoner

prisoner to get away, which is commonly termed Rescuffe: & a third, in the officer, or party whatsoeuer, by whose wilfull default he is suffered to go, and that is named an Escape 10. E. 4. 17.

Rescuffe.

The breach of prison, and Rescuffe doe manie times concur, & now an then an escape doth appere without the company of any of them both.

Escape.

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

On the other side, if a stranger doe either breake the prison, and let out one that is there for felonie, or doe rescuffe such an one as is vnder arrest for felonie, then is it Felonie as well in the stranger, as in the prisoner himselfe. *Coron. Fitzh. 48. 134. & 158*: Nowbeit, if that stranger shall but offer disturbance onely before the arrest, so that the arrest is hindered thereby, then will it pooue no Felonie in him: because the other was no more a prisoner,

then if hee were attached onely, and were not yet brought vnder hand *Coron. Fitz. 333. & Stanf. 31 & lib. Ass. pla. 9.* against the opinion of *W. Fitz.* in his Iustice of Peace.

And for the same reason, if a man receiue a Felon, knowing the Felonie, and then doe willingly suffer him to escape, this sufferance to escape is no Felonie of it selfe, howsoever the receiuing of him may make him an Accessarie *9. H. 4. 1. & Stanforde 33.*

Neither is it Felonie for a man willinglie to suffer one to escape that is arrested for an Act, which was not then Felonie, but by matter consequent fel out so to be: As, if Iohn strike Richard, for which the Constable arresteth him, and afterwards letteth him goe, and then Richard dieth of the blow within the yeere, *Commentar. 401. 11. H. 4. 11* much lesse, to suffer one to escape, that is arrested for the killing of another, *Se defendendo*, or by misfortune, or for petite Larcenie, or that hath his iudgement to be deliuered, paying his fees: because none of these doe amount to Felonie.

Honey?

But now, to pursue those Publique Felonies that do yet remaine. Those Felonies of Gallihalfpence, Sufkins, and Dodkins, *3. H. 5. Sta. 1.* and of Blankemonies, *2. H. 6. cap. 9.* whereof there is little (or none) use at this day amongst vs, may stand in this Register of publique Felonies. And albeit the embezelling of any Record, doth immediately touch some one particular mans interest: yet

Records.

yet knowing that when it is once a Record, euery other man hath access to it, and may vse the help of it, I would reckon that offence (adiudged felony by the Statute *8. H. 6. ca. 12.*) amongst the rest of publike Felonies, if the Iustice of peace had to doe with it.

There may bee more doubt of the Felonies by Puruepours, abusing their office against the Statutes, *4. E. 3. cap. 3. 25. E. 3. cap. 15. 30. E. 3. cap. 4. 26. E. 3. ca. 5. & 6. & 7. R. 2. ca. 8.* and likewise of those Gaolers that (by harde and cruell custodie) Gaolers. compell their prisoners to become Approouers, against the act, *14. E. 3. cap. 10.* because in al these, some particular person is chiefly pinched: But yet forasmuch as they doe it by colour of their offices (which are Publike) I can be contented to range them amongst publique Felons also.

From these Common and farre spreading offences, I must fall to those that I called Priuate, *Private felonies, and their distinction.* in respect that particular men are immediately wronged by them, sauing that the lawe doeth also take some auengement of the crime, lest impunity in the offendours should embolden others to commit the like.

These (as appeareth in the Table before) doe either runne to the body alone, or to the bodie and goodes together, or else to the goodes onely.

Again, seeing that the bodie is either touched in the point of life, or by other violent or fleshly abuse y^e bringeth not death, I am first to entreate of Homicide

Homicide.

Homicide, which I called Manslaughter, and therein to note some few things that bee common thereto, and afterwarde to drawe it into sundrie sorts, or kinds also.

In all these sorts of voluntarie Manslaughter, being exempted from the fault of Felonie (as that is, which we say to be done *Se defendendo*) there is no person to be punished, to whom the law hath denied a will, or mind to doe the harme: as a madde man: he that is borne both deafe, and dumbe: nor an infant vnder the age of 12. yeres, vntlesse it may by some euident token appeare, that he had vnderstanding of good and euill: for then, in him *Maliicia supplebit aetatem*: and to these (by the opinion of M. Bracton) you may adde the Lunatique burning that disease for a fourth, *quem tuetur* (as hee saith) *consilij inopia*, 3. H. 7. 1. 21. H. 7. 31. *Coron.* Fitzh. 193. & lib. Ass. 26. pl. 27.

Moreouer, to hurt a woman great with childe, whereby the childe either dieth within her boole, or shortly after that she is deliuered of it: or to strike any person, so, as he dieth not thereof, till the yeare and day be fully past: will not wrap a man within the danger of these Felonious manslaughterers: lib. Ass. 3. Pl. 2. 1. E. 3. 24. 3. H. 7. cap. 1. & *Coron.* Fitz. 303. For in the former case, the childe is not reckoned to be *In rerum natura*, vntill it be borne, though M. Bracton (fol. 121.) taketh it to be Homicide if the blow be giuen *Postquam puerperium animatum fuerit*: And in the latter case, it cannot reasonably be alleaged, that the man died of that blow, which he

he receiued a whole yeare before.

Lastly, if any person shall bee brought before a Iustice of the peace, and charged with any of these Homicides (except that which is done in the orderly execution of a iudgement) it shall be his part (as I thinke) to commit him to prison, or at the least (if the cause will so suffer) to ioyne with some other Iustice in the Bailment of him: to the ende, that the party may be discharged by arraignment and Triall: without the which (or other finding of the truth before the Coroner, or otherwise) I see not how the Iustice of peace may safely dismisse him. And for this purpose, I referre you to the statute of Gloucester ca. 9. and *Coron.* Fitz. 288.

But now to the sorts of Homicide: Not euery Manslaughter (saith M. Bracton) deserueth punishment: for it may be done for Iustice sake, and then it is no fault at all, so it be done sincerely, and without delight in shedding of blood.

And therefore, neither the Iudge that by order of Iustice condemneth the guilty man to death: nor the officer that orderly executeth that iudgement according to his warrant: is guiltie of any offence for which vpon examination he ought to bee committed to prison, Seeing they haue done no more then law commanded.

Next vnto this, is the case of those whom law alloweth to slay a man, and holdeth them unpunishable for it: whether it be vpon a certaine necessity for the aduancement of Iustice, or for the defence of his house, or goods, or for the more terrour against

Homicide
commanded
by the law.

Homicide al-
lowed by law.

against offendours. And therefore the Sherife, bailife, or any other, that hath a Warrant to arrest a man endited of Felonie, may iustifie the killing of him, if otherwise they cannot take him, 22. lib. Ass. pl. 55. and so may any other man, that followeth felons upon the Huy and Cry raised, if they wil not peeke themselves, but stand at defence or flie away: by the opinion of Thorpe, *Tit. Coron. Fitzh. 261*: and so is it also, if a man that is arrested for felonie, doe (as hee is in carrying to the Gaole) offer resistance, and flie: for then those that haue the conduction of him, may without blame kill, if they cannot otherwise recouer him, *Coron. Fitzherb. 288 & 328*.

And if the Iustices of Peace come to arrest Riotters, and they resist, whereby one of the Riotters is slaine by any of the Iustices or their seruants, or by any other comming in their aide, that is iustifiable, and allowed by law: because in this, and the former cases, the killing proceedeth upon a necessitie for the execution of Justice, which otherwise should be left vndone.

Of like account is it, when a Gaoler both slay any of his vnruely prisoners that shall assault him, li. Ass. 22. pl. 5. But whether this rule will hold, when the arrest is onely for debt, or such like, it is good to be aduised.

If the Iustices of the Peace, or any other (lawfully authoris'd) do assemble any number of men for the suppressing of any persons unlawfully assembled contrarie to the Statute (1. Mar. Parl. 1.

ca. 12.) and be vniuen to set upon them, and thereby any of the offendours be slain, this slaughter is warranted, both in the Iustices themselves, and for euerie other of their company, by the same Statute.

And if any Foxrestre, Parker, or Marreiner, or such as be in their company for their aid (after huy and cry made upon offendours within their charge to peeke themselves, which neuertheless wil make resistance, or flie) do without former malice kill any of them, they are neither to bee imprisoned nor to forfeit any thing for it, *Stat. de malefactoribus in parais, 21. E. 1.* So if any do attempt, to robbe, or murder any person, in his dwelling house, or in (or nigh) any common high way, cart-way, horse-way, or foot-way, or feloniously to breake into his dwelling house in the night time: and in this attempt the partie or his seruants then with him, do kill any of the misdoers, he or they shall forfeit nothing thereby 24. H. 8. cap. 5. and so (in effect) was the common law before that Statute, as may appeare 26. lib. Ass. pl. 32. & *Coron. Fitzh. 330. 305. & 261.* and so also was the Romane Lawe of the twelue Tables: *Nocturnus fur quoquo modo dirivus aut si se telo defenderit, impune occiditur.* For of necessitie men must either defend themselves, or be oppressed by these & such other wrongfull inuasions.

And therefore, if there be malice betweene A. & B. so as they haue fought together: and afterward they meete sodainly in the highway, or in the street of a towne or citie, and draweth his weapon, and challengeth B. to fight; B. saith that hee will not haue

Murder.

haue to doe with him, and goeth to the wall from him, and thereof taketh witnesse of the standers by: and yet notwithstanding A. followeth, & striketh at B. and then B. striketh againe, and killeth him: in this case, it was adiudged (15. El. Reg.) that B. shall go quite by this statute, without any forfeiture. Report Crompt. We come now to Manslaughter vpon premeditate malice, whether it be executed vpon others, or vpon the partie selfe. That which is generally committed vpon any other, betweene whom and the sleaer, there is no speciall ligeance (or soueraigntie) is now called Murder, and the other petite Treason.

In the old time, euerie killing of one man by another, was (of the effect) called Murder, because death ensued of it. For (as *Postellus* noteth) of the Hebrew word *Morb*, came the Latine *Mors*, and thereof our elvers (the Barons) called it *Morð*, and *Morðon* as we now sound it.

Afterward (about the time of *W. Bracton*) murder was restrained to a secrete killing onely: and therefore he in the definition of Murder saith, that it is *occulta occiso, &c.* with whom *Britto* agreeth also. But since the statute (14. Edw. 4. cap. 4. by which the presentment of Englisherie was taken away) Murder is taken in a middle degree, neither so largely as it first was, nor so narrowly as it afterward became to be. For Murder is now construed to be, where one man of malice premeditated killeth another feloniously, that liueth within the Realme, vnder the protection of the Queene, whether

whether it be openly or priuily, and whether the partie slaine be English, or alien. Wherein it is carefully to be obserued, that the wordes (of malice premeditated) doe make the true difference betweene this, & the other voluntarie Manslaughters: so that to make the offence Murder, it is of necessitie, that there be a preceuent malice, and the same either apparant, & bewrayed by the partie himselfe, or els implied and supplied by the vnderstanding of the law.

And therefore if two persons do mutually beare malice the one against the other, and meeting by chance they agree to go into the fielde to fight together, and thereby the one of them is slaine, this is manifestly Murder in the other: Report *Dalyson*.

So, if two (of malice forethought) lie in awaitte the one to kill the other, and thereby the one of them doth kill the other, this is Murder in the killer, without respecting which of them gaue the first blow, by the opinion of *Sir Robert Catlin* late chiefe Iustice, as *Crompton* reporteth.

And if a man of premeditate malice, striketh at another, and after in the sight flieth to a wall (beyond which he cannot go) the other pursueth him to the wall, and is there slaine by him that began the assay: this seemeth to be Murder, notwithstanding his flying to the wall, by the opinion of *Catlin* chiefe Iustice and others: for hee slew the man in the same malice, wherein he did assault him. Report *Crompton*.

And if *Iohn* and *William* do fight together (by agreement)

upon their former malice, & Iohn woundeth William: and afterward (they meete againe upon the sodain, and falling to fight) William slayeth Iohn: that is Murder in him, by the opinion of Cathin chiefe Iustice, as Crompton reporteth.

Now, as all this is meant, where the former malice is apparant: So, many times the law doth (by the sequelle) iudge of that malice which lurked before within the partie, & doth accordingly make imputation of it. And therefore, if one do (sodainly and without any outward shew of present quarrell or offence) draw his weapon, and therewith kill an other that standeth by him: the law iudgeth it to haue proceeded of former malice meditated within his owne mind, howsoever it be kept secret from the sight of other men Dalyson.

The ancient law that measured the fault, not by the event, but by the intent, will, and purpose of the offender, tooke it for Felonie (saith *M. Stanf. fol. 16.* out of the booke 3. E. 3.) in the owner of a beast that killed a man, if so be that the owner bid know it to be accustomed to doe harme, and bid not tye it up, or otherwise restraine it: but that case (3. E. 3. which you may see *Coron. Fitzh. 311.*) goeth not so farre (as I thinke) but onely saith, that if the owner were alive, hee shoulde bee arraigned of the death, and amerced towards the king. Again, Brytton (fol. 14.) hath the case, that if one which is not a Physitian or Surgeon, will take upon him to cure a sicke or wounded man, which dyeth under his hande it is Felonie: and

Thorp

Thorpe (43. E. 3. 33.) saith that he knew one to be indited accordingly: But the statute (34. H. 8. cap. 8.) leaueth so great a libertie of such practise to unskilfull persons, that it will bee hard now to make any felony in such a case. Howbeit if any of these two latter offences shoulde be drawn to Felony, then I see not but that the same must be accounted Murder, in respect either of the bold presumption, or of the will to do harme, which both amount to malice.

And it hath beene adiudged Murder, when a man hath drawne his weapon, and killed either a knowne officer, or one that had and shewed sufficient warrant to arrest him for debt onely.

So if a harlot will take the child whereof she is newly deliuered, and couer it with leaues, and let it lye abroad, whereby vermine destroyeth it: and so likewise, if the sonne will take his sicke father against his will out of his house, and carrie him in the colde aire to another place, whereof he dieth. Fitz. Enditement 3. or if the same officer will behead him that is adiudged to be hanged: or if a priuate man will kill him without any warrant, 35. H. 6. 58. & 27. lib. Ass. pl. 41. or if a Gaoler kill his prisoner by ouer-hard keeping Briton fol. 18.

Again, it is taken for a rule (by *M. Brooke 4. & 5. Phil. & Mar.*) that wheresoever a man goeth about an unlawfull act, as to beate a man, or to disseise him of his lands, &c. & do (in that attempt) kill him, it is murder: because the Law presupposeth that he carrieth that malicious mind with him

Th

that

that he will attchieue his purpose though it be with the death of him against whom it is directed. And therefore if a thiefe doe kill a man whom he neuer saw before, and whom he intended to robbe onely, it is murder in the iudgement of lawe, which implyeth a former malicious disposition in him rather to kill the man, then not to haue his money from him, *Comment. 474.*

And if a man command his seruant to beat another man, which doeth it in his presence, and the partie dieth thereof, it is murder in them both, *ibid. 475.*

It appeareth in B. Dalysons Report (4. & 5. Phil. & Ma.) that a Precedent was shewed to the Iustices, that whereas a man entred into an other mans Orchard of his owne head, and there tooke Peares from a tree, and in the doing killed the owner that rebuked him, it was adiudged murder, and he was hanged for it. And of like sort is it, if Rioters, or such as be otherwise unlawfully assembled, doe kill any of those that come in aide of the Sherife or Iustices of the Peace, for the repressing of them.

Furthermore, the law (not thus contented) doth many times extende this murdering malice, towards other persons then the offender may seeme to bend it: yea, and to punish it in some that haue a shew to be very farre from it. And therefore, if a man (of his former malice against one) do shoot at him, and thereby killeth another, with whom hee was not offended, yet is he a murderer, for the mind that

that he bare to murder him, against whom he drew his arrow, *Comment. 474.* So if two fight upon premeditate malice, and the one of them slayeth the seruant of the other that fighteth in defence of his master, he is guilty of Murder: and yet hee had no former malice against the seruant, *Comment. 101.*

And if two fight upon malice fore-thought, & in their fight a stranger is killed that laboureth to de-part them, it is Murder in him that killeth him, if it be may be discerned: & if not, then in them both, *Coron. Fitz. 262. & Dalison, & Collect, Dier 228.*

But (to go further) the husband meaning to be rid of his wife, offereth her a poysoned apple to eat, and she (not seeing the danger) giueth part thereof to her little daughter that standeth by, in the presence of the husband, who (to auoid the suspicion) suffereth her to eat thereof, and she dieth: this was iudged Murder in the husband, for his wicked intent against his wife: and yet the case was, that he loued his daughter dearly. *Comment. 474. & Stat. 1. E. 6. ca. 12.* by which all wilfull killing by poisoning, is adiudged Murder of malice pre-pensed.

So if a man lie in wait by the way to kill A. and (mistaking the man) he killeth B. as hee commeth the same way, this is Murder, *ibidem.*

Againe, all such as be present, (and aiding, abetting, or comforteth him that committeth a Murder) be principall Murderers in the eye of the law, as well as hee is by doing the deede, though they strike neuer a stroke therein: for the law draweth

the stroke of the murderer to be the stroke of them all that be present, and do assist him, 4. H. 7. 18. & Comment 100.

And therefore, if hunters do enter into a parke, and do agree to kill any man that shall resist them, and one of them (being out of the sight of his fellows) doth run upon the keeper, and killeth him: this will make all the rest of the Hunters to be principall Murderers, as wel as him that gaue the deadly blow, Dalyson.

And (to giue one example of both these last Rules) the Case was (4. & 5. Phi. & Mar.) that George (hauing conceived a displeasure against Richard) assembled sundrie persons, and came in ryotous sort to the house of Richard, of purpose to fight with him, but not with the mind to kill any man: and vsing there some quarrellous speeches together, a kinswoman to them both trauelled indifferently to appease them, and was suddenly stricken on the head with a stone that was throwen ouer a wall by one of the seruants of George, whereof she afterward died. And (by the opinion of all the Iustices, and others) it was declared, vpon long aduise, that if she came on the part of Richard and not as a stranger to the matter, then this killing of her was Murder in George and in all his complices: but if she came as a stranger, and indifferent to both the parties, yet by the better opinion it was thought to be Murder in George and all his company, because they came with a malice against the person of Richard and in the execution of

of that malice this death ensued. Report Dalison: with which Sir Iames Dier in his Collections doth not altogether agree.

Now followeth to speake of wilful Manslaugh- Petite treason.
ter committed by treason which is a sort of Murder: and therefore, howsoever it exceede Murder in the grauitie of the crime (as I said) yet in Methode, and true order of handling, it must come after it, as being the lesse generall.

It is of 2. sorts, whereof the first is called high, in respect of the Prince which is the highest person: and thereof I shal not need to intreate further than I haue spoken already.

The other is tearmed petite, in regarde of the inferiority of the persons against whom it is committed: and they be either Ecclesiasticall or Lay: as is declared by the statute 27. E. 3. ca. 2. which is but an affirmation of the common law.

So that, if a Clarke do maliciously kill his prelate (or superior) to whom he oweth obedience: or a wife, her husband: or a seruant the master, or mistress (who haue a ciuill soueraignie ouer them:) this will be Petite treason lib. Aff. 12. pl. 30. & 22. plac. 49. Coron. Fitzh. 383. 19. H. 6. 47. & 25. E. 3. ca. 2.

