

Served Iosuæ, ad

Achan, Y. 19. 17.

Fili mi, da gloriam Domino
no Deo Irael, & confiere
atq; in die a misi quid se-
cerit, se abscondeat.

Lb. 10. cap. 7.

1. The examination
of an offence, is a con-
sideration of it.

1. The disposition
of the person, by
1. Will to do the fa^t,
which is gathered by.
2. Power to commit the
act, which is to be con-
sidered, by his
1. Present
demas his

1. Parents: as if they were wicked, and giuento
the same kind of Fault
2. Sexe: for some offences are more commonly
found in one Sexe, and some in the other
3. Childhood. Whether idle, & with-
out honest occupations: or riotously in diet, play-
ing, quarrellous, light-
ed, &c.
4. Youth. Apparel: whether braw-
ling, quarrellous, light-
ed, &c.
5. Education in his
Mans state.

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1. The examination
of an offence, is a con-
sideration of it.

1. of a cause: and
it is to bee
weighed by
greater, rather
as the

1. Forcible (or impulsive) as, for revenge of for-
mer displeasure, or upon sudden offence.
2. Perfidie: as for hope of gaine, whereof he is
needie, or greedy: or for the eschewing of any
hurt, whereof he was afraid.
3. Wit: subtiltie: courage of mind: meete to en-
able him.

1. Strength, or swiftnes of body, to warrant him.
2. Country: kindred: wealth: friends: office: to
cover him.

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1. Timers being very early or late, which be fit for
the doing of culle, that will not abide the light.
2. Space sufficient to performe the feate.
3. Place, convenient & meete for the actas Wood,
Dale, house, or other place of aduantage.
Occasion, rightly taken, as which being omitted, the fa^t & could not follow.
Companiion, as that none but he, or none so commodious as he, could
commit the fa^t.
Hope, to haue it concealed by thes aduantages, to escape with it.

Common voice and fame, against him, that he did the offence.
Winefess, 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 offendors: his offer of composition: the meafeure of his foote: the
bleeding of the dead body, &c.
Confession, as his owne doubtfull, or inconstant speaking: his repugnancie
with others speech, &c.

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

Kent.

JOHN SCOT Knight, one of the Justices, &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 immediatly you receiue the said A.B. and him safelie keepe in your said Gaole, vntill that hee shall be thence deliuered by due order of her Maiesties lawes. Hereof saile you not, as you will aunswere for your contempt at your owne perill. Yeouen at, &c.

The division
and discourse
of Felonies.

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

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

But before I steppe any further herein, I am to pray pardon of the Reader, if I shall neither set Manslaughter before Felonie, as this statute doth: nor shall vse either of both those wordes 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 before the particular: and therefore, refusing the common vse of the wordes at this day, I will (for orders sake) take them in their owne more 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, eicher 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 offenses, are called Felonies, because they be committed *Felio 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 availeable both for murders, and for some Treasons also: as may appear, Lib. Ass. 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 interfecitis per feloniam tantum.*

Againe, as touching Manslaughter, that word (as euerie man may see) doth most aptly, and significantly render unto vs, the Latin *Homieidium*: which word, both M. Bracton, and M. Stanforde doe rightly use, as the generall, as well to Murder as to the rest: howsoeuer unfull men wil needs restraine it (nowe a bates) 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 Felonic, (for so the word other doth imply) and doth also therewithall comprehend Murder underneath it: seeing it cannot bee thought, but that this statute requireth examination, as well (if not more) in the case of Murder, as it doth in the other lesse haintfull Homicides.

This excusation thus prepared, I will nowe aduen-

aduenture (under the name of Felonic) 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 more light) I haue bestowed in this pro- fect (or Table) fol- lowing.

O The

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

Mr. Pidge
Sime, and
entomologist
other

Felonies
examinable
for enquiry
in the 17th, 18th

Before the
Justices of
the Peace,
the citizen

1. *The booby*,
and *shark*,
by

2. *Angling*,
it, with-
out *dearh*,
by

3. *Cutting out of tongues:*
s. H. cap. 5.

4. *Homeric*,
whereof though all the
so far be now *Euclines* (for a full view)
the whole is divided into

5. *Baggenic with mankind:*
26. H. 8. cap. 16.
Rep: VII. 2. art. 3-4.
Carroll Rovony of an
Infant under ten years;
18. Eliz. cap. 6.
Tr. 1. art. 1. of women.

1. Taking away of ^{by}
England, or robbing of a Boat
3. H. 7 cap. 2.

2. The ^{by} Burning of houses &c.
dy and the Robbery from the person
Goods to-
gether, as Cutting (or picking) of persons
3. The ^{by} Lancashire, Goods
Penit.

Publike Felonies.

By Publike Felonies, I doe heere in this Table meane those offences, that do not so much touch any particular (or priuate) 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 Subiects within the Realme: Betweene the which twaine, there is such a neare Sympathie and mutual feeling, that whensoeuer the one is offended, the other is also hurt and doth suffer with it.

Felonies against the Queene.

Of these (which immediatly doe concerne the Queene and the Estate) some be called Treasons: and other bee named Felonies, after the vsuall understanding 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 receivee enclu-
ments only.

Of this latter sort, is the Treason of extolling foraine power: 1. Eliz. cap. 1. the Treason of absolving (or withdrawinge) her Majesties subiects from their naturall obedience, 2. 3. Eliz. cap. 1. and the Treason of putting in vse any instrument of reconciliation, gotten from the See of Rome 13