And albeit there bee a naturall obedience, due from the childe to the parent, whereby it might seeme, that the wilfull & malicious murder of the parent by the hand of the childe should as well be sortied in the range of petite treason as the rest: yet by the opinion of Bromley chief Iustice: & Portman.

1. Ma. (as Dalison reporteth) it is not petite treason for the sonne to kill his father or mother, unless he take meate, drinke, and apparel (or wages) of them, and do their businesse for it as a servant.

I know that the imprinted booke at large 2 R. E. 3. fol. 17. hath (*Mere*) shortly, & corruptly written, for *Meistre*, which did, and may deceiue some Reader: but Fitzh. *Coron.* 447. and Statham also (which do abide that case) haue it plainly *Meistre*, to take all doubt away from it.

But (to go forward on our way) there is none other difference betweene the offence of Murder and petite Treason, but this onely, that Murder is more generall, and may be executed against euery stranger, whereas petite Treason is restrained to these narrow bounds of priuie, that I haue set downe before you.

And therefore if the wife and a stranger do ioin in killing, or poisoning the husband: or a servant and a stranger in destroying the maister or mistress of that servant: this is petite Treason in the wife and servant, and Murder in the strangers. And (by the way) that wife may for the poisoning either bee touched with petite Treason at the common law, or with Murder by the new Statute, 1. Ed. 6. cap. 12. Dalison. But if the wife and servant do conspire to kill the husband, appointing the time and place therefore, and the servant, doth execute the same accordingly in the absence of the wife: then is it petite Treason in them both: whereas if it had beene done by a stranger, he should onely haue

haue bene accessarie to it, as to a Murder, Collect. Dier. fol. 332. pl. 254. & pl. 103.

Now therefore (to auoide all needlesse multiplication of particular cases) I may leaue you this one generall and short Rule for the better understanding of all the rest of petite Treasons: namely, that whatsoever act wil proue Murder betweene strangers, the same will also make petite Treason betweene these forenamed priuies. Onely I will adde this one case, which hath an extraordinary relation therein: the servant (being departed out of seruice) killed his late master, for the malice which he had premeditated against him during the time that he was his servant: and this was taken to be petite Treason, lib. Ass. 33. pl. 7.

For an ende of malicious killing, we are come to him that killeth himselfe: and is therefore called *Felo de se*: for the Lawe deemeth that he doth it *Felonice*, and with a meditate hatred against his owne life. And although this fault is neuer imputed (as I saide) to him that is not *compos mentis*, or (as we speake) *non sana memoria, de die in diem*: yet if he haue *lucida interualla*, his death shall yeeld that forfeiture which belongeth to the fault: as Master Stanford gathereth by the booke, *Coron.* Fitzherb. 324. And so it was accounted of him, that in a furious heate striketh another to the ground, and withal draweth his dagger to kill him, but whilst the other that lieth on the ground draweth his weapon, and holdeth it before him, bee in haste to kill the other, falleth upon that weapon

Felo de se.

and is slaine himselfe: For the booke (44. E. 3. 44.) adiudgeth that he is *Felo de se*, and that the other shall forsaite nothing for it: But *W. Stanford* (fol. 16.) taketh it for Chance medley, and that he (in a maner) killed himselfe.

Homicide, by
Chance
medley.

There doe yet remaine two sorts of voluntarie homicide (but without preceding malice) the one commonly called Manslaughter, but moze properly Homicide by Chance medley: the other *Se defendendo*, that is, in his owne defence, the former is fitly named Chaunce medley, for that in it men are medled (or committed) together by meere chaunce, and vpon some vnlooked for occasion, without any former malice or euill mind in one, to offer hurt to the person of the other. And in this offence, our law doth remit somewhat of her severity against the former fautes: so that bearing (as it were) with the infirmities of mans nature, it seemeth no lesse to allow of manhood heere, than to haue abhorred malice before. But I will exemplifie it by particular cases.

If the master and his seruant fight against one, towards whom the master hath malice, and telleth not his seruant thereof, and in that fight the seruant killeth the other man: howsoeuer this be Murder in the master, yet is it but homicide by Chaunce medley in the seruant, *Commentar. 101.* for hee could not come to execute the malice of his master whereto hee was not made priue. So, if Richard and Robert fight together vpon premeditate malice, and a stranger (hauing no malice) doeth suddenly

sodainely take the part of Richard whereby Robert is slaine: this is but Chance-medley in the stranger, *Commentar. 100.*

And if two play at the bucklers together without former malice, and the one slayeth the other, this is reputed to be done by Chaunce-medley, if it be not before the Queene, and by her commandement, or proclamation: and if it so be, then it is not punishable at all, as Iustice Fincux did hold, 11. H. 7. 23. But *W. Brooke Coron. 228.* noteth, that the Iustices in the time of H. the 8. were of another opinion.

In some case, the killing of a man may ensue vpon the maintenance of an iniurious act, and yet shall bee deemed but Manslaughter by Chance-medley, as thus: Robert entrencheth forcibly with his companie into the house of Richard: and putteth out the wife and family of Richard, the next night after Richard cometh with a great companie weaponed to the house, to recover his possession, and setteth an outhouse thereof on fire: which when one espied that was in the principall house, hee shot off a gun and therewith killed one of them that came with Richard: now vpon this fact, Robert and his complices were arraigned of Homicide by Chance-medley, 23. El. Report Crompton: for it cannot be taken to be a iustificable killing, since the other side came not to rob, or kil, but to recover the possession of that which was in a forcible Riot taken from them: neither ought it to be construed Murder, when a man in the night season shooting

shooteth at aduventure to kil him that setteth a part of his house on fire, not knowing whether it be any man against whom he hath former malice: and least of all can it be misadventure, seeing hee that shot, had a purpose to hurt, or kill withall.

Doze plainly is it Manslaughter by Chancemedley, where Henrie was in possession of a house diuers yerres together, and William (pretending title to that house) commeth thither with a stranger, and he shooteth an arrow at Henrie that was in the house, whereupon Henrie dischargeth a crossebow, and with an arrowe thereof killeth the stranger: and so it was taken, 5. Elizabeth Report Crompton. For this was a sudden quarrel for the Title to the house, without any unlawfull act preceding on either side.

If two fight vpon sudden offence, and without any precedent malice: & in the fight the one runneth away, and the other goeth into the next house, and there catcheth a staffe and pursueth and killeth him which fled: this was taken to bee but manslaughter by Chancemedley, for the continuance of the furie, which was (at the first) without malice, and could not in so short time be appeased 18. El. Report Crompton.

So, if the one of them had broken his sword in that fight, and had run home to his house (not being far distant) and fetched another weapon, and had therewith killed the other: & so, if two haue bozne malice mutually, and be reconciled together, & then afterward they meete, and the one chargeth the o-

ther

ther with words of misreport, wherupon by agreement they go immediately together out of the house into the field to fight, & there the one slayeth the other: for, these & such like haue bin taken to be manslaughters only: vntil the respice and distance of time haue beene such, that (by reasonable coniecture) the heat of the first anger might in that mean while haue beene allwaged.

Richard and Robert fight together vpon former malice, and Richard woundeth Robert, and so they depart for that time: afterwarde they meete vpon the sodain and fight againe, and Richard killeth Robert: this (by the opinion of Catlin chiefe Justice) seemeth to be by Chancemedley: for that the former malice of Richard shalbe thought to be appeased, by the hurt that hee first did to Robert: and on the other side, if Robert had then killed Richard, it should be taken to be Murder, by the malice that Robert shalbe thought to beare, for the hurt that hee receiued, Report Crompton. Whereto of the principall parties to the fight, now of others that happen to haue to do therein.

If two fight by occasion of the euill words of a woman that is present, & the one killeth the other without any other malice: this is manslaughter by Chancemedley in the woman, as well as in the slayer himselfe, *Coron. Fitz. 331.*

And if two fight vpon the sodaine without former displeasure, and a stranger commeth to part them, and is slaine by the one of them: this is manslaughter by Chance medley, *Coron. Fitzherbert*

180. So, if two fight upon the sodaine without former malice, and the one of them breakeh his staffe: and a stander by which is not of their company lendeth his staffe unto him, with which hee killeth the other: this seemeth to be manslaughter by Chance-medley in the stander by, Crompton.

Homicide, in
his owne de-
fence.

The last member of voluntarie Homicide, is where one man killeth another in his owne defence: and this is neither felonie, nor yet any iustifiable killing: but euen as the Law of nature (as Cicero in his defence of Milo said) doth allow unto man, *Omne honestam rationem expediende salutis*: So the lawes of men do sometime reach vnto him *gladium ad occidendum hominem*. And therefore, our Lawe also is a Sanctuary for the life and lands of him that killeth another in the necessitie of his owne defence, if he cannot otherwise escape with his life from him.

But he must know, that it is not all one to haue to doe with a thiefe, or murtherer, and with a loyall subject. For albeit he may boldly defend himselfe, his goods, or his house against a murtherer or theefe, on euen hand (as it were) and without anie shrinking from him: yet, if he be assailed by another manner of man, he must flie so far as he may, and till he bee letted by some wall, hedge, ditch, prease of people, or other impediment: that his necessity of defence may be esteemed altogether great and ineditable: and yet shall he be committed till the time of his triall and shal then loose his goods, and seeke his pardon, for taking away the life of his

his fellow subject, Stat. Glouc. cap. 9.

¶ D. Stanford fol. 15. describeth this manner of Manslaughter by this example A. striketh at B. with his weapon, and B. goeth from him so farre as he may for the safetie of his life, so that he cometh to a strait, beyond the which hee cannot flie: A. still pursueth the assault, and then B. striketh also, and killeth him, or holdeth out his weapon, whereupon A. runneth, and is slaine, this (saith he) is taken to be done, *se defendendo*: whereas if B. had not so fled, but had striken againe when A. stroke at him, and had thereby killed A. it had bin felony in him. But yet if A. had striken at B. as before, and B. had striken at him diuers blowes also (without giuing him any deadly wound) & then B. had fled to the strait, and being pursued still by A. had then killed A. this would be deemed to bee done by B. in his owne defence: because (saith D. Stanford) it is sufficient for B. that he fled to the strait before he had giuen to A. any deadly wound: and this he gathereth by the bookes, Lib. Ass. 43. pl. 31. & *Coron.* Fitz. 284. 286. 287. 295. & 297. And it is not material in the first case, though there were former malice betweene A. and B. vnlesse B. do lie in await for A. or do agree with him vpon the place for fight, or do strike the first stroke at A. in all which cases, the flying of B. afterwarde to the strait, will not auaille, or helpe him at all.

So, if a man doe assault one in his house vpon a sodaine quarell, and is thereby killed, this is taken to be done by the other in his owne defence, *Coron.* Fitzh.

Fitzh. 305. for *ita fugias, ne prater casam*, as the Comique said: and our law calleth a mans house his Castell, meaning that he may defend himselfe therein.

Homicide by
misadventure.

Having thus perused these kinds of Homicide that are willingly (though not all alike wilfully) committed and done, we must come to that which happeneth cleane besides the will and purpose of him that doth it. And therefore according to the law of God (which iudgeth him not woorthy of death that ignorantly killeth another, but protecteth him in the cities of refuge) our law saueth vnto such a one his life and lands, but yet taketh his goods, and giueth him a pardon of course without any speciall suit to the Prince for it. So, that if a labourer doe worke with an Aie, and (in the fetching of his stroke) the head of the Aie happen to flie off from the helue, and doe kil one that standeth by: or if a man doe throw a stone at a bird, or shoote an arrow at a fowle, or at a marke (without euill intent) and an other man is slaine vnwares therby: or if (in the felling of a tree) he giueth loud warning, when the tree is ready to fall, and yet it falleth vpon another man that standeth, or passeth by: Or if a Tiler throweth downe the tiles from a house that hee is to amende, and giueth warning thereof, and another man cometh vnder, and is slaine with a stroke of a tile: Or if a schoolmaster doe moderately correct his scholler, and hee dyeth thereof. In all these, and the like cases, it is to bee adiudged Manslaughter by misfortune: Statute

Marl.

Marlbridge ca. 25. 2. H. 4. 18. Coron. Fitzh. 302.

354. and 398: and Comment. 19.

But here the distinction (taken by M. Bracton and allowed by M. Stanford) in this case of Misadventure, is woorthy recitall. *Distinguendum est* (saith he) *utrum quis dederit operam rei licite an illicite: ut, si lapidem proiebat quis versus locum per quem homines consueverunt transire: vel dum insequitur equum, vel bouem, & aliquis alius ab equo vel boue percussus fuerit: hic imputabitur ei. At si magister causa discipline discipulum verberauit: vel si quis dum senum de curru deponebat, vel dum arbores inciderebat, & adhibuit quam potuit diligentiam, scilicet, respiciendo & proclamando, neque id nimis tarde aut dimisse, sed tempore congruo & ita clamose, ut alter fugere aut sibi precauere potuisset, non imputabitur ei.*

Thus haue the felonies appeared, that doe kill the bodie: it is now time to speake of those that abuse the bodie without destruction of it. And here first offreth it selfe, that felonie, which (of set purpose, & prepenched malice) cutteth out the tongues, or putteth out the eies of any of the Queenes subiects, 5. H. 4. cap. 5. next the sin of Buggerie that is committed with man, against the order of mankinde, 26. H. 8. cap. 16. after that, the taking of a nie maide, widowe, or wife, vnlawfully against her will, that hath lands or tenements, goods or chattels, or is heire apparant to her auncestors (except it be by such as shall claime her for their warde or bondwoman) declared to be felony (by the Statute

3. H. 7.

Felonies touching the bodie but without the death thereof.

Buggerie.

Taking away of women.

3. H. 7. ca. 2.) if he that tooke her, doe afterwarde marry, or do defloure her : for so was that Statute construed, 3. & 4. Ph. & Ma. Report Dalyson : and by the same statute, they be principall felons, that doe procure or abet the felony, or that (knowing thereof) do receiue the same woman. Then followeth the felony of the carnall and unlawfull abuse of the bodie of any woman (or rather a woman child) being vnder the age of ten yeres, the which, for resolution of the doubt that master Dier noteth, (14. Eliz. Reg.) was declared to be felony (by the Statute 18. Eliz. cap. 6.) whether she consent, or no, since the law iudgeth her unable to consent at her so tender age.

Rape.

And lastly, commeth the raiuising of any woman against her will, where she neither consented before, nor after : and the raiuising of her by force, though she consented after : which was obtained to be felony (by the statute of Westminster the 2. cap. 14.) ten yeres after such time as the imprisonment of two yeres laid vpon the offender (by Westminster 1. ca. 14.) was not found sufficient to repress the fault : which manner of punishment also, M. Stanford thinketh to haue been rather a mitigation, then any increase of those paines, that the elder lawes did lay vpon raiuisment : and whereas that Statute of Westminster 2. in the first branch thereof, vseth the wordes thus: Raviſhe, where shee doth not assent, &c. and in the second branch thus: Raviſheth with force: I suppose that the word force is but declaratory in that place, and

and set downe to noe other end but to signifie, that all raiuisment is accompanied with force & therefore agreeth the Etymologic of the word Raviſhment it selfe, which is deriued from the Latin *Rapere*, that is, to take, catch, or snatch, by force or violence.

But here, if the partie complaining to be raiuised, shall thereby conceiue a child, then Britton taketh it to be no Rape at all : because her conception proueth her consent. So, if she were kept, and used by the raiuiser, as his concubine, Master Bracton fol. 148. thinketh that he cannot be saide to haue raiuised her: yet, if she were an harlot to another man, the raiuiser shall not be excused thereby (as it there seemeth) because shee consented not to him : And howsoever the wicked man force her, yet can it bee no Rape in him, vnlesse that either hee take carnall knowledge of her, or bee present and ayding to another, that so forceth, and abuseth her, 11. Hen. 4. 13. and Stanford fol. 24. and 44.

Thus farre we haue dealt with the bodie alone: now must we ioine the bodie and the house (or the goods) together : and within this measure, there fall two diuers faultes, whereof the one is called Burglarie, and the other, Robberie: each of them the more hainous in the sight of law, because not onely the house is inuaded, & the goods sought for there, but also a great terrour, and dreadful daunger is often brought thereby to the body and person. And seeing that feare is most fearefull in the time

Felonies touching the body and goods.

Burglarie,
and the cir-
cumstances
thereof.

time of sleep, when we least thinke of it, and can worste auoyde the danger, let vs begine with the night theefe that committeth Burghlarie.

Burghlarie seemeth plainly to take the name of Burghlar: which is deriued of Bower (a chamber, or inner roome) and laron (a thiefe.) So, that Burghlary is the theft done by entry into a dwelling house. And Britt. (fo. 17.) describeth a Burghlar (whom his printed booke calleth a Burgeslor) to bee one, that feloniously in the time of peace breakes open churches, or houses, or the walles (or gates) of Cities or Boroughs, in which he respected not the time of night.

But, as the law is commonly taken in our time, there are foure speciall things that must concur to make this felonie: that is to say, the time, the place, the maner of the fact, and the end for which it is committed.

The time is not in the time of peace alone (which is noted of this ancient writer onely to shew, that in the time of ciuile and intestine war such breaking of a house against rebels is iustifiable enough) but in the time of peace, it must bee in the time of night also. For (as M. Stanford fol. 30. truly obserueth) the Inditements of Burghlarie bee alwaies of this forme, *quod noctantur fregit*: & there. withall agreeth a report of 4. E. 6. in M. Brooke, Coron. 185.

The time.

But in this part, it shall bee good to enquire, whether all that time, which is betweene the sun setting and the sunne rising, shall bee accounted vnto

vnto the night for his purpose: or whether that time of light which is in the Euening, betweene the sunne setting and night, and likewise in the morning betweene the night and sunne rising (whereof the one is called *Aurora*, and the other *Crepusculum*, and the beginning of the one, and end of the other, as by Ptolome said to be when the sunne is eightene degrees vnder our Horizon) shall bee taken from the night, and bee added to the day.

For, as the booke *Coron. Fitzh. 293.* taketh the euening (that is after the setting of the Sun, and before the departure of his light) to be a part of the day, in respect of an amerciament to be laide vpon a Towne for the escape of him that killed a man within that time: So, the statute of Winchester 13. E. 1. (speaking of the watch) saith, that it shall continue all the night from Sunne setting, to sun rising: by which words (as you see) it comprehendeth both *Auroram* and *Crepusculum*, within the night.

Concerning the place, it may either be Publique (The place) as the Church for prayer, and the walles (or gates) of townes, (or cities) for defence: & then you may number those acts amongst Publique felonies: or els it may be priuate, as a dwelling house: and then it seemeth to be no Burglarie, vnlesse some person be at that time within it: because (as I said) the law in this offence beholdeth the place and the person together.

But, although this offence bee not committed

in the verie bodie of the dwelling house, but in a stable that is parcel thereof, and neare vnto it, yet will it be taken for Burglarie, as Master Brooke *Coron.* 180. doth write: and seeing like reason begetterh like law, so must it be, if the offence be perpetrated in a barn of the house, or other out house that is so adioyning.

Each Colledge in the Uniuersitie, each Inne of Court and Chancerie, and euery other like place, that is distributed for the seuerall lodgings of sundrie particular persons, is but one entire dwelling house for this purpose. So that if any chamber (or lodging) there, be broken by in the night season for the dooing of a Felonie, it will worke to Burglarie, though no man be then in it, if so be that any person be within any other part of the whole Colledge, Inne, or such other house. But if a man doe in the night season breake into anothers close, *ad ipsum interficiendum*, that is no Burglarie, because it is not into any house, 13. H. 4. 8.

The maner.

The maner of the burghlarie consisteth, partly in the breaking of the house, and partly in the entry into the same. For, if a man breake the house to do a felony, and enter not, it will be no Burglarie, *Stanf. fol. 30. and Collections Dier 99.* But yet, it seemeth by Shard (*lib. Ass. 27. pl. 38.*) that hee which is taken in the onely attempt of a Burglarie, shalbe hanged for it, although he haue not put the thing thorowly in bye.

And of the same opinion (as Crompton reporteth) was both sir Anthonic Browne, sir Edward Mounta-

Mountague, and sir Robert Brooke, late seuerall chiefe Iustices of the Common place: the first of them holding, that if one do but make an enterpryse (by night) to enter into a house to robbe there: the next, that if he shal but onely turne a key, being on the inner side of the locke of the doore: & the third, that if vpon an attempt of Burglary, they with in the house, shal call out their money for feare, and the attemptors take it away: that in euerie of these cases, it is a full and complete Burglarie.

We also repozteth that Justice Portman, 3. Ed. 6. did execute one for Burglarie, which was taken in the night, putting backe the lease of a window with his dagger: and the like is to be thought of him that shal be taken drawing the latch of a doore, that is not otherwise fastened.

But admitting that those doe amount vnto breaches, and entries in Law only: & that a breaking with an actuall entrie is requisite, in the case of Burglarie: Let vs consider, what other acts shalbe taken for sufficient breakings and entries.

If one do breake the glasse window of a house by night, and then with a hooke draweth out any goods: or doe breake a hole in the wall of any house by night, and shooteth in thereby with a gunne or bowe, at one that is within the house, to kill him, and yet misseeth him: or do in the night season come into the house, by the helpe of a key, to steale any goods there: or do sodainely come into the house by night (the doore being open (whereby the owner flieth to his chamber for feare, crying for helpe,

and shutteth the dooze, and the offendour is taken shoouting at the chamber dooze: in euery of these cases also, it hath beene taken to be Burghlarie, Report Crompton.

In like sort is it, if the goodman of the house (perceiuing that theeuers are without) will open the doozes, and goe out against them: and whilst hee is in hande with some of them, one of their companie steppeth to the dooze, and stretching his hand ouer the thershold (but not setting his foote ouer it) dischargeth a dag against one of the seruants that standeth to defende the entrie 26. Elizabeth. *idem*.

And albeit, the first entrie into the house were lawfull, or standing with the good liking of the owner: yet by matter subsequent it may become a breach and entrie that shall amount to Burghlarie.

As, if theeuers shal come into a Towne by night with Hue and Cry, pretending that they be robbed, and shal pray the Constable to make search for the felons: and whilst he goeth with them into some mans house to search, the theeuers, bind and robbe both the Constable and the goodman of the house, for, in such a case, the entrie shal be deemed Felonious, euen from their first comming.

But, if the case be so, that theeuers doe enter into a house by night (with a minde to steale) thorough a hole in a wall that was broken befoze, or thorough a dooze then standing open, & doe then depart without dooing any other harme, & be taken vpon pursuit:

suit: it is good to be enquired, whether such a manner of entrie will make them Burghlers.

But if diuers come to doe a Burghlarie, and but one of them entreteth & committeth it, the rest of them standing neare to the dooze, or about other parts of the house, or a good space off (as at a lanes end, or at some orchard gate, or field gate) to watch that no helpe shall come: yet is it Burghlary in all that company, 11. H. 4. 13. Hul.

The last of these points that must meeete in the making of a Burghlarie, is the end, and intent for which the offendour commeth: which of necessitie must be, either to kill, or robbe some person, or to doe some other felonie, lib. Ass. 22. pl. 95. The end.

For if a man should breake, and enter a house by night, of purpose onely to beate a man, that is but trespassse, Stanf. 30. but if it be to kill him, then it wil be Burghlarie, although he do not so much as touch him, Coron. Fitz. 267. & 13. H. 4. 7. And so is it also, if the purpose be to rob, although he taketh away nothing at al with him, Coron. Fitz. 185. 264. lib. Ass. 22. pl. 39. But if the intent were to perpetrate a Rape (which was not felonie, at the common law, as some haue thought) then is there some doubt and question made vpon it.

Thus much of Burghlarie: whereunto those of Robbing in a fences be somewhat neare, that are set forth by the house. boorhe statutes, 23. H. 8. ca. 1. & 5. E. 6. ca. 9. to this effect or tent, following, viz. if any person shal robbe an other, in any part of his dwelling house, or place (the owner, or dweller, his wife, children, or seruants being

being within the same, or within any place within the precinct of the same, and being either sleeping, or waking) or shall robbe any person in a me Tent, or Boothe, in any faire or market (the owner, his wife, children, or seruants, or seruant, being within the same, sleeping or waking) hee shall be a felon. Betweene the which offences, and Burghlarie, the difference standeth thus: first, that these may be done by day, whereas Burghlarie is by night onely: and then, that in these there must be a Robbery, or taking away of some thing, whereas in Burghlarie the offence may be performed, though the offendour take nothing away with him. And (by the report of M. Dalison) the statute shall be straitly construed, (in fauor of life) and according to the bare letter: so that, if the robbery be done by day, and there be in the house but one seruant onely: or there be in the house, booth, or tent, but a stranger, or sojourner onely: the fact shall not be adiudged an offence against these statutes. To these commeth nowe to be added, the Felonie of breaking a house by day, and taking thence mony, or goods, to the value of v. s. or more, in any part of any dwelling house, or outhouse (belonging, and used to a dwelling house) though no Person shall be then therein, which offence (being formerly taken for a common Felony, to which cleargie was allowed) is now made equal to Burghlarie, by the denial of Clergy, & (in a point or twaine) is more penal then Burghlarie it selfe was. For to that Burghlarie it is required, that some person be in

bee in the house, which is not materiall here, and this may bee committed in such an Outhouse, as would not make vp that auncient Burghlarie 29. Eli. cap. 15.

There is yet also one other Felonie concerning houses: For Master Bracton saith, that if one do burne a dwelling house maliciously, he shall die the death for it: and Britton fol. 16. describeth the manner, writing that he shall be burned for it: besides the which, *Testimonia. 1. cap. 15.* forbiddeth the Replewin (or bailment) of such an offendour. And the burning of a house *Felonice* (saith M. Brian 3. H. 7. 10.) was felonie at the common law.

Burning of houses.

So is it, to burne a barne (in the night) that is adioyning to a dwelling house, 11. H. 7. 1. Cur. or to burne a barne (in the day) that hath any cozne (or graine) in it, although it do not so adioyne.

Now, if the wicked purpose of a man be, to burne the house of A. onely, and yet by that fire the house of B. is burned also: then is the burning of this last house Felonie: because it followed of the fire that was maliciously kindled to burne the first, *Comment 475.*

But to leaue the house, and to come to the goods *Robberie.* that do accompany the person, we must bewray the violent robber, so called, either by corruption of the Latine *Raptor*, from which our tongue will easily fall to robber: or els of robe, because he that after this forcible and fearefull manner spoiled another, did vse to take his robes (or clothes) from him. After the which sence, and like Etimologie, the

the grecians called such offenders *Λάτρες*, & the Latines *Expilatores*: that is to say, fleefers, or flawers of men. And in this kinde of felonie, the law regardeth not so much the value of the thing robbed, as the feare that the robber bringeth with him to the person of him that is invaded. So that if he take any thing at all, it will be robberie, though it be not worth so much as one penie: *Coron. Fitz. 115. & 178. & lib. Aff. 22. pl. 39.* And hereof *M. Bracton*, and *Iustinian* do terme this offender, *Fur rem improbum, & prædonem, qui rem alienam rapit.*

So that Robberie is the felonious (or theevish) taking of any mans goods from his person, to his feare and against his will, to the ende to steale them. And in this description, the word (taking) is largely extended against the offendour: in so much that it may proue robberie, though the owner may (in some case) rather seeme to haue deliuered the goods, then the theefe to haue taken the same from him: if so it proceed & be done by feare and menacing.

And therefore, if the theefe doe assault a true man, and threaten him, that (if hee will not deliuer his purse) he will kill him; by meanes whereof he deliuereth his purse vnto him with his owne hands: yet this is plain Robberie, because he doeth it for the feare wherewith the theefe hath stricken him: *Stanf. 27.*

So, if the theefe do (without any expresse words of threatening) onely assault a true man for his purse, who (fleeing with him, and finding himself

too weake) throweth downe his purse, & the theefe taketh it, 20. *Eliz. Report Crompt.*

So if theeves take a man, and compell him (by menace of killing) to sweare vpon a booke to bring vnto them a certaine summe of money, or other goods: and thereupon he goeth, and bringeth the same vnto them: this is adiudged Robberie 44. *E. 3. 14.* and yet he was once at libertie and out of their hands, so as he might seeme to be freed of all the feare wherein he stood by them. But yet, who seeth not, that the same feare that made him to take the oath, did still follow him euen to the performance of that which he had sworne & promised.

And so is it, if theeves assault me for my purse, and I (in the flight from them) drop it downe into a bush, vpon hope to haue it againe if I may escape them, and they espy it, and take it away with them: for, had they not put mee in feare, I would not so lightly haue throwne my money from me.

Neither is the word person so nicely to be construed in this description, that (to make vp Robberie) the goods must needs be annexed (or fastened) to the bodie of the person. For *M. Stanf. (fol. 27.)* reckoneth it to be Robberie, if one shall take my goodes openly against my will, in any place wherein I am present, though the goods bee not vpon my person at all: which seemeth to be good reason, seeing that in both cases, the losse is the same, and the feare is alike.

But now withall, some thing must (in some sort) be taken from the person: or els the fact will proue

proue no robbery: for if a man doe lie in awaite to robbe me, & (drawing his sword vpon mee) he willethe me to deliuer my money: and I likewise betake mee to my weapon, and thereby repell him and take him, either by sight, or by Huey and Cry made after him: this will not bee Felonie at this day (saith D. Stanford, agreeing in opinion with Tenney. 9. E. 4. 26.) because hee tooke nothing from me: and yet in the olde time (when the will and the act, were of like account in felonie) it was otherwise holden, as it may appeare, li. Ass. 27. pl. 38. & 25, E. 3. 42.

Againe, a man may take some thing from the person of another without title to it, and by force, and to his feare also, and yet it may bee doubted, whether the act will amount to robbery: as for example it happened (26. Eliz.) that one came to a fisherman that trauelled by the high way with fish to sell: and prayed to haue fish of him for money: the fisherman refused to sell vnto him: and he (with force and feare) tooke some of the fish, and gaue him money (to the value and aboue) for it and of this case the Iustices of the Session thought good to be aduised, Report Crompton.

For an end of Robbery: two theeves attempted to rob a true man, who fled from them, the one of the theeves followed him in chase, and the other espying another true man in the same high way (but out of the sight of his fellow, theefe) ridde towards him, and robbed him: and then returned to his fellow, from whom the first true man had in the

meane while escaped: this was adiudged robbery in both the theeves, Report Crompton: and yet the one of them was neither within the sight of that robbery, nor assented to it: But because they both came to robbe and (at the same time) this fact was committed by the one, it is worthily to be imputed to the other also.

And and betweene the violent Robber that taketh from the person by force, and the myching theefe that stealeth when the person (or the owner) is absent, standeth the craftie cutpurse, or pickpurse, that taketh goods (or money) from the person by sleight onely, the owner neither being made afraid, nor witting of it. Cutpurse.

This fact as it is no robbery, because it is boide of assault, force, and feare: So neither is it any felony vnto death, vnlesse the thing taken be of moze ualue the .vij. s. in money, Collect. 1 2. Dier. fo. 224.

And in this kind of offence, it is thought necessarie, that the theefe haue an actuall possession of the thing, leuered from the person of him from whom it is taken. So that, if the offendor cut a mans girdle, at which his purse hangeth, and the purse falleth to the ground, and he bee discried before he take any hold of it: this will not make Felonie: But if he take the purse in his hand, & then cut the girdle, and afterward let them fall, that will proue him a felon; because he had a manuel possession of his purse, remooued from the person: Crompton. And now I am (by the course of mine owne order, and diuision) drawne from the body, and driuen

giuen to take in hand that Felonie that worketh
vpon the goods alone.

This booke *H.* Stanford call Larcenie: a name
fetcht from the Latine *Latrocinium*, which lan-
guage would as soone haue knowne it to bee her
owne, if we had called it *Latrocinie*, but she must
be contented to beare with our custome of clipping
whatsoever we do borrow from her. *H.* Bracton
callet it *furtum*, and Varro said that *fur* was de-
riued of *furus*, (that is, darke) because theeuers doe
willingly worke by night, as hating the light of
the Sunne that may bewray them. But Gellius
noteth him of errour, and thinketh that *fur* came
of the old Greeke worde *φύρ*, which signified a
cheefe (or a stealer) so named (as Iustinian writeth)
of the word *fero*, which is both Greeke & Latine,
and signifieth to carrie, or beare away: which is
the verie end for which the thiefe commeth.

H. Bracton defineth it thus: *Furtum est con-
tractio rei alienae fraudulenta, animo furandi, inuito
domino*: which definition is tollerable, although
H. Stanford doe not like it. If *H.* Bracton meant
thereby to describe all manner of theft, whether it
were robberie it selfe, or great or petite Larcenie;
euen as the Ciuilians do vse to teach.

But, because I haue taken another way in fe-
lonies, I wil (for mine owne purpose sake) describe
Larcenie to be a felonious and fraudulent taking
of another mans personall goods (remoued from
his bodie, or person) without his will, to the end
to steale them.

And

And albeit petite Larcenie be not punishable by death (as the greater Larcenie is) yet be they both felonious and fraudulent takings, &c. for the enditeement of petite Larceny (saith Iudge Fitz. 27. H. 8. 22. must be *Felonie cepit*, and he shall forfeit his goods for such a felony. So that there is no difference either in the nature of the offence, or in the mind of the offender, but onely in the value of the thing that is taken, which also maketh the degrees of the punishment.

And therefore, if it be found by the Iurie to exceed *iii. s.* in value, he shall die for the fault: and (if it be of, or vnder that worth) he shall be corrected by the discretion of the Iustices that may heare and determine it: West. 1. cap. 15. Brit. fol. 21. *Coron.* Fitz. 404. and 406.

But here on the one side if a man commit diuers petite Larcenies, which (in all) do exceed the value of *iii. s.* then may they bee put together into one Enditeement, and he shall suffer the paines of death therefore. *Coron.* Fitz. 415. and on the other side, if two or mo persons do ioine in the stealing of goods that doe surmount *iii. s.* they all must die for the fault, *ibid.* 404. for (as saith *H.* Stanford) that felony is seuerall in Law, euen as those others were seuered in act, and deed.

But for the more cleere vnderstanding of Larcenies, I will first shew of what thinges Larceny may be committed: and then, after what manner, & with what mind, the same may be performed: for as touching the persons that may be charged with that

Of what
things Larce-
nie may be.

that fault, they will be shortly comprehended.

It is Felonie therfore, to steale any the moueable goods of any person: but because it may in some cases be doubted, whether the things so taken are to be numbred amongst moueable goods, or no, I will proceed in particularitie.

Honey, plate, apparell, household, stuffe, Cozne, of any sort (or hay, or fruit) that is seuered from the ground, horses, mares, colts, or kine, sheep, lambs, swine, pigges, hens, geese, ducks, peacocks, turkies and other beastes, & birds of domestickall (or tame) nature, are such, as felonie may be committed in the taking of them.

It may be felonie also, to take some that be of a wilde nature: as to take yong pigeons, or yong hawkes out of their nestes (or airies) before that they can flie. So, to take fishes that bee kept in a trunke, stew, or pond, 10. E. 4. 15. 18. E. 4. 8. A. Ass. 22. pl. 98. & 18. H. 8. 2. For, as a man hath a proprietie in those first things that be domestickall, and therefore it is plainly theft to take them: So in these latter, he hath such a possession of them, that the one sort for weaknesse, and the other for the restraint, cannot (without help) vse their nature, and forsake him: and therefore it is like iniurie to steale them also.

But otherwise it is of doves, or hawkes, that can flie at libertie: and of fishes that liue abroad in ri- uers, or streames, because they are *nullius in bonis*, and therefore *occupanti conceduntur*. And yet, by Statute law there is one exception: For if a man

find

find a Falcon, Carcelet, Lano, Laneret, or other Falcon that was lost, and do not forthwith bring it to the Shirife, to be proclaimed, but doe steale, and carrie away the same, it is declared to bee felonie, 34. E. 3. cap. 22. & 37. E. 3. cap. 19.

But to go forward: To take Phelants, Partriches, Hares, Conies, Herons, Swans, or Deere that are abroad: or to take Dogges of any kind, Apes, Parats, singing Birds, or such like, (though they bee in the house) is no felonie, because these latter be but for pleasure onely, & are not of value: and those former be of wild nature, as those others are whereof I spake before, 18. H. 8. 2. And therefore Iustice Hales (7. E. 6.) thought it no felonie to take a diamond, rubie, or other such stone (not set in gold, or otherwise) because they bee not of price with all men, howsoeuer some doe hold them both deare and precious.

And here againe, is some exception: for to take a tame deere is Felonie, if at the least the taker know it to be tame, 10. Ed. 4. 15. & Stat. 25. And the Statute 1. H. 7. ca. 7. maketh it felonie to hunt deere, or conies (after some sort) in a forrest, parke, or warren.

Furthermore, to take the flesh of any tame, or wild soule or beast (that is dead) out of the possession of another man, is felonie, Stanf. 25. So to take the wooll from the sheeps back, or to take the skinne, and leaue the bodie behind, will be felony, Report Dalyson.

And now you must remember, that in the descrip-

R

sion

tion I said, of another mans personall goods: for to take chattels reals, will not amount to felonie: as to take the charters of a mans land, in or without a bore, or to take a infant in ward can be no felonie: because they bee reall, and not personall chattell, 10. E. 4. 15. And yet the statute (5. Eli. ca. 14.) toucheth them in felonie, that shall secondly offend in forging deeds concerning another mans lands, &c. by which they endeavour to steale (as it were) his inheritance from him.

Again, to steale fruit that hangeth on the tree, or to cut downe & carie away the tree it selfe, or to take the Leade from a house, or Church, will not worke to any Felonie: because these things bee part of the freehold, til they be severed, and cannot therefore be reputed for any chattels, *Coron. Fitz. 119.* and 256. and Report Crompton.

But if I gather mine apples, or cut downe a tree of mine owne: then may another become a felon by the taking away of either of them, *Stan. 25.* And by (the opinion of Mar.) if a man cut downe a tree of mine this day without title, and fetch it away to morrow, that will proue him a felon, because it was a chattell severed when he tooke it.

Moreover: to take treasure that was hidden, or goods or cattell that bee waived, or wrecked, or strated is no Felonie, *Coron. Fitzher. 187.* & 265. and *Stan. 25.* because it both not yet appeare who is the owner of them, and the words of the description be an other mans goods: And it is not like, as where the goods may be said to be, *Bona capella bona*

bona parochianorum bona cuiusdam mortui ignoti, or bona domus, aut ecclesie in the time of vacation: for in all these cases, there, bee *domini*, or owners of them to some purpose, Enditement *Fitz. 15.* yea, if a man do baile (or lend) his goods to another, and doe afterward feloniously take them againe, this shall charge him selfe in Felonie: for albeit he were owner of them, yet had the other therein a speciall proprietie also, by which he might haue an appeale or action of trespassse, against a stranger that should steale, or take them, 7. H. 6. 43. And agreeably to this the Civilians do adiudge it theft, if one (that layeth his goods to pledge) do embesell them from the partie to whom they were engaged.

So, (by the opinion of Mar.) if I lend my plate to one that melteth it, & I take that mettall feloniously, it is Felony in me, because the proprietie is altered by altering of the fashion.

Thus far of the things that are subject to this Felonie. Now let vs see what manner of act and deed meaneth is requisite to make the fault full. Two things must concurre, namely, to take and to carie away (or remoue) the thing taken with a purpose to steale the same. For the Enditement must alwaies be *cepit & asportauit, or cepit & abduxit*. And in either of these two, the letter and word is not so much to be regarded, as the meaning & sence thereof, for the more seuerer & assured suppression of offenders. For as it is clearely felonie, if a man take my goods (with a mind to steale them) without any delivery by me: so may it proue felony also, though he

In what man-
ner Larcenie
is committed.

come first vnto them by deliuerie from mine owne hand.

And therefore if a Tauerne deliuer a goblet to one to drinke his wine, and he carrie the goblet away, it is Felony, because the Tauerne gaue him no possession therof, but the vse for y time onely, 13 E. 4. 10. So if I deliuer to a man certaine bales of Dade, or a tunne of Wine, to carrie to Canterburie (giuing him money for the carriage thereof) and he carrieth them to Yorke, and there breaketh by the bales or tunne, and conuerteth part of the Dade or wine to his owne vse, it is Felonie in him, *ibidem*.

But if I deliuer my goods to a man to keepe, and he fraudulently consumeth them, or otherwise conuerteth them to his owne profit, it is no felony, *ibidem*: for that booke agreeth, that if the other had conuerted all the Wine, or all the Dade (as he receiued them) to his owne vse, it had bene no Felonie by reason of the deliuerie: but heere may it be truly said vnto him, that neither the Dade nor Wine were deliuered to him in y plight whereto himselfe hath brought them, and so (vpon the matter) he had no deliuerie of them, but a bargaine to carie them.

And if my Cooke, Butler, or horse-keeper, shall go away with any of my vessell, plate, or horses, which they haue in their keeping, it is felonie, because they haue no deliury: insomuch that whilist those thinges were in their handes within my house, the possession of them is continually remain-

ning in my selfe, and not in them: But (3. H. 7. 12) there is some strong opinion against it.

If I deliuer my goods to one to carrie to a place in London, and he carrieth them accordingly, and then conueyeth them away, and selleth them, it will be Felony, because the puiitie of the deliuerie was determined so soone as hee came to the place. Stan. 25. and then he hath no more a deliury, then if I should giue to one the key of my chamber, and he would therewith open the doore, and take the goods that are therein from me, Stan. 25.

A man may gather by Glanville, that the ancient law gaue no iudgement of Felony against him that came to the possession of the goods by the hand of the owner: for he saith (lib. 10. ca. 13.) *Fortum non est, ubi initium habet sue detentionis per dominum rei*: and thereupon grew those differences of opinions concerning goods in the charge of seruants: for the appealing whereof (in some part) the Statutes (2 I. H. 8. ca. 7. & 5 Eli. ca. 10.) do declare it to be Felony, if any seruant of the age of 18. years (other than an Apprentice, which also is to be understood of him that is bound by Indenture, by the name of an apprentice) shall go away with, or conuert to his owne vse, any mony, iewels, goods or cattels of his masters: or mistresses, and of his or her deliuerie to keepe, of the value of xl. shillings to the intent to steale the same.

But euen as to labor to take away all doubts in law, is nothing els, but *Hydra caput amputare*: So within forty peares after that Statute (which

was made for the resolution and clearing of those former doubts) sundrie questions did grow upon the construction of this law it selfe.

First, if a man deliuered an obligation to his servant to keep, and he tooke by the money due thereby, and went away with it: and then, if a man deliuer to his servant wares to bee sold at a faire (or market) & he selleth them there, and goeth away with the money: whether these offences be within that statute, 21. H. 8. And it seemeth by the better opinion, that they are not: for in the first case the money was not deliuered, but the Obligation: and then the servant stole not that which was deliuered, but another thing, & that also a thing in action only, and so of no value at all. And in the latter question, the first parte of the former reason holdeth also.

Howbeit, if the servant receiued xx. li. in gold, which he changed into silver money, and then ran away with that, his fault wil rise to felony, because that gold & silver were both but money, though diuers mettals, Colled. Dier. fol. 5. & Report Crompt. 27. El. And it seemeth by Dyer there, that if one servant do deliuer to his fellow servant, the goods of their master to keepe, and hee goeth away with them, this shall bee felony within the meaning of that statute, because it shal be said to be the deliuerie of the master himselfe.

An other Felonie there is also declared by the statute (33. H. 6. cap. 1.) against the household servants, that do take and spoile the goods of their de-

ceased

ceased master: But that felony groweth by their default of apparance in the kings bench, after proclamation, & therefore our Iustice of the peace can not take knowledge of it.

The other point that (as I said) must concurre to make by this Felonie, is the carying away, or remotion of the thing that was feloniously taken. In which part also, it is not of necessitie, that it bee cleane caried out of the place where it was, but it sufficeth that it be so farre remoued, or stirred, that the euil mind of the taker may plainly appeare. As if a guest will take the sheets out of the chamber where he lodgeth, & then go towards the stable for his horse, with a mind to steal the sheets, & is taken with them, this maketh his felony full, although he hath not caried them quite out of the house, lib. Ass. 27. pl. 39. And like law is it, if a man do take a horse in another mans close with felonious intent & bee deppehended in the fault before that he haue led him out of the same close Report Dalison.

Touching the persons that may be charged with Larceny, they shall best appeare by a Negation, or handling of those which can not bee charged with it. And for that purpose, if the husband & the wife, do commit a Larcenie together, it shall be imputed to the husband onely Coron. Fitzh. 160. Neither is he chargeable if the husband compell her to commit the Larcenie alone, lib. Ass. 27. pl. 40. But if she doe it by his onely commandement, without other constraint, then M. Bracton affirmeth it to be Felonie in her, and M. Stanford doubted of it.

What persons are chargeable in Larcenie.

And the wife shall not be accounted a Felon for stealing of the goods of her owne husband: yea although an other (that knoweth it) take them of her, yet is he no felon for it, *Coron. Fitzh. 455. & Stanf. 27.* But a wife may become a felon by her owne act, the husband not knowing thereof: as if she steale another mans goods, or receiue the thief that stealeth them: and in such case if the husband know not thereof, or (knowing it) doe forthwith forsake his house, and her company, he shall not be charged for her offence, *Coron. Fitz. 383.* The infant, the furious man, the lunatique, and the dumbe and deafe person, are chargeable in Larcenie, after the same sorte as they bee charged in Homicide before.

Accessories to
Felonies by the
common law.

The principal felons of all sorts being thus perused, we are now to consider of their Accessories, for they be felons also. It may plainly be collected by Bracton, and by the statute of Westminster, 1. ca. 15. that in ancient time the Law tooke knowledge of three sortes of Accessories: some before the felonie done, as commaunders thereof: others at the verie time of the felonie, as those that (being present) gaue force by aide thereunto: and others after the felonie committed, as those which receiued or comforted felons knowing of the offences that they had made.

And *W. Stanford* (fol. 71.) saith, that all Abettors, consenters, & procurers be taken to be within the reach and measure of accessories before the offence committed.

But

But, forasmuch as it is euident by many bookes (and namely by 7. H. 4. 27. 11. H. 4. 13. 10. E. 4. 14. 21. E. 4. 71. & *Coron. Fitz. 309. 314. 350. 433.* and others) that the Law is otherwise taken at this day touching them of the second sorte, that bee of societie with the principall, and be also present with him at the dooing of the felonie, (whether it be Murder, Robberie, Burghlarie, or Larcenie) insomuch, as it adiudgeth them principals no lesse then him that doth actually perpetrate and worke the offence (as it may sufficiently appeare by that which is said before) I am eased of the labour to deale with them, and shall not neede to handle any other sorts of accessories, but those onely, that bee either before, or after the time of the felonie done and committed.

Accessories by
Statutes.

And here (at the first) I am fallen vpon a tooke question: the one, whether there may be any accessories to such felonies as were not at the common law, but were afterwarde created felonies by statutes, vnlesse the same statutes doe specially so appoint it: and if there may bee such accessories before the offence, yet then whether there may bee any Accessories to such a felonie after the offence also.

And, albeit the first of these questions might haue receiued the more easie resolution: for that all such as doe will or procure any felonie to be done, are the verie cause thereof, so as without them it is to be thought that it should not haue been committed: yet they of the Parliament house haue (in the making

making of sundrie new felonies) thought it convenient for the avoiding of all doubt, to comprehend in plain speech the Accessories, both before and after. For so you may see it done, by the severall statutes, 1. Mar. cap. 2. 2. made against Rebellious assemblies: 1. & 2. Ph. & M. cap. 4. against Egyptians: and so of such others.

And this caused M. Stanford (fo. 44.) to write, that there could be none accessories) after the offence) to the felony of embezzelling Records, declared by H. 6. cap. 12. nor to the felony of contrivance, set forth by the Statute 33. H. 8. ca. 8. because those two Statutes have no expresse mention, but onely of the Accessories before the offence committed: And that there could be none Accessarie at all, to the felony of taking of maydens, widowes or wives against their wills (enacted 3. Hen. 7. cap. 2.) because thereby, the procurers, abettors, and receivers are adjudged to be principall felons.

But, for a more certaine rule in all these points, I will use this one case, that happened in the kings Bench (3. & 4. Phil. & Mar. as Judge Dalyson reporteth it.

Two men (saith he) were indicted upon that Statute (3. H. 7. cap. 2.) for the taking of a woman against her will feloniously: and two other men were then also indicted, for that knowing the felony) they did receive, and comfort the first said offenders. In this case, albeit the Statute doth make as well the procurours, and abettors of the felony, as

nie, as also the receivers of the woman (knowing the matter) to be principal felons: and thereby these two persons, which received the felons onely, (and not the woman) can be deemed no principals: yet, all the Judges of that Court were then of the opinion, that these receivers be accessories to this felony, by the Statute, no lesse then if it were to a felony at the common Lawe. For, when a Statute (say they) maketh a felony, it is a felony, and hath accessories to it, even in the same manner as if it had beene felony at the common Law. As in a Rape, which is declared by the Statute (Westm. 2. cap. 34.) saying, If a man ravish any woman, where shee assented not before, nor after, let him have iudgement of life and member: yet, if another (knowing of the fact) shall receive the ravisher, hee shall be an accessarie, no lesse then if it were to a felony that had bin by the common Law.

The ground of accessories being thus levelled by the line of this iudgement, I will walke evenly through it, and handle (under one) both the accessories before, and after, as well by the common law as by the Statutes.

Such therefore as shall either will, command, hire, procure, conspire, consent, or abette, any Murder, Rape, Robberie, Burghlarie, or Larceny to be done, and be not present at the dooing thereof, are accessories before the felony done, and thereby felons when the felony is done.

And

And albeit, that the chiefe offender doe not accomplish the fault altogether in the selfe same sort, as it was befoze hande agreed, & plotted betweene him and the accessaries: yet, if any felonie fall out by that attempt, either against the same person, or against any other, then those that were so priuie thereunto shalbe taken for accessaries vnto it. As if A. willethe B. to beate or to rob C. and he attempteth it, & thereby so beateth him that he dieth thereof, now is A. an accessarie to the murder. *Coron. Fitzh. 314. & Comment. 475.*

So, if a man commaunde one to set fire on the house of A. and he so doth, & by kindling the same fire, the house of B. is wasted also: this commander is accessary to the burning of the house of B. though he neuer meant that the fire should goe any further then to the house of A. onely, *ibid.* For, in either case, the latter euill was but a sequele of the former, which was commaunded by him, and attempted by the other.

Againe, if a man hire one to poison another, and hee killeth him with a sword, or contrariwise killeth him with poison when hee was willed to slay him by sword: this procurer is an accessary to the murder: *Dalyson.*

So also, if one procure a man to kill another in the field, and he killeth him in a house, or church: or to kill him such a day, or at such an houre, and hee killeth him at another day or houre. For, their wicked purpose is effected as they agreed, though by another meane (or circumstance) then was set downe

downe betweene them. *Comment. 475.*

But if I commaund one to take A. and he taketh and robbeth him. I am no accessary to his offence: *Stanf. 41.* So, if one doe conspire with another, that the one of them shall burne the house of A. and he burneth the house of B. or that hee shall steale the horse of A. and he stealeth his ore: or that he shall robbe A. in the high way, and he robbeth him burghlarly in the night seals within his house: Now is that other noe accessary to any of these felonies, for that they be either in other things, or of other kindes, then were intended. *Comment. 475.* And (which is moze strange) if the husbände conspire with another to popson the wife, and hee for that end procureth and bringeth poison to the husband, who tempereth it with an apple, and giueth it to his wife to eate, and she (thinking none euill) deliuereth a morsell thereof to her daughter there present, who also eateth it, and dyeth of the poison: yet is that other person none accessary to this murder that the husband hath committed: because it is a distinct thing from that which he purposed: and (against him that is not the immediate murderer) the sequele of the fact shal not be drawne to charge him beyond that which was intended by him. *Commentar. 476.*

But nowe, in all these, and like cases of Accessaries befoze the fault, it is of necessitie that the commander, hyperer, procurer, or conspirer, doe continue that his minde and purpose, euen till the felonie be fully done and executed. And in this respect,

pect, though it be no felonie (as I said) to strike a woman with child, whereof the child dieth after it is bozne: Yet if a man shall maliciouslie procure a woman that goeth with child to destroy that child so soone as she shal be thereof deliuered, & she thereupon doth it: Now is he an accessarie to this Murder: because that procurement before the birth continueth untill it be executed by the Murder which followeth the birth. Collection Dier 186.

But otherwise if he shall repent him of his malicious minde, and thereof giue notice to the other, and withall charge him that hee make no such attempt, and hee doth neuerthelesse bying the same to effect, then is such commaunder or procurer no moze Accessarie to the fault, then if hee had neuer imagined, or thought vpon it. *Comment.* 476. Neither doe I thinke, if a man forkeknow of a felonie (intended to be done) and doe conceale it, and thereby suffer it to passe to be effected, that he can bee made an Accessarie thereby: vnlesse he haue also vnterred some expresse consent, or giuen assured signe of his owne allowance and liking of the same: but rather, that such his concealement wil weigh to a mispyssion (or contempt) for which he shall bee fined: euen as if it happened him to be present at the dooing of a felonie whereof he neither had knowledge, nor came therfore, nor gaue aide thereunto) and would neither disturbe the felon, nor leaue Hue and Crie after him. Stanforde 40. & *Coron.* Fitzh. 395.

Accessaries after
the offence.

Accessaries after the felonie, be those, which know,

knowing of the felonie) doe feloniously, or with an euill minde, receiue, harbour, fauour, or otherwise comfort the felon, whether it be in the same county in which the felonie was done, or in any other.

For, if a man shall onely make sute by his word (or writing) in the behalfe, and for the deliuerance, of one whom he knoweth to be a felon, this is done of fauour, but yet not with such an euill intent, as that it shall make him an Accessarie thereby: lib. Ass. 26. pla. 47. But if a man do (vpon Hue and Crie) arrest a theefe that hath stollen the goods of another, and doe then (with an euill mind) take the goods, and so let the felon go, he is to be arraigned for it, as an accessary to the felonie, if not as a principall felon: for so is the doubt mooued, lib. Ass. 27. pla. 62.

Againe, if a man pursue, and take a felon that hath stollen his goods, and then taketh his goods, and suffereth the theefe to go at large, he is no accessarie thereby: for hee may *agere civiliter*, or *criminaliter*, at his owne pleasure, as *Hast.* Bracton writeth: but if he take money of the thiefe, to the end that hee shall not giue euidence against him, whereby the theefe scapeth, then is he become an Accessarie to the felony of his owne goods, by the opinion of Judge Hales (6. E. 6.) because it is done with a mind to comfort the felon in his euill dooing, Report Dalison.

To receiue, harbour, or relieue with money, a man that is bailed for felony, and bound to appeare for his triall, breedeth no daunger of beeing an Accessarie,

Accessarie, because the Law doth him that fauour, and the felonie cannot be concealed by it: Neither will it make a man accessary, to receiue (or buy) the goods, that he knoweth to be stollen, vnlesse he doe receiue the theefe that stole them: 9. H. 4. 1. & *Corone Fitzh.* 126. & 208.

And although the preamble of the statute (2. & 3. E. 6. cap. 24. seemeth to cal him an accessary, that receiueth the goods onely: yet that must be vnderstood of him that receiueth the goods, and the felon together. For it was not the purpose of the statute (as I thinke) to make any new accessary that was not before, but onely to prouide triall (where it wanted) for those Accessaries that were before.

Accessarie to
an Accessarie.

Furthermore, as one man may be Accessarie to a principall felon: so may an other man be Accessarie to that Accessarie also. For, if one doe feloniously receiue, or comfort him that is an Accessarie, he is fallen into equal danger with him, and is called an Accessarie to an Accessary lib. Ass. 26. pl. 51. *Coron. Fitzh.* 196.

Againe, in the iudgement of an Accessarie, nature is not allowed her excuse: for, (*Corone Fitzh.* 427.) a felon fled to the house of his naturall brother, who shut the fore-dore against them that pursued the felon, and conueied him out of the house by a backe doore, whereby hee got to the Church: and this brother was adiudged an Accessary for it.

But yet such consideration hath the Law of the duetie of the wife towardes her husband, that shee shal not be deemed an Accessary, though (knowing him

him to haue committed a felony) shee doe both receiue, and comfort him, & also couer the fault that he hath done *Coron. Fitz.* 383.

And in all cases of an after Accessarie, this one thing is generall and requisite, that the fact (to which he is an Accessarie) be a felony at the verie time in which he becometh an Accessarie to it. For, if a man doe giue a mortall wound to another vpon the first day of August, and a third person (knowing thereof) receiueth him, two or three daies together, and letteth him go, and then afterwarde hee that was stricken dieth of the wound within the yere and day: yet this receit maketh the other none accessarie, because the principall fact was then no felony, Report Dalyson.

And if a man haue been charged as a principall felon, and vpon triall be acquitted thereof, yet may he (if the speciall matter will so serue) be an accessarie thereto after the offence, though not an accessarie before. *Coron. Fitz.* 200. & 463. For (as *W. Bracton* saith) those offences which make an accessary before, be so fast tied and knit to the principall fact (whereof they be very causes) that they cannot be seuered from it: whereas those others (which make an Accessarie after) doe follow the fact aloofe, which also is in it selfe complete without them.

And to this opinion *W. Stanford* enclineth fol. 10. But as he confelleth that the law was otherwise taken in ancient time, & that the partie might be charged as an Accessarie before the offence also,

One person
charged as
principall and
Accessarie.

as it may appeare Coron. Fitz. 424. So I finde, that the late opinion of all the Iustices (1. & 2. Ph. & Mar.) was agreeable to the same: because the principall fact is one offence, and the accessary fact (whether before, or after) is another offence, and distinct from it: insomuch, that although a pardon of all felonies, will not discharge a murder, yet it is auailable for all the Accessaries thereto, be they Accessaries before, or after, Report Dalyson.

Now, as all that which is hitherto spoken, is meant of Accessaries to felons, that be not attained: so is the same much more to be holden, concerning accessaries to felons that be attained, and of recorde. For to receiue an approuer (knowing him so to be) will make a man accessarie to the felonie that he hath confessed: and of like danger it is, wittingly to receiue him that is attained of felonie, by way of vclawzie: Coron. Fitz. 285. And in this latter case, there is some opinion, that a man shall be an accessarie for receiuing a felon attained (especially in the same Countie) though he know not of the attainder at all. Coron. Fitz. 377. & Collet. Dyer 355. for euery man (say they) is bounde to take knowledge of a matter of Recorde, at the least in the same (though not in a forrein) countie: but M. Bracton verie reasonably requireth a right and direct knowledge in the partie, to make them accessarie, as well in the one case as in the other: for albeit a recorde (and especially the pronounciation of an vclawzie) be so notorious, that euery man may easilie

easilie come to know the same: yet, were it an ouer great extremitie, that ech man should (vpon the peril of his owne life) enforme himselfe; and take vnderstanding of it.

I haue nowe (as you see) gone ouer this large field of principals, and accessaries, in all these sundrie sorts of felonies: so much the more flowlie in pace, as I haue laboured to carrie the reader in company with me, and that also the rather, because it is a point of great weight, frequent in vse, and fit for euery Iustice of the Peace to heare, and vnderstande.

Now, as I haue passed thorow the power of any one Iustice: So am I to prosecute, by way of short note, the power of some one Iustice of the Peace, and so conclude this second booke.

The assesse, made at the Easter Sessions of the Peace vpon euery Parish in the countie, shal perely in default of the parishioners, and (in default of the Churchwardens and Constables there) be rated by order of such Iustice of Peace as shall dwell in that Parish, or (if none so bee dwelling) in the parts next adioyning: And in default of the saide Churchwardens and Constables any Iustice of peace within the limit, may leuie the same & by distresse and sale of the goods of any person refusing or neglecting to pay his portion thereof, and shall tender to the party the ouerplus of such Sale, and in default of such distresse, any Iustice of that limit may commit to prison such person without Baile till he pay the same, 43. El. cap. 2.

What things
some one Ius
tice may doe,

Stocke of the
shire for the
poore.

Stocke for
Souldiers.

The like order is taken concerning the assesse made for Souldiers and Mariners. 43. El. ca. 3.

Sherifes.

Any one of these two Iustices of peace, which (by this statute) may appoint Duerseers for the poore, may also send to the house of Correction, such as wil not employ themselves in work, according to this statute, 43. El. ca. 2.

Amendments
two men
and one

The *Custos Rotulorum*, or the eldest of the *Quorum* in his absence, ought (at the general Sessions after S. Michael) to appoint two Iustices of the peace (the one being of the *Quorum*) to haue the ouersight, and controlment of the Sherifes entring of plaints and amerciaments. And one of those Iustices may examine (and without further enquiry) conuict the gatherers of the same amerciaments, if they gather any moze money then is contained in their lawful Estreits, 11. H. 7. ca. 15.

Crossebowes
& handguns.

Euery person finding or seeing any to offende the statutes made against the shooting in Crossebowes and Handgunnes may arrest and bring, or conuey him to the next Iustice of the Peace of the countie, where he was found offending, who (vpon due examination and ppoofe thereof before him made) may by his discretion commit him to the Gaole, there to remaine till he shall truely pay the one moitie of the forfeiture of this statute to the Queene, and the other moitie to such first bringer or conueyer, 33. H. 8. ca. 6.

In this, and such other cases the Iustice of peace, hauing (as it seemeth) the whole matter committed to himself alone, ought to be warie and circumspect,

spect, least either he rashly condemne the guiltlesse, or negligently suffer the guilty to escape: And vpon the offence sufficiently ppooued, it is necessarie that in his *Mittimus* (or Precept to the Gaoler) there be contained, the names of the parties, with the maner of the offence, and how long time he is to be kept in prison for it.

Furthermore, he is to make a Recorde of the matter, and to send the Estreit of it into the Eschequer, whereby the Barons may (vpon intelligence thereof) cause the Queenes duetie to be leuied to her vse. And although the forme of the *Mittimus*, might bee easily fashioned by some other Precedents in this booke, yet for the moze ready helpe of the Iustice in this, and towards other like, I will not sticke to leaue him a paterne both of that, and of the Recorde it selfe also.

To the Keeper of her Maiesties Gaole at *Maidstone*, in the said Countie, and to his Deputie or Deputies there, and to euery of them.

Forasmuch as this present day A. B. and C. D. *Kent.* of Halling in the said Countie Yeomen, did arrest and bring before me at Halling aforesaid one I. at S. of Friendsbury in the saide Countie Mariner, whom they had seene and found the same day (as they said) shooting in a handgun, charged with powder, and a pellet, at a Conie in a certain place in Cuckstone, within the said county

called the Churchfield, contrarie to the Law of this Realme, and thereupon prayed me that Iustice might be done in that behalfe.

I Iohn Leueson Knight, being the next Iustice of the Peace in the said Countie to the place aforesaid, did then at Halling aforesaid vpon the said request take the examination of the said I. at S. and did also then, and there here the proofes of them the said A. B. and C. D. touching the said offence: and for that it did then manifestly appeare vnto me, aswel by the testimonies of them the said A. B. and C. D. as also by the plaine confession of him the said I. at S. that he had not then lands, tenements, fees, annuities, or offices to the cleere yerely value of 100. li. and that he had shot in the said handgun, in maner and forme as is aforesaid. I doe send vnto you herewith the body of him the said I. at S. as lawfully conuicted of the said offence before me: requiring you in her Maiesties name, to receiue him into your saide gaole, and him there safely to keepe as her Maiesties prisoner, vntill that hee shall haue truely payed the paine and forfeiture of x. li. of lawfull money of England layd vpon him for his saide offence, by the statute thereof made in the 33. yeare of the Raigne of the late King Henry the eight, that is to say, the one moiety thereof to our said soueraign Lady, & the other moiety to them the said A. B. and C. D. the first bringers of him before me. And this shall be your sufficient warrant in this behalfe. Hereoff faile you not, as you will

wil answere for your contempt at your own perill. Yeouen at Halling aforesaid, the xx. day of March in the 41. yere of the raigne of our saide Soueraigne Lady Elizabeth by the gace of God, Queene of England, France and Ireland, defender of the faith &c.

By me the said

J. Leueson.

MEmorandum quod xx. die Martij, anno regni Kanc. dam. nostra Elizabeth, Deigratia, &c. Ang. Francia, & Hyb. Reg. fidei defensoris, &c. 41. A. B. & C. D. de Halling, in comitatu predicto Ycoman, quedam I. at S. de Friensburie in dicto comitatu Mariner innenerunt, & viderunt apud Cuckstone in com. predicto, die & anno supradicti cum quodam tormento (Anglice vocat. a Handgun) onerato pulvere tormentario & globoplumbeo (anglice charged with gunpowder and a leaden bullet) in quendam cuniculum adtunc existentem in quodam loco ibidem vocato Churchfield, sagittantem & exonerantem dictu tormentum, contra formam statuti (in Parliament Dom. H. nuper regis Anglia octani, apud Westminster, anno regni sui 33. rent.) promissae editi: Ac proinde die & anno supradicti presat. I. at S. arrestauerunt, & apud Halling pred. coram me. I. Leueson milite, (vno, & dicto loco proximo Iusticiarioru, dicti dom. reg. ad pacem in dicto com. conservandam, necnon ad diuersas transgress. & alia malefacta in eodem comitatu perpetrata audiendum & terminandum assignatorum) adtunc vna secum adduxerunt.

petentes inde iusticiam fieri. Qua quidē petitione audita, Ego prefatus Ioh. Leneſon, apud Halling prædictæ die, & anno ſupradictis, debuit ſuperinde examini præſatum I. at S. ac probationes prædictæ. A. B. & C. D. in hac parte cepi: Ac propterea quoddam tam per probationes prædictas, quàm per confeſſionem ipſius I. at S. ad tunc & ibidem apparuit mihi manifeſtè quoddam præſat. I. at S. (cum non haberet in iure ſuo proprio, nec in iure uxoris ſue ad uſum ſuum proprium, nec aliqui alij ad uſum eiſdem I. at S. haberent, terras, tenementa, feoda, annuitates, aut officia, ad clarum annuum valore centum librarum) in tormento prædicto modo & forma prædictis ſagitaſſet contra formam ſtatuti prædicti. Ego præſat. Iohannes Leneſon, prænomi- natum I. at S. die & anno ſupradicti, proxima Gaola di. dom. Reg. apud Maidſtone in comitatu prædicto de transgreſſione prædicti coram me conuiſtum com- miſi, ibidem moraturum quouſque panam & forisfa- cturam decem librarum legalis monete Angliæ verè ſolueret, viz. vnā medietatem inde dictæ Domine Reg. & alteram medietatem inde dictis A. B. & C. D. primis eiſdem I. at S. coram me ductoribus. In quo- rum omnium fidem & testimonium Ego præſatus Io. Leneſon, hijs præſentibus ſigillum meum appoſui, Da- tum apud Halling prædictæ die & anno primum ſu- prædictis.

Per me præſatum
I. Leneſon.

Handgun and
Croſſebow.

And euerie perſon (other then ſuch as are ſo au- thorized by the peereſy value of one hundred li. as is aforeſaid) ſought if he bee licenced to ſhoote in croſſebow

croſſebow or handgunne, and doe inhabite in the countrey, to preſent his name to the next Juſtice of Peace adioynning. And thereupon the Juſtice ought to preſent & recoꝛde the ſame befoze the Ju- ſtices of the peace at the next quarter ſeſſions, 2. E. 6. ca. 14. But learne of others, whether this part is to haue continuance ſtill, or els did only extend to ſuch perſons as had licence at that time.

Thus ſuperuiſors for amendment of the high- waies, ought within one moneth next after any of- fence done by any againſt the Acts, 2. & 3. Phi. & Mar. ca. 8. & 5. El. ca. 13. to preſent that offence to the next Juſtice of the Peace: and thereupon he ought to certiſie the ſame at the next generall ſeſſions within the ſame County, 5. Eliz. cap. 13. & 27. Eli. ca. 11.

The occupiour of any Iron worke, for euerie Highwaies. Load of Cole, or Myne, and alſo for euerie Tun of Iron, that he ſhall cauſe to be carried in any pere (betweene the 12. of October, and the firſt of May) by the ſpace of one Myle in the high waies within the Wealdes of Suffex, Kent, or Surrey, ſhall for euerie three ſuch Loades, and alſo for eue- ry ſuch Tunne, pay to the Juſtice of peace dwel- ling neere to the places in that Countie where the High-waies ſhal be moſt annoied or to his aſſignes three ſhillings in money: the ſame (in default of ſuch payment) to be leuies by diſtreſſe by ſuch Ju- Rice or his Aſſignee, of any the goods of the partie.

And ſuch Occupiour for euerie 30. Loades of Cole & Mine, or of either of them, and for euerie ten

ten Tuns of Iron, carried in the said Highwayes, betweene the 1. of May, and 12. of October, in any yere, shall lay one load of Synder, Grauell, Stone or Chalke in places to bee appointed by such Iustice, or els shall pay within eight dayes after demand, at euery such Iron worke, iij. s. for euerie such load, to the hands of such Iustice, who vpon default of payment, shall leuie the same by distresse: the same moneyes to be likewise bestowed by such Iustice vpon the same High-waies, at his discretion. And such Iustice may yearly (within 40. daies next after May day) assigne the places for bestowing the said Sinder, Grauel, Stone, Chalke, or moneyes thereto, 39. Eliz. cap. 19.

Disabled soldiers.

In default of the Parishioners and Churchwardens, that shall not take the Parishioners towards the reliefe of Disabled Souldiers, any Iustice of the peace dwelling in that parish, or (if none dwel there) in the partes next adioynning, may asseesse the same: and may also (in default of the Churchwardens and Constable) leuie the same by distresse to be sold, 43. Eliz. cap. 3.

Hedge-breakers.

The Iustice of Peace where the hedge or pale-breaker, cutter of cozn or wood, robber of Orchard or Garden, and such like is apprehended, or the offence is committed, may vpon the testimonie of one sufficient witnessse vpon oath, cause the offender to pay damages, or to be whipped by the Constable, 43. Eliz. cap. 7.

Seafaring men.

The Iustice of peace, or, or neere the place, where any Sea-faring man (suffering Shipwracke, and not

not hauing to relieue himselfe homewardest) doth land, may giue him a Testimonial vnder his hand containing the time and place of his landing, with the place of his birth or dwelling, to which he is to passe, and with a conuenient time for his passage thither. By which he may accordingly passe in the vsuall and direct waies thither, and aske and take reliefe, 39. Eliz. cap. 4.

The Iustice of Peace, in or neere the place where any idle & wandring Souldier or Mariner (comming from his Captaine from the seas or from beyond) doth land, ought (vpon request) to giue him a Testimonial vnder his hand, expressing therein the time and place of such his landing, with the place of his dwelling or birth, to which he is to passe, & with a conuenient time therein limited for his passage thither. And the Iustice of peace, next adioynning to the place, or direct way, where any Souldier or Mariner, (comming from, or beyond the Seas) landeth or trauaileth, & maketh knowne his pouertie, may licence him to passe the next and direct way to the place whither he is to repaire, & may limite him time. necessarie onely for his traualle thither: which licence if he purche, hee may aske and take (without danger) for his necessarie reliefe in such his traualle, that which any persons shall willingly giue him, 39. Eliz. cap. 17.

Souldiers and Mariners to begge.

One Iustice of the peace, of the Shire or Riding next adioynning to any citie, Borow, or towne corporate, beyond the Riuer of Trent where Northerne clothes bee made, may also ioyn with them

Northerne Clothes.

them of such Citie, Borow, or towne corporate, in appointing the yearely Overseers for such clothes, &c. 29. Eliz. cap. 20.

Now forasmuch as this 2. booke (containing the power of one Iustice to be exercised out of the Sessions) hath great varietie, and is thereby growen somewhat long, I will hereto (for his ease) annexe a summarie and short Table, by which he may suddenly and at once (as it were) behold whatsoever he alone (out of the Sessions) may take upon him to accomplish.

A Recapitulation of all that which one Iustice of the Peace may doe

out of the Sessions.

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Howbeit, our Iustice of the Peace is not (in the execution of any of these Statutes) to sit downe and rest himselfe vpon my short collection or note of them, wherein (howsoever I haue obserued some substance of the matter) the whole manner of the doing in circumstance could not be comprehended: But he must alwaies (for his more assurance) fle unto the Abridgement of the Statutes, or rather to the booke of Statutes at large, and thereby line out, and leuell his whole proceeding. For, as in the penning of Lawes, each word is (or ought to be) of weight and value: So, neither will this Volume containe them wholly, nor the Skill of any is able, sufficiently to abridge them, but that he shal do wrong to the substance, and bodie of the Law, which cannot speake plainely, except it speake fully and altogether.

The

THE THIRD BOOKE

containing the Practique of two
(or moe) Iustices of the Peace,
out of the Sessions.

What things any two Iu-
stices of the Peace may doe out of the
Sessions: and therein first
of Ryots, &c.

CAP. I.

The authoritie and power
of one Iustice of the peace,
(without the Sessions)
thus perused and passed o-
uer, let vs now examine
the like power of two both
in generalitie, and parti-
cular.

It is vniuersally true, that whatsoeuer thing
one Iustice of the Peace alone is permitted to do,
either for the conseruation of the Peace, or in
the execution of the Commission (or Statutes)
the same also may bee no lesse lawfully perfour-
med by two (or moe) Iustices: except it bee in a
serie few cases, where some Statutes do seeme
specially to appropriate the execution thereof
to some one certaine Iustice, either in respect
that

that he is Next to the place, eldest of the Quorum
or such like.

But we will proceed by particularities: and be-
cause the first place of right belongeth to the peace, *The power of two Iustices of the peace, in punishing of Riots &c.*
(wherein the office of this Iustice chiefly consi-
steth) and for that also we haue (in the 5. chapter
of the second booke) disclosed what an unlawfull
Assemblee, Rout, and Riot be, to the end that one
Iustice (which hath some portion of power in the)
might thereby vnderstand, what it is that he ought
to prevent, or stay (in that behalfe) for the custody
of the peace: let vs heere supply in two Iustices,
that power in punishing these Riots, Routs, and
Unlawfull assemblies, which we said before to be
wanting in one: And that shall we the better doe,
if we first of all lay open the Statute of K. Henry
the fourth, containing a most ample authoritie, as
well for the repressing, as for the recording of the
same and then may wee adioyne somewhat out of
some other Statutes also.

If any Riot, Assembly, or Rout of people against
the law be made, the Iustices of peace, or three
or two (at the least) of them, and the Sherife (or
Vnderherife) of the countie shal come with the
power of the County (if need be) to arrest them,
and shal arrest them, and shal haue power to re-
cord that which they shall find so doone in their
presence against the Law. And by that recorde
such offenders shall bee conuicted, in manner &
forme as is contained in the Statute of Forcible

T

entries

entries. (viz. 15. R.2. cap. 2.) And if such trespassers bee departed before their comming, then these Iustices of Peace, or three, or two of them, shall diligently inquire within a moneth after such *Riot, Assemblie, or Rout* made: and thereof shall heare and determine according to the lawe of the land: and if the truth may not bee found in the manner as aforesaid, then within a moneth then next following, the said Iustices and sherife (or Vndersherife) shall certifie before the King and his Councell, all the deedes and circumstances thereof: which Certificate shall bee of like force as the verditte of twelve men, &c. And if such offenders doe traaverse the matter so certified, then the Certificate and Traaverse shall bee sent into the Kings Bench, to be tried and determined, as law requireth. And that the Iustices of the Peace dwelling most nighest in euerie Countie, or Vndersherife, shall do execution of this Statute, euerie one vpon paine of one hundred poundes, to bee paide to the king, as oft as they shall bee found in default, 13. Henr. 4. cap. 7.

Maintenance
& embracerie.

Whereupon the Statute 19. H. 7. addeth, that if the saide Riot, Rout, or vnlawfull assemblie, bee not found by the saide Iurie, by reason of any maintenance, or embracerie of the saide Iurours: then the same Iustices and Shirife, or Vndersherife shall also certifie the names of the maintainours and embracers in that behalfe (if any bee) with their misdemeanours that they know,

know, vpon paine of euery of the saide Iustices and Sherifes or (Vndersherife) to forfeit twenty poundes (if they haue no reasonable excuse) for not certifying the same: which Certificate so made, shall bee of like force as before, &c. And euery person duely proued to be a maintainer, or embracer in the same, shall forfait twenty poundes to the King, and shall be committed to Warde, there to remaine by the discretion of the Iustices 19. H. 7. cap. 13.

Maintenance,

Hereunto also the Statute (2. Hen. 5.) adioyneth further, That the Kings liege people (being sufficient to trauell) shall be assistant to these Iustices, Sherifes, or Vndersherife, when they shall bee reasonable warned, to ryde with them in aide to resist such Riots, Routes, and Assemblies, vpon paine of Imprisonment, and to make fine and raunsome to the King. Prouided alwaies, that the saide Iustices, Sherife or Vndersherife shall doe their sayde offices at the Kings costes, in going, tarrying, and returning, by payment thereof to bee made by the Sherife, by Indenture betweene him and them, of the sayde payment. And that such Riotters (attaynted of great and haynous Ryottes) shall haue one whole yeares imprisonment at the least, without being let out of prison by bayle, mainprise, or in any other manner, during the yeare aforesaid: and that the Ryotters (attainted of petite Ryottes) shall haue Imprisonment as best shall seeme to the King and to his Councell:

At the Kings
charges,

T 2

and

and that the fines of such Riotters attained, shall bee by the same Iustices encreased, and put in greater summes, then they were wont to bee put in such cases before that time, in aide and suppor-
tation of the costes of the Iustices and other officers aforesaid, in this behalfe, 2. H. 5. ca. 8.

**Capias and
Proclamatio.**

Now, if it be witnessed by two Iustices of the Peace, and the Sherife, by Letters vnder their Seales, to the Lord Chauncellor of *England*, that any murders, Manslaughters, batteries, robberies, assemblies of people in great number in manner of insurrection, or other rebellious Ryots haue beene done, & that such offenders haue withdrawn themselves, to the intent to auoide the execution of the common Lawe, then the Lord Chancellor may make a writ of *Capias*, & thereupon (if need be a Proclamation, &c. 2. H. 5. cap. 9. which Statute was made to endure till the next Parliament, & so discontinued: but it was reuised by 8. H. 6. & made perpetuall: which moreover, ordaineth, that (before this Writ of *Capias* shall be awarded) two Iustices of the Peace, and the Sherife of the Shire where such riot is supposed, ought to witnesse, that the common voice & fame runneth in the said Countie of the same Riots, 8. H. 6. cap. 14.

The letter (or Text) of these lawes being thus laide open, let vs also see what exposition and helpe *P. Marrow*, and others doe bring to some parts thereof, and especially to that of King Henry the fourth: as well for arresting the Riotters,

as

as for recording, enquiring, and certifying of the Ryot it selfe.

Forasmuch as the power giuen by the statute (17. R. 2. 8. c. 8.) for repressing of great assemblies and riots, was deliuered with such coniunctiue, & general words, viz. To the Sherife, and other the Kings Ministers, that it was often doubted, not onely who were meant by the word Ministers, but also whether the Sherife and any of those Ministers (apart) might performe the seruice, or that they ought all to ioyne together therein: Therefore this statute (13. H. 4.) cleareth those questions, and putteth expresse power into the handes of any three (or two) Iustices of the Peace, and of the Sherife (or Vndersherife) not onely to arrest such Riotters, but also to conuict them of their offences, by recording of that which they should see to be done against the peace.

And this authoritie of assembling the power of the countie, and of arresting, and imprisoning the riotters, was once before this time (namely, 2. R. 2. cap. 6.) committed to some: but it was by and by after (euen in the selfe same yeare of the same King) resumed, as a thing ouer-hard to bee bozne (that a Freeman should be imprisoned, without an Enditement, or other Trial by his peeres, as *Magna Charta* speaketh) untill that the experience of greater evils had prepared, and made the stomache of the common-wealth able and fitte to digest it.

Now, whereas here is mention of the power of the

¶ 3

the

Some part of
the occasion of
the statute.
13. H. 4.

Power of the
Countie.

the Countie: by vertue of those words, *¶* Marr. thinketh, that the Iustices of the peace, Sherife or Vnderherife, ought to haue the aid & attendance of all knights, gentlemen, yeomen, labourers, seruants, apprentices, and villaines: and likewise of *¶* Wardes, & of other yong men that bee aboue the age of xvj. yeares: because all of that age are bound to haue harnes by the Statute of *Winchester*. But women, ecclesiasticall persons, & such as be decrepite, or do labour of any continuall infirmite, shall not be compelled to attend: for the Statute (*2. Henr. 5. cap. 8.* which also worketh vpon the same ground) saith, that person sufficient to trauel, shall be assistant in this seruice. And it is referred to the discretion of these Iustices, Shirife, or Vnderherife, how many or how fewe they will haue to attend vpon them in this businesse: and how or in what sort, also they shall be armed, weaponed, or otherwise furnished for it.

Information.

But be it, that information bee made to these Iustices, and Sherife, or Vnderherife, that certaine persons be riotously assembled at Dale, and they do thereupon gather people to suppress them, and when they come to the place, they find no Riot there: yet are they excusable for this assemblie of power so made by them: because they did it by information.

And though they do so much without any information, yet if they find a Riot, when they come to the place, they shall not onely be excused for calling together such company vpon their owne motion, but

but may also lawfully proceed to punish the offenders, *Fitzh. titul. Iustic. del P. 9.*

And this they ought to do by Arrest, if they be present: In the execution of which Arrest, they may also iustifie the beating, wounding, or killing of any of the rioters that resist it. So if they meet with the offenders in their way riotously arraied, and coming from the place, they may neuertheless arrest them for their unlawfull assemblie: and after this arrest so made, the power of the countrey ought to aide the Sherife for conueighing the Rioters vnto the Gaole: without which the Arrest were but nugation. And in this point it differeth (by the opinion of *¶* Marrow) from the arrest of a ffelon by Huy & Crie: for there (saith he) when they haue once deliuered the ffelon vnto the Sherife, they are no longer compellable to waite vpon him.

The Arrest thus made, these Iustices, Shirife, or Vnderherife, ought to make a record in writing of that which they see and finde: the which (since it is a conviction in it selfe against the offenders) ought to be sozmall and certaine, as well for the time, and place, as for the number, weapon, maner, & other circumstance. For the parties shall be concluded thereby, and shall not be receiued to trauesse, or deny it: because the view of a Riot (as *¶* Fitzherbert saith) is not to be trauesed. Inso much as if either they doe Record, that they saw a Riot, where in truth there was none at all, or that it doe afterwarde appeare by the Record it selfe

selfe, that the Acte which they Recorded doeth not amount to a Riot, yet bee the parties without any remedie. And if a man be bound to the Peace, and afterwards such a record of a Riot, is made against him and others, he shall neither iustifie (as *M. Marrow* holdeth) nor pleade not guiltie, in a *Scire facias* vpon his Recognisance.

If therefore a man be slaine, or maimed, or a recusor be done to the officer, by such a Riot, then the record ought to bee, *Riotos occiderunt*, or *riotos mahimauerunt*, or *riotos rescusserunt*: and not *Felonice* nor simply *rescusserunt*: because their authoritie in this case is restrained to the riot onely: and extendeth not to the felony, but so that the parties may (notwithstanding that record) plead not guiltie to the felony, or to the rescue howsoever (for the riot) they are estopped.

And this record ought to remaine with the one of them: and they, (and none other Iustices of the peace) shall imprison the riotters, and assesse their fine, *Marrow*: which fine they are willed by the Statute (2. H. 5. ca. 8.) to put in greater summes then they were wont to bee put in such cases, for supportation of the costes of the said Iustices, & other officers in this behalfe, as well in going and tarrying, as returning: whereof payment ought to be made by the Sherife, by Indenture therof betwene him and them.

But if the Riotters shall escape, after that these Iustices, Sherife or vndersherife do come & see the riot, the can they neither arrest the at any other time
saith

(saith *M. Mar.*) nor awarde Prozesse against him vpon that record which they do: make: And then, that record must be sent into the kings bench, from which place Prozesse may be made vpon it: where also the parties shall not be admitted to any traaverse, but must of necessitie make fine for their offences.

And now, if these Iustices, Sherife, or Vndersherife, shall goe to see one riot, and then another riot fallerth out in their presence, yet may they make a record of that: *Marr.* So, if they bee assembled for some other cause of seruice, or for some priuate busines (as for an arbitrement, or such like matter) and a riot happeneth to be committed in their sight, they may record it: *Marrow.*

Likewise, if the riotters shall make a riot vpon the Iustices, and Sherife that doe come of purpose to arrest them from the former riot, they may Record that also, *Mar.* and so may they (as I think) record any riot that shall be done vpon themselves, whilest they be assembled for any other cause then for to suppress a Riot, though *M. Marr.* seemeth to denie it.

These be the things that I haue obserued, concerning the execution of these parts of these laws, declared against unlawfull Assemblies, routs, and riots: whereunto I will adioyne a case or twaine, reported by *M. Fitzh.* and will then proceede as I promised.

If two Iustices of the Peace (without the Sherife or Vndersherife) shall see certaine persons in doing any riot, they may cause them to be arrested,
and

and may make a record of that offence, whereof the parties shall be for ever concluded, Fitz. tit. Iustice del P. 9. whereto he addeth (in his booke of Iustices of the Peace fol. 17.) that if two such Iustices shall make such a Recorde, (where in trueth they saw no such Riot), that yet the parties shall be estopped, and are without remedie.

How this Record may bee made without the Sherife, or Undersherife, since none other statute giueth this power of recording but this onely, I cannot hitherto perceiue: vntlesse it be vnderstood of a Riot, committed in their presence whilest they be sitting in Iudiciall place (as in their Sessions) or at the least, done to their disturbance, when they be coming vnto the Sessions: and so farre in this way with him goeth the booke, 7. E. 4. 18. as well as that (14. H. 7.) which is reported by Fitz. tit. Iustice del P. 9.

The Recording of a Riot by the Iustices, and Sherife, or Undersherife, may be after this (or the like) manner.

Memorandum quod xx. die Ianuarij Anno regni domine nostre Elizab. Dei gratia &c. Nos Henricus Brooke miles, Dominus Cobham, Dominus Guardianus quinque portuum, & Ed. Hoby Miles, duo Iusticiariorum dictae domine Regine ad pacem in com. predicto, &c. assignatorum, & Martinus Barnham ad tunc vicecomes eiusdem comitatus, ad grauem querimoniam & humile petitionem A. B. de

de C. in dicto comitatu Yeoman, in proprijs personis nostris accessimus ad domum mansionalem ipsius A. B. in C. predicta, ac tunc & ibidem inuenimus D. E. F. G. H. I. de C. predicta Laborers, ac alios malefactores & pacis dictae dom. Reg. perturbatores ignotos, ad numerum decem personarum modo guerrino arraiatos, viz. gladijs pugionibus, galeis, loriceis, arcibus & sagittis, illic & riuos & aggregatos, & eandem domum obsidentes, & multa mala in ipsam A. B. comminantes, in magnam pacis dictae Dom. Reg. perturbationem, ac populi sui terrorem, & contra formam Statuti in Parlamento Domini Henrici nuper Regis Anglie quarto anno regni sui decimo tertio tento editi & promissi. Ac propterea nos praefati dominus Cobham, & Edw. Hoby, & Martinus Barnham, predicti D. E. F. G. H. I. &c. tunc & ibidem arrestari ac proxima gaola dictae dom. Reg. in comitatu predicto, duci fecimus, per visum & recordum nostrum de illicita congregatione & Riota predicti conuictos, ibidem moraturos quousque finem dictae dom. Reg. proinde fecerint. In cuius rei testimonium huic praesenti recordo nostro sigilla nostra apposimus. Datum apud C. predicta die & an. primum predictis.

And the Mittimus, for conueying the Riotters to the Gaole, may be easily (with a few words of Enquire of the Riot. change) framed out of that which is before in the chapter of Forcible entries.

But now, as the lawes haue laied downe this order of proceeding against the Riotters that shall be apprehended in their offence: So haue they also provided,

provided, that if the offendours bee gone, yet their fault shal not escape with them. And therfore, these Iustices are commaunded, first, to enquire of that by others, which they and the Sherife or Vnder-sherife, did not see and finde : and if the truth may not thereby be found, then to certifie what be the impediments.

To this Enquirie, the Sherife or Vndersherife be not associated, as they were before in arresting the riotters and recording their disorder : because they are now ministers for returning of the Enquirie, and therefore to be spared from being Judges therein.

And albeit these Iustices doe not goe to see the riot as this Statute biddeth, yet may they Enquire thereof within the moneth after.

Every Iuror of this Enquirie, ought to haue lands in that countie to the value of xx. s. by yeere of freehold, or xxvi. s. viii. d. of Copphold, or of both, aboue all charges : vpon euery of which also, the Sherife ought to returne xx. s. in issues at the first day, and xl. s. at the second day, 19. Hen. 7. cap. 13.

Moreover, where the Statute saith, that the same Iustices shall enquire, yet if any other Iustices of Peace there (and not they) shal doe it, that will suffice, Marr.

Neither is it of such necessitie to haue the Enquirie within the moneth, that for default thereof the presentment shall be void, for the Iustices of the Peace may Enquire thereof at any time by force

force of their Commission : but if it be not within the moneth, euery of them that be the next, is in danger to loose 100. li. for it. And therfore, if these Iustices doe charge the Iurie within the moneth, and doe giue day vnto them for peelding their presentment after their moneth, the Statute is not offended by it: Marrow.

But if it happen the parties to fall to an accord amongst themselves, so as none of them will sollicite the Iustices to make the Enquirie : yet ought the Iustices to proceede *Ex officio*, as knowing that either some of the Iurie may haue knowledge of the fact, or that (vpon Proclamation made to giue euidence for the Queene) some other persons may come forth ready to enforce them.

The trueth of the matter being found by this Enquirie, these Iustices haue authoritie by this Statute not onely to make out Prozesse against the offendours vnder their owne *Teste*, but also to commit them to prison till they make their fine, and to deliuer them after payment of the same, or vpon suerties taken for it : or otherwise to receiue their trauesse, and thereupon (if the matter will so serue) to discharge, and dismisle them.

For, to all these effects (as I thinke) the words of the Statute (heare & determine according to the law of the land) doe lead and inable them.

On the other side, if by this Enquirie the fault be not brought to light, being hindered either by the malicious perueritie of the Iuroys, or by the unlawfull maintenance, countenance, or embazement of

Certifie the
Riot.

rie of other men that put themselves into the cause: yet ought there (within one moneth after such Enquire) a Certificate to bee made, as well of the names of the principall offenders, and of so much of the fact, and circumstances thereof, as may by any waies or means appeare, as also of the names of such maintainers, and imbracers, & of their misdemeanors in this behalfe.

And here the Sherife (or his Undersherife) is once more called to this seruice, & ioined with these Iustices, who by reason of his presence at the Enquire, may both helpe to espie the euill, and adde force, and credite to the Certificate. The ende of which Certificate, is but onely to put the offenders to answer.

For, although the words of the statute do make the certificate equal in force with the verdict of ritmen: yet, forasmuch as it followeth in the same Statute, that the Certificate may be trauesed, that is a plain prooffe, that it is no conviction at all, but is only of the nature of a declaration, presentment, or enditement, at the common Law, and therefore also, it ought to comprehend the certaintie of the time, place, persons, & other circumstances, though perhaps (as H. Marrow holdeth) it needeth not to expresse the additions of the parties, as not being within the words of the statute (1. H. 5. cap. 5.) because no processe of vlawrie doth lie vpon it.

And, whereas the Enquire is good, though it be had after a moneth from the offence committed, this

this Certificat (saith Marrow) is not good, vnlesse it be made within the moneth after the Enquire: because the power of certifying is giuen by the statute onely, which is the Warrant that they must pursue.

Moreover, where the statute willet that they shall certifie before the King and his Counsel: it seemeth to mee, that the same ought to be done either to the bodie (and boord) of the priuy Counsel, or into the Starre Chamber at the least: because the Statute is selfe both by expresse words distinguish the King and his Counsel here, both from the Chancerie, and from the Kings bench, which in many other cases be taken from the king, and his counsel also. And this I do the rather note, because I haue read of Certificates of this kinde, sent by Iustices of the peace into the Starre Chamber, and for that it is penal to those Iustices, Sherifes or Undersherifes, if they shall not adresse their Certificate, as the statute doth appoint them.

But now, if two Iustices, and the Sherife goe to see a Riot, & other two Iustices make the Enquire: then the one sort or the other of them, (with the Sherife or Undersherife) may make the Certificate, Marr. And if foure Iustices, the Sherife, & Undersherife goe to see a Riot, and two of those Iustices and the Sherife ioine in one Certificate, and the other two and the Undersherife ioine in an other Certificate, then that Certificate whereunto the Sherife is partie shall be preferred: because the authoritie of the Undersherife, is overshadowed

shadowed by the Sherifes owne presence: Marr. But otherwile, if two Certificates be equall, then that shalbe preferred which is best for the Queene.

And the same rule must holde, where the Enquirie, and Certificate shall disagree: for, if the Enquirie shall finde that the Riot was made by 12. persons, where in truth it was made by 100. or if the Enquirie be of 12. persons, and the truth is that those 12. were harnessed: or if the Enditement be of a riotous assault onely, and the Riotters did both make an assault, and did beate and wound: in these, and the like cases, the Certificate may well be made so, as the omission in the Enquirie shal be supplied by it. Marr. Howbeit (he saith) that if they shall varie onely in the day, then the Enditement shall be preferred.

And if after the Enquirie, and before the Certificate, the Sherife die, or one of the Iustices be put out of the Commission, no Certificate can then be made. Marr. But if the Riot were recozded by the Iustices, and Sherife, and the Riotters doe escape, yet may that Iustice of the peace (so put out of the Commission) ioyne with the other Iustice and the Sherife, in their Certificate of the same, Marr.

These speculations of M. Marrowes reading, are like enough to fall in practise, and therefore I thought it not amisse to acquaint the reader before hand with some of them.

There remaineth yet, the last branch of the Statute (13. H. 4.) that willett the Iustice of Peace (most nigh in euery Countie, to the place where

The peine of
100. li. vpon
the Iustices.

such

such Riot, or Route shal be) to doe execution of this Statute, vnder the paine of 100. li. vpon euery of them for euery default. Upon which words, these notes may be gathered: First, that no Iustice of the Peace (dwelling out of the countie where the Riot is) can be charged, although he be the next vnto the place: Secondly, that if any other Iustices (that be not next vnto the place) shall execute the Statute, then that will excuse those Iustices that be the next, because they al haue power by the first part of the Statute.

And this is the cause for which I haue taken leaue to place these things before, vnder the authority of any two Iustices generally, although the Statute doth specially (and that by a greater paine) bind them that be the next. Yea, all the Iustices of peace (within the commission and countie) ought to supplie the default of y next Iustices, if they haue notice of such vnlawful Assembly, Rout, or Riot: for, so was it lately adiudged in the Starre Chamber: howbeit that penalty of 100. li. was there laid vpon the next Iustices onely, and the residue were fined by the discretion of that Court, according to the exigencie and temper of their fault.

Thirdly, it is to bee gathered, that if one or two of the Iustices of the Peace (that be next to the place) shall come to execute the Statute, & the Sherife or Undersherife, doe not come at all, yet those Iustices shall be excused for their C. li. And M. Marr. thinketh that in this last case, the Iustices be bound to send for the Sherife or Undersherife,

U

rife,

rife, and not they for the Iustices: and in the same case also it seemeth that the Iustices shall be fined, if they arrest not the Riotters, or do not moreouer al that which without the Sherife or Underherif, they are herein by any way authorized to performe.

Lastly, that they shal do execution of this Statute, that is to say, of all, and euery part thereof respectiue as to such Iustices, Sherife, or Underherife, is thereby appointed. But whether they are to take notice of such Riots at their perill, or may safely expect the information therof, I find it both doubted & vndecided. Collect. Dier 110.25.

Thus much of these things after this consideration: now to some precedents for the furtherance of these Iustices in the execution, and then to our other matters.

The Precept to the Sherife, for Enquire
vpon a Riot, may beare this
Forme.

Michael Sondes miles, & Mathæus Hadde Armig. duo Iusticiariorum, &c. assignatorum, vicecomiti eiusdem comitatus, Salutem: Ex parte dicta dom. Reg. tibi precipimus, quod venire facias coram nobis apud I. in comitatu predicto, 29. die Ianuarij proxime futuro 24 probos, sufficientes, & legales homines de comitatu predicto, quorum quilibet habeat terras & tenementa, infra dictum com. liberi tenementi per chartam ad annum valorem xxx. solid. aut per copiam rotulorum Curie ad annum valorem 26. solid.

solid. & viij. denariorum, aut per vtrumque, ultra omnes reprisas ad inquirendum pro dicta Domina Regina ac pro indemnitatem nostram in hac parte super sacramentum suum de quibusdam illicitis aggregationibus & riotis apud C. in comitatu predicto nuper commissis ut dicitur. Et hoc nullatenus omittas sub pena xxx. lib. quam incur surus es si in executione premissorum defeceris. Et habeas ibi tunc nomina Iuratorum predictorum, & hoc preceptum: Datum sub sigillis nostris, xx. die Ianuarij, Anno regni dicta domina nostra Eliz. &c.

The entrie of the presentment (or Enquiry)
may haue this forme.

Inquisitio pro domina Regina, &c. (as before in Kent. for forcible entries) coram Mich. Sondes milite & Mat. Had. Qui ad hoc iurati & onerati, dicunt super sacramentum suum predictum, quod D. E. F. G. & H. I. simul cum alijs malefactoribus, & pacis dicta dom. Regine perturbatoribus ignotis, (ad numerum septem personarum) modo guerrino arraiati, vi & armis, viz. Hawberdis, gladijs, arcubus, & sagittis xx. die mensis Ianuarij, ult. preterito, apud C. in comit. predicto inter horas octauam & nonam, post meridiem eiusdem diei, domum mansionalem A. B. de C. predict. Yeoman, situatam in C. predicta, riotose fregerunt, & intrauerunt, & in ipsam A. B. tunc & ibidem insultum fecerunt, ac ipsum tunc & ibidem verberauerunt, vulnerauerunt, & indignis modis tractauerunt, ita quod de vita eius desperabatur, in magnam pacis dicta

dicta domina Reg. perturbationem & populi terrorem ac contra formam Statuti de Riotis, Rontis, & congregationibus gentium illicitis in parlamento dom. H. nuper Regis, Angl. 4. Anno regni sui 13. sententia promissi & editi.

And as for the Certificate (which ought to be made to the Queene, and the Cōseil) that may be done in English, by way of a Letter, comprehending the truerth of the matter present, as the case shall require.

And heere, let vs leaue these unlawfull Assemblies, Routs, and Riots, and addeesse our stile to o^rther statutes.

Any two Iustices of the peace, vpon complaint, that any seruant retained by the statute, departeth before the end of his terme, or at the ende thereof without a quarters warning: or that any person (compellable by the statute to serue) doth refuse to serue for the wages appointed, may examine the matter, (and finding such seruant, or person faulty) may commit him to ward, there to remaine, till he shall be bound to the partie offended, to serue and continue according to the Statute.

They also, may imprison for ten daies, the master that giueth, and for xxi. daies the seruant that taketh, more wages then after the rates thereof made: and may imprison for a whole yere, such seruant as shalbe convicted before them (by his owne confession, or by the oaths of two honest men) to haue made any assault vpon his master, mistresse, or other person hauing the charge of him, or of the worke:

Seruants
and Labou-
ers.

worke: and they may appoint any woman (being vnmarrried, of the age of xii. yeres, and vnder fourtie) that is out of seruite, and whom they shall think meete to serue, to be retained by their discretion, & may vpon her refusal commit her to Ward, till she wil be so bound to seru. , Eliz. ca. 4.

Any two Iustices of the peace, may make testimonial to a Seruing man, that is turned away from his master, or whose master is dead: 14. Eli. cap. 5. & 18. Eli. ca. 3. & 27. Eli. cap. 11.

Any two Iustices of the Peace may giue assent to the Churchwardens and Duerseers, or to the greater part of them, to bind (as Apprentices) the children of poore parents, till the age of the man-child of 24. and of the woman child till 21. 39. Eliz. ca. 3.

Any two Iustices of Peace may dispose of the monies ryling by the deceipfull stretching of the Northen cloth &c. 39. Eliz. cap. 20.

Any two Iustices of Peace may by Warrant vnder their hands and seales, cause to be leuied (by distresse, and sale of the goods of the offender) all Fines and Forfaits, that shall grow by the Confession of the offender, or by prooofe of two lawful and sufficient witnesses, before them vpon this statute of Rogues, 39. Eli. cap. 4.

Any two Iustices of Peace may duely conuict by two witnesses, or by the parties Confession, any person that shal disobey the restraint of Malt-ing made [against] in the open Quarter Sessions, and shall commit him to prison without Baile, or

Malt-ing.

Warrant to
leue forsa-
tures for
Rogues.
Quere of this
[against] I
thinke it shold
be out.

Mainprise for three daies & untill that he become bounden in xl. li. to some one Iustice to performe such restraint, 39. Eli. cap. 16.

Licence to goe
to Bath or
Buckstone.

Such two Iustices may Licence diseased persons (living of almes) to trauel without beging to Bathe, or to Buckstone, for remedy of their grieve 39. Eli. cap. 4.

Change a
high way.

By the oversight of any two Iustices, & twelve discrete men of the Hundred, and Hundreds adjoining, any person (within the Weald of Kent) may make in his owne land a new high way, more commodious then the olde, 14. H. 8. cap. 6.

Appoint O-
uerseers of
Cloth.

Two such Iustices may once every yeere appoint Ouerseers (for that whole yeare following) of cloth to be made or solde, in any Towne (not being corporate) and may charge them upon their oathes, to see execution of some parts of the Statute, 3. E. 6. cap. 2. yet in force.

Disturbe a
Preacher.

Within five daies (after accusation had, that any person hath disturbed a Preacher, and after his committing to safe custodie by one Iustice of the Peace) one other Iustice of that Shire must toyne with him in the examination of the Offender, and may proceede to find him guiltie by his owne confession, or by two witnesses, and thereupon commit him to the next Gaole, for three moneths, 1. Mar. Par. 1. cap. 2. Aske of the continuance of this Statute, as before.

Iesuits and
Seminaries
Colledge.

Any two Iustices of the Peace of the Countie (where any of her Maesties subiects (not beeing a Iesuit, Seminarie Priest, or other Priest, religious,

ous, or ecclesiastical person, &c.) now being, or which hereafter shall be of, or brought by in, any colledge of Iesuits, or Seminaries, shall arrive within five moneths next after Proclamation to be made in that behalfe in the city of London under the great Seale of England) may within two daies next after such returne, receiue his submission, under the oath set forth by Act in the first yere of her Maesties raigue, 27. Eliz. cap. 2.

If any person, that ought to be set to the Subsidie, doe by his craft or couine escape the Taxation, & that be prooued before two Iustices of peace of that Countie: then shall he be charged at the double value of so much as he ought to haue bin taxed at, and shall further be punished at the discretions of the said Iustices, 39. Eliz. Reg. and diuers former acts of Subsidies.

Any two Iustices of the peace may require any popish Recusant (not making submission according to this Statute) to abiure the Realme, upon his corporall oath before them. And two such Iustices, may (with the assent in writing of the Bishop of the dioces, or of the Lieutenant of the Shire, or deputie Lieutenant) giue licence for such time as shall be comprised in such licence, to such person as is appointed by this Statute to abide within the five miles, to goe (for his necessarie occasions) out of that compass, 35. Eli. ca. 2.

What things some two Iustices of
the Peace may doo out of the Sessions: and
therein of. Bailement.

CAP. II.



It falleth out many times, that the
statute laws regarding some Iustices
aboue others, either for the opinion of
the abilitie or learning that they shold
haue (being of the Quorum) or for the aduantage
and facilitie that they haue to dispatch the affaire,
by means of their nearnes and dwelling, or for the
indifferency that they are likely to vse in the hand-
ling of the cause, (as being neither of kindred, nor
alliance to any of the parties) doe manie times
make choise of some two Iustices: and doe either
altogether close the hands of the rest, or else doe
chiefely repose the trust in these that bee so chosen
and elected.

Bailement.

Amongst those of this kinde, the Statute for
Bailement of prisoners worthily craueth the first
place, whether you respect the weight of the mat-
ter that it concerneth, or the length of the discourse
that it requireth: the one tending to desired liber-
tie, and the other comprehending much varietie.

Difference be-
tweene Baile-
ment, Main-
prise, and Re-
pleuin.

This sauing then (or deliuerie of a person out
of prison, befoze he hath satisfied the Law, is vtte-
red by three termes in our Statutes, that is to say,
Bailement, Mainprise (or manucaption) and Re-
pleuin. And they be indifferently vused, to expresse
that

that suertie which the prisoner is to find in such a
case. For that which Bracton and the statute W.
1. cap. 15. (made 3. E. 1.) doe speake, of setting at
libertie of accessaries by the words *Replegiari*, and
of letting out by sufficient Pleuin, Britton, and the
Register do expresse by finding of Mainprise: the
Statute 5. E. 3. cap. 8. by letting to Baile: that of
Marlebridge, cap. 27. (made 52. Henr. 3.) by *tra-
di in balliu vel replegiari*: And the statute of 2. E. 3.
cap. 9. making mention of the writ: *De homine Re-
plegiando* to be directed to the gardein of a Forest,
declareth the effect thereof to be, that he should re-
pleuy the prisoner by good Mainprise: The Sta-
tute 23. H. 6. ca. 10. that commandeth the Sherife
to let out of prison (such as hee hath arrested vpon
Enditements of Trespasse) vpon reasonable suer-
tie of sufficient persons, calleth the same a letting
to baile or mainprise: And lastly 1. & 2. Phil. &
Mar. cap. 13. seemeth to make all the three words
quodvisum, and of the same signification.

Neuerthelesse it seemeth, that Repleuin had his
originall of þ word Pledges, which denoteth them
that undertake for the partie, that he shall abide to
be iustified by law: And it is vused in diuers other
cases, as in Repleuine of cattell vpon a distress, re-
pleuine of Franchises in a *Quo warranto*, repleu-
uine of Land vpon a *Grand cape*, in olde time, and
repleuining of the person of a man in the case of
Villenage.

Bailement is deriued fro the French terme Bail-
ler: Bailement.

And that also commeth of the Greeke *Baillē*, they both signifying, to Deliuer into hand. For hee that is Bailed, is taken (or kept) out of prison, and deliuered (as it were) into the hands of his friends as Suerties for him, whereof also the word *Maincaptio* (or Mainprise, which is all one) giueth good euidence: the one mentioning the deliuerie, the other the receiuing of such a prisoner. And in this respect, the booke of the *Norman Customes* calleth Bailement, a liue prison: for that the partie thereby becommeth prisoner to his friends, that doe undertake for him.

Mainprise.

But Bailement and Mainprise haue bene taken to differ in the practise of our common law: for he which is properly Bailed by the Iustices of any Court, hath bin neuerthelessse reputed to be a prisoner there still, and his suerties to be (as it were) his speciall gardeins: otherwise it hath bene thought of him that is let to Mainprise, as may bee seene by the Booke cases, 33. E. 3. & 36. E. 3. *Corone* Fit. 12. & 13. 7. H. 6. 42. 31. H. 6. 10. 38. H. 6. 23. 9. E. 4. 2. & 21. Henr. 7. 33. But at this day, how long he shal be adiudged to be a prisoner, *Et in Custodia Mariscalli Mariscalcia*, &c. that is Bailed in the Kings Bench, the custome of the Court it selfe must rule the matter: for it differeth somewhat (if I be not deceiued) from those opinions.

Howbeit so far as in our course (concerning Iustices of peace) it is not so needful to stay vpon the difference between the words, as to proceed to disclose the vse & manner of y^e thing: Let vs examine the

the power of the Iustices of peace in this behalfe.

It seemeth, that Iustices of the peace might (after the Statute 34. E. 3. cap. 1. that made them complete Iudges) haue letten to baile such persons as were indicted of felony before them in their Sessions, euen as the Iustices of the Kings bench vse to doe: but not such as were arrested for suspicion of Felony, and not indicted thereof before them, because before the enditement they were no Iudges ouer them. And for help herein, it was ordained (1. R. 2. cap. 3.) that euery Iustice of peace might let to baile any suspected of felonie. But that Law begate some inconueniences, and therefore it was soone after repealed (by 3. Henr. 7.) which left power to two Iustices of the Peace (the one being of the *Quorum*) to let any prisoners (mainpernable by the law) to baile, to the next general sessions, or the next Gaole deliury: & willeth that they shal the certifie such baile taken, vpon pain to forfeit for euery default (therevpon recorded) ten pounds to the king. 3. H. 7. c. 3.

And here againe there sprang by another inconuenience: for then Iustices of Peace would not sticke to borrow one an others name, (as many yet still do) and by that meane defraude the good meaning of the Statute: Whereupon it was lastly provided by 1. & 2. Phil. & M. as followeth.

That no Iustice, nor Iustices of peace, should let to bayle any person contrary to the said statute of *West.* 1. cap. 15. And that no person, being arrested for manslaughter, or felony, or for suspitiō of

Bailement of prisoners, and examination before they bee bailed.

of eyther of them (being baileable by the Law) should be bailed by any Iustice of Peace, if it be not in open Sessions, or by two Iustices of the Peace at the least (the one of them being of the *Quorum*) and the same Iustices to bee present together at the time of the said Bailement: & that they shall certifie (in writing, subscribed, or signed with their owne hands) the saide Bailement or Mainprise, at the next generall Gaole deliuerie, to bee holden within that shire, where that person shall be arrested, or suspected: And that the saide Iustices, or one of them, (being of the *Quorum*) when such prisoner is brought before them for manslaughter or felonie, shall before any bailement, take the examination of that prisoner, and the information of them that bring him, of the fact and circumstances thereof: and the same, or so much thereof, as shall be materiall to proue the Felonie, shall put in writing before they make that bailment: which examination and bailment the said Iustices shall certifie at the next Gaole deliuerie, within the limites of their Commission: And the saide Iustices shall haue authoritie by this Acte, to bind all such by Recognisance (or Obligation) as do declare any thing materiall to prooue the saide Murder, or Manslaughter, offences, or Felonies, or to be accessarie or accessaries to the same, as is aforesaid, to appeare at the said next Gaole deliuerie, where the triall thereof shall bee, then and there to giue euidence against the partie, at the time of his

his triall: and shall certifie all and euerie such bond, in like maner, as is abouesaid of the Bailement and examination, 1. & 2. Phil. & Mar. cap. 13.

This statute of Bailment I haue purposely recited at large, because it both comprehendeth some such other things as must concurre with the Bailment of the prisoner, and also prouoketh me to set downe the Statute of W. 1. and to shewe what persons are baileable by the Law: for to either of these it referreth it selfe (as you haue seene) and is also restrained by them.

Now by the Statute of W. 1. cap. 15. Prisoners that be before outlawed, or haue abiured: prouours: felons taken with the manner: those that haue broken the Kinges prison: notorious and proclaimed theeues: those that are appealed of prouours, so long as the prouours be liuing (if they bee not of good fame:) those which are taken for felonious burnings, or for falsifying the Kinges money, or his seale: or which are taken vppon excommunication, or for open euill, or for treason touching the king himselfe, or for the death of a man, or by the commandement of the King himselfe, or of his priuie Counsell, or by the absolute and not ordinarie commandement of the kings Iustices, or for the Forrest: be not repleuifable by the common Writ (nor without Writ, by Sherifes, nor other gardeins of prison. But he that is taken for light suspicion: or is indited of *petitie Larcenie*, (not

(not being guilty before of other *Larcencie*) those that be charged with the receipt of theeves, or Felons, or of commaunding, or force, or aide: or charged with Trespasse, that toucheth not losse of life, nor member: and he that is appealed by a Prouour (being no common theefe, nor defamed) after the death of the Prouour, is baileable by the Statute.

Againe, the Statute 23. H. 6. ca. 10. prohibiteth those that bee in prison by condemnation, execution, *Capias Velagatum*, excommunication: for Suertie of the peace: or by speciall commandement of any Iustice, to bee bailed, by Shirife, Keeper of prison, or other Officer or Minister: But willeth & commandeth, that al those that be Arrested by force of any Writ, Bill, or warrant, in any action personal, or because of any enditemēt of *Trespasse*, be let out of prison vpon reasonable suerties of sufficient persons, hauing sufficient within the Counties where they be, to bee let to baile or mainprife, to keep their daies in such places as the said writs, Bills, or warrants shal require.

Both these last Statutes (as appeareth) were at the first made to giue a rule vnto Sherifes & other officers, as well for the letting to baile, as for the retaining of their prisoners. But as the Statute of W. 1. is by the expresse letter of 1. & 2. Phil. & Mar. set forth as a line whereby the Iustices of Peace are to guide themselves: so it seemeth to me, that they ought to haue an eye vnto the other Statute also: forasmuch as certaine other persons be

be therein also mentioned not to bee Baileable by law, and so within the reach of the verie wordes that lie in the Statute of Philip and Mary.

And first, this statute 1. & 2. Phil. & Mary, seemeth to distinguish these wordes (Death of a man) that are read in the Statute of *Westminst.* the first, and in this place to restraine them to Murder only: seeing that it admitteth, that (for some death, or Manslaughter) a slaier may be lawfully bailed: which also is the common practice in that behalfe.

We learne also, that (within the yeare) is acquitted of murder, or manslaughter, at the Queens sute, must be remitted to prison or let to mainprife til the end of the yeare, and the partie grieved, may in the meane time commence his appeale, 3. H. 7. cap. 1.

It seemeth moreover, that hee which is indited of Felonie, is not baileable, Li. Ass. 41. pl. 30. nor he which confesseth the Felonie whereof hee is accused: for that Statute (*West. 1.*) meaneth to exclude the one, when it saith, that he which is indited of Petite Larceny, may be bailed: and the other, when it denyeth Baile to a Prouour, who must begin with confession of his owne fault, before he may be admitted to burthen another man.

And if a man be taken vpon Proceffe of rebellion, issuing out of the Chancerie, or Star-chamber, those Iustices of Peace may well be thought void of discretion, that shall take vpon them to baile him.

Further, mee thinketh that I may set downe this

Baile for
Manslaughter.

this as a rule (even at the common law) concerning Bailements. That the Iustices of the peace cannot meddle with the Bailement of any prisoner, except he be prisoner for such a cause, whereof the Iustices of peace be competent Judges: which altogether was the cause, that one Justice of the Peace could not by force of the commission onely, haue bailed suspects of Felonie, before that they were ended thereof as I haue tolde you. For out of their Sessions, and before inditement, they were no iudges of such a matter.

And on the other side, it seemeth that two Iustices of the Peace (the one of the being of the *Quorum*) may out of the Sessions, baile such as come into prison by the procelle of the Sessions made vpon penall lawes, not forbidding Baile: because two such Iustices bee competent Judges of all those matters, inso much as they may heare and determine them.

Aduise concerning bailement.

Sundrie doubts (I confesse) may be made concerning the businesse of Baile, which I am not able to dissolue, & therefore not much willing to moue. Onely this I will say for all, that it becommeth Iustices of the Peace to bee verie circumspect in granting Baile, both for feare of wrong by denying it to him that is repleuisable: and for feare of danger to the seruice it self, by giuing it where it is not grantable.

And therefore I aduise them to consider first, whether the power of Baile (when it is required) be not taken from them by some of those former recited

recited statutes: and then, whether that particular Statute it self (against which the prisoner is charged to offend) do not specially prohibite the baile: for you shall meete with many statutes, which doe not onely take baile from the offenders thereof, vpon their solemn conuiction after Iudgement, but also vpon the Recorde of some one or two Iustices of the Peace, or by examination, or prooffe by witnesses, or such other priuate triall, had before them.

For example, take a few of each kind, seeing it would proue troublesome to report them all.

1 He that is conuicted before the Iustices of *Liveries* the peace, vpon the statute of Liveries, shall be committed to prison for one whole yeare, without baile or Mainprise saith the Statute, 8. H. 6. cap. 4.

2 He that is conuicted before them, for abusing a licence of transporting victuall, shall likewise be committed by them, and shall remaine there a transport. whole yeare without Baile or Mainprise, 1. & 2. Phil. & Mar. 5.

3 He that is conuicted before them for offending the Statute made against forestalling, &c. shall be committed to the Gaole for two monethes without Baile or Mainprise, 5. E. 6. ca. 4.

4 And hee that is conuicted before them for offence against the Statute of Musters, shall bee awarded to remayne in prison without Baile or Mainprise, till he haue paid the forfeiture, 4. & 5. Phil. & Mar. cap. 3.

1 Again, if any one Iustice of the peace shall *Games*

¶

And

Games.

find, or know any to haue exercised any unlawfull games, hee may commit him without Baile or Mainprise, till hee will become bound no more to vse unlawfull games, 33. H. 8. cap. 9.

Seruant.

2 So, he that is convicted before two Iustices of the Peace to haue refused to serue for such wages as is by order appointed, shall remaine in prison without Baile or Mainprise, till hee will bee bound to serue accordingly, 5. Eliz. cap. 4. and the like is, of some other points in that statute.

Alehouse.

3 He that is committed by two Iustices of the Peace, for keeping a common Alehouse, of his owne authoritie, shall remaine in prison three daies, &c. without Baile or Mainprise 6. Edw. 6. cap. 25.

Bastard.

4 And the reputed Father or Mother of a Bastard childe, that will not performe the order set downe by two Iustices of the peace thereto authorized, that shall be committed, and shall remaine in prison without Baile or Mainprise, till hee or she will be bound, &c. 18. Eli. cap. 3. & 27. Eli. ca. 11.

The most of the rest shal onely be appointed out, that the Iustices may in a sort bee warned of them, thus shortly.

Prophecies.
Witchcraft.

5. Eliz. cap. 15. touching Prophecies.
5. Eliz. cap. 16. concerning Witchcraft.

Periurie.

5. Eliz. cap. 14. of Periurie.

Service.

1. Eliz. cap. 2. touching Common prayer.

Schoolmast.

23. Eliz. cap. 1. touching Schoolemasters.

Preachers.

1. Mar. cap. 3. of disturbing Preachers.

27. Hen.

27 Hen. 8. ca. 20. & 32. Hen. 8. ca. 7. of Tithes.

2. Edw. 6. cap. 2. of Souldiours selling harnesse.

22. Hen. 8. cap. 5. of Collectors for Bridges.

33. Hen. 8. cap. 9. of Aliens, conueying long Bowes.

Bowes.

1. & 2. Phil. & Mar. cap. 2. of wearing Silke.

8. Eliz. cap. 3. of transporting sheepe.

5. Eliz. cap. 21. of taking Fish, Deere, Hawkes.

5. Eliz. cap. 5. of eating Flesh.

9. Hen. 5. cap. 8. Part. 2. of false Weights.

1. Mar. cap. 12. & 1. Eliz. cap. 16. of rebellious Assemblies.

2. Hen. 5. cap. 8. of great Riots.

23. Hen. 8. ca. 2. of Collectors of Gaole money.

35. Eliz. cap. 1. touching Recusants.

5. Rich. 2. cap. 2. of Forcible holding.

13. Eliz. cap. 21. of Purueiance neere to the Vniuersities: and 23. Hen. 6. ca. 14. of Purueiors of noble men.

1. & 2. Phil. & Ma. cap. 5. of carying Corne.

39. Eli. cap. 3. for refusing to contribute to the poore, or to accompt, or to pay forfeitures.

39. Eliz. cap. 11. touching Logwood.

39. Eliz. cap. 16. vpon restraint of Malting.

And so, if there be any other few, wherein Iustices of the Peace may not graunt Baile, though otherwise they haue to deale: for all others (that be not of that sort) I do willingly pretermitt.

Now for an end of Bailement, I will shew you one forme of a baile, & another of the Liberate.

¶ 2.

Memoran.

Tithes.
Souldiours.
Bridges.
Bowes.

Apparell.
Sheepe.
Hawkes &c.

Flesh.
Weights.

Assemblies.

Riots.

Gaole money.
Recusants.
Force.

Purueiors.

Corne.

Poore.

Logwood.
Salt.

Kane,

Memorandum quod 20. die mensis Iulij, Anno regni domine nostre Eliz. &c. Venerunt coram nobis Thoma Robertes, & Henric. Lyndley, duobus Iusticiariis, &c. assignatorum, apud H. in comitatu predict. A.B. & C.D. de E. in dicto comitat. Ycomen, & ceperunt in ballium, usque ad proximam gaole deliberationem in dicto comitatu tenendam, quendam F.G. &c. Labourer, captum, & detentum in prisione pro suspitione cuiusdam Felonia, &c. Et assumpserunt super se, scilicet quilibet predict. A. B. & C.D. sub pena 20. libr. bona & legalis moneta Anglia, & predict. F.G. assumpsit pro seipso sub pena 40. lib. similis moneta de bonis & catallis, terris & tementis eorum quorumlibet, & cuiuslibet eorum ad opus dicta domine Regine, Heredum, & successorum suorum levandam si prefatus F.G. ad eandem proximam Gaole deliberationem personaliter non comparebit coram Iusticiariis dicta domine Regine addictam Gaolam deliberandum assignatis ad standu recto de Felonia predicta & ad respondendum dict. dom. Regine tunc & ibidem de & super omnibus que illi obycientur. Datum sub sigillis nostris, die & anno primum supradictis.

The Liberate

IHon Bishop of Rochester & Timothy Low, two of the Iustices of &c. To the keeper of her Maiesties Gaole in Maidstone, &c. greeting: Forasmuch as F.G. &c. labourer, hath before vs found sufficient mainprise to appeare before the Iustices of the gaole deliuey at the next general gaole deliuey to be holden in the said County, there

there to answer to such things as shal be then on the behalf of our said Soueraigne Lady objected against him, and namely to the felonious taking of two sheepe (for the suspicion whereof he was taken, & committed to your said gaole) we command you on the behalfe of our said Soueraigne Lady, that (if the said F. G. doe remaine in your said Gaole for the said cause, and for none other) then you forbear to greue or detain him any longer, but that you deliuer him thence, & suffer him to go at large, and that vpon the paine that will fall thereon. Ycouen vnder our Seales, this 20. day of Iuly, &c.

The authoritie of some two Iustices of the peace goeth yet further: For two Iustices, of the Peace, Alehouse. (the one being of the Quorum) may prohibite and remoue common Ale-selling, and may also allow the same, taking bond with suertie by Recognisance for good rule to be kept in such ale-house, &c. by their discretion. And they may also commit and imprison (for thre daies) those that keep common ale-selling of their owne heades, against prohibition, or without allowance thereof, and may after take Recognisance of the with two suerties that they shall keepe none, 5. Ed. 6. cap. 25.

And here seeing that the order of the conditions of these bondes is partly referred to discretion, I will (for the better brideling of these nurseries of naughtinesse) leaue with you that forme of them, which I haue knowne practised by that honourable Iusticer, the late Lord William Cobham,

Lord Warden of the Five Ports, Lord Chamberlaine of her Maiesties household, and one of her Highnesse priue Counsell.

Alehouses.

THE Condition of this Recognisance is such: whereas the within bounden A.B. is admitted & allowed by the within named Lord Cobham, and I. Lenison Knight, (two of the Queenes Maiesties Iustices of the Peace within the Countie of Kent within written) to keepe a common Alehouse, or Tipling house, and to vse common selling of Ale, or Beere, onely within the now house of him the said A.B. (and not els where) situate in the high streete of the Towne of M. within written, and called the signe of the Hart: If therefore, he the said A.B. during such time as hee shall keepe such common Alehouse there, shall not suffer any vnlawfull play, at the Tables, Dice, Cardes, Tennise, Bowles, Closh, Coytes, Logets, or other vnlawfull games to be vsed in his said House or in his Garden, Orchard or other his Ground, or place: Nor drinke, or cause, or suffer to be dressed any flesh to be eaten vpon any day forbidden by the Lawes or Statutes of this Realme of England: Nor wittingly & willingly admit, or receiue into his said house or any part thereof, any person notoriously defamed, of, or for theft, incontinencie, or drunkenness, or that shall be before hand notified to him the said A.B. by the Constable or Borsholder of M. aforesaid, for the time being, or by the Deputie of either of them, to be an vnmeet person

For euerie
place is not
meete.

son to be receiued into a commo Alehouse: Nor keep, or lodge there, any strange person (aboue the space of one day & one night together) without notice thereof first giuen to the Constable or Borsholder, or the Deputie of the one of them, there: And finally, if he the said A.B. during all the time that he shall keepe common selling of Ale or Beere in the said house, shall & will there vse and maintaine good order and rule: then this present Recognisance, &c. or else, &c.

In some Shires, the Iustices of the Peace doe condescend vpon certain Articles, framed by their discretions, and generally to bee propounded to all common Ale-sellers, taking the bonde for performance of the same Articles, a copie whereof they do vsually deliuer to euerie of them: which manner is auowable also, though not so assured as the former.

Two Iustices of the peace (so that the one be of the *Quorum*) may (by examination, or Enquirie) heare and determine the faultes of head officers in Citties, Boroughes, and market Townes, that do not twise yearely view and examine Weightes and measures, and breake and burne the defectiue: as also the defaults of buyers and sellers by other weights and measures then they ought to do: and may breake and burne the defectiue weightes and measures, and amerce & fine the offenders by their discretion, & make processe against them, as if they were endited of Trespasse against the Peace, 1. H. 7. ca. 4. & 12. H. 7. cap. 5.

Weights and
measures.

Oath of Underheriff.

Two Iustices of the Peace (the one being of the *Quorum*) may take the oath of the Vnderheriffe of their Countie (before that hee meddle with the exercise of that office) as well touching the Supremacie declared in the Act, 1. El. as touching his office, set forth 27. El. cap. 12. And the like may they do, for the like oathes of Bailifes of Franchises, Deputies and Clarkes of Sheriffes, and Underheriffes, and of euery other person that shall take vpon him to intermeddle with the returning of Iuries, or with the execution of Proceffe in any Court of Record, 27. El. cap. 12.

Hospitall.

The Bishop and his Chancellor, shall call the two Iustices of the Peace next inhabiting to any Hospitall, to assist them in taking the account of such as haue had the collection of the reuenues and profits of such Hospitall: and they three may charge the accountant (vnder penaltie, to lose such summe of money as they shall thinke meet) to account, and not to delay it, and forthwith to employ the Surplusage to the vse of the Hospitall, 14. El. ca. 5. & 39. El. cap. 18.

Bastard child

Two Iustices of the peace (the one being of the *Quorum*) in, or next to the limits where the parish Church is, in which a Bastard child (left to the charge of the Parish) shall be borne, ought to take order by their discretion, as well for the reliefe of the parish, and keeping of the child, as also for the punishment of the mother, and reputed father thereof, 18. El. cap. 17.

Tithes.

Two Iustices of Peace (the one being of the *Quorum*)

Quorum) vpon complaint by any competent Iudge of Tithes, for any misdemeanour of the defendant in a suit of tithes, may cause him to be attached, or committed to ward, till he find suertie vnto them by Recognisance to the Kings vse, to obey the Proceffe and Sentence of that Iudge, 27. H. 8. ca. 20. & 27. Eliz. cap. 11.

And also vpon complaint in writing by an Ecclesiastical Iudge that hath giuen definitiue sentence in case of Tithes against one (which wilfully refuseth to pay the Tithes, or summes of money so adiudged) two such Iustices may cause the party to be attached, and committed to the next Gaole, till he finde such suertie (as is aforesaid) to perforce that sentence, 32. H. 8. cap. 7.

After execution had for the partie robbed against the men of the Hundred, & vpon complaint made by them so charged, two Iustices of the Peace (one being of the *Quorum*) of the same Countie, inhabiting within the said Hundred, or neere vnto it where any such execution shall be had, may asseesse and take, ratably & proportionably by their discretions, all and euery the Townes, Parishes, Villages, and Hamlets, as well of the said Hundred, as of the Liberties within the same, towarde an equall contribution to be had for the reliefe of them against whom such execution was had, 27. Eliz. 3. cap. 13.

Two Iustices of Peace (whereof one to be of the *Quorum*) which were present at the Session, where in any person was convicted for any offence against this

this Statute of Highwaies within the Wealde of Kent, Surrey, or Sussex, may make Warrant for leuying the forsaits thereof, to any officer: and they also may appoint by their discretion such waies and means to leuy the doubles for not paying those forsaits within xx. daies next after lawfull remainde of the same by such Officer, 39. Eliz. cap. 19.

Rogues.

Any two such Iustices of Peace, haue power to heare and determine all causes, that shall growe in question, by the Statute of Rogues, 39. El. ca. 4.

Souldier, or
Bariner.

Two Iustices of Peace, of, or neare the place to which a Souldier or Bariner commeth with the Testimonial of one Iustice of Peace, shall take order by their discretion for setting to worke, or relieuing of him, if he cannot of himselfe get worke there, or employ himselfe in lawfull course of life, 39. Eliz. cap. 17.

Cloth.

Two Iustices of Peace, dwelling next any Citie, or Towne, where any recailer of woollen cloth shall present vnto them any defectiue cloth against this Statute (being conferred with the Statute 4. & 5. Phil. & Mar. ca. 5) shall cause the same to be cut into three equal parts, wherof the one to be to the Queene, the other to the Presentors, and the third to the Iustices themselves, 5. El. 6. cap. 6.

Fisherment.

No Fisherman shall be taken to serue as a Bariner by the Queens Commission, but by the choise of two Iustices of the Peace adjoining to the place where he is to be taken, 5. El. ca. 5.

Two Iustices of the peace (not being of kindred alliance,

alliance, counsell, or fee, to the Lord or owner of a woode) appointed by the more part of the Iustices of Peace at their Sessions vpon complaint of the Lord made vnto them, may deuide and set out the fourth parte of it, if the Lord and Commoners thereof (being first called before them) cannot agree vpon it, 35. Hen. 8. cap. 17. and 13. Elizab. cap. 25.

Two Iustices of the Peace, wherof the one to be of the *Quorum*, (appointed by the *Custos Rotulorum*, or by the eldest of the *Quorum*, in his absence) are to ouersee, and controll the Sherifes bookes & amercements, and the estreats of the said amercements, are to be made by Indenture betwene the and the Sherife or Undersherife; and to be sealed with their scales: And they may vpon suggestion make proceste as in an action of Trespasse against the offenders of that Statute to answer before them, 11. H. 7. cap. 15.

Two, or more Iustices of the peace (wherof one to be of the *Quorum*) dwelling in or neere the Parish, or diuision where the Parish is, must nominate perely in Easter weeke, or within one moneth after Easter vnder their hands and Seales 4. 3. or 2. substantiall householders in euery Parish to bee Ouerseers of the poore of the same Parishes. And the Churchwardens and Ouerseers of euery Parish, shall with the consent of two or more such Iustices of Peace set the poore on worke, and take euery inhabitant and occupper of land there towards the same, and to bind children Apprentices. And

Deuide the
fourth part of
a wood.

Amercements
in the County
Court.

The poore

and the excuse of the Churchwardens and Duerleers for not executing their office, is to be allowed by two such Iustices of Peace. And such two Iustices of peace are to take their accompts perely, and to commit them that refuse to accompt.

And two such Iustices of peace may take any other of other parishes within the Hundred to contribute to a poore parish. And may make out their warrants, to the Churchwardens & Duerleers of every parish to leuie the Taxations, by distress and sale of the offenders goods: And in defect of distress, may commit the partie refusing to contribute, to the common Gaole, without Baile or Paineprile.

And they may do the like concerning Penalties and Forfeitures committed, 43. Eliz. ca. 2.

And here also, is place for those private Acts, wherein any power is given to two Iustices of the Peace, as:

Norwich.

5. E. 6. ca. 24. For the making of Couerlets & Dornikes, in Norwich.

Wales.

35. H. 8. cap. 11. For wages of the Knights of Parliament.

Northumberland.

11. H. 7. cap. 9. For recognuances to be taken of Lessees in Northumberland.

Universities.

2. & 3. Phil. & Mar. cap. 15. & 13. El. cap. 21. & 27. Elizab. cap. 11. For prohibition of puruei-
ances within five miles of either of the Vni-
uersities.

Kent, and
Sussex.

14. H. 8. cap. 6. & 26. H. 8. cap. 7. For laying
out new high waies in Kent and Sussex.

23. Eliz.

23. Eliz. cap. 11. For the repairing of Cardiffe
Bridge.

Cardiffe.

35. El. ca. 6. Touching new buildings and In-
mates, in, and neere London and Westminster.

London.
Westminster

39. El. cap. 24. For the making of the Bridge
at Wylton ouer Wye in the County of Heref.

Wylton
Bridge.

What things, three, or moe, Iustices
of the Peace may doe out of the Sessions.

CAP. III.

The authoritie as well of any two Iu-
stices of the Peace generally, as of
some certaine two Iustices specially,
being thus at some length vnfolded,
it remaineth that (for an end) we speake somewhat
of three, and the greater number.

Three Iustices of the peace (one of them being
of the Quorum) may discharge out of prison any
person committed thither for his offence in not de-
claring to a Iustice (within 24. houres) that hee
was mooued to ioyne in any unlawfull assemblie
contrarie to the statute, 1. Mar. 1. Parl. cap. 12. &
1. Eliz. cap. 17.

Unlawfull
assembly.

It is requisite, that the Certificate (that is to be
made to the head Officer of a Citie or Towne cor-
porate, where a childe is to be put Apprentice to a
Marchant, Mercer, Draper, Goldsmith, Iron-
monger, Ambroderer, or Clothier, that the father
or mother of such childe may dispens forthie shil-
lings

Certificate for an
apprentice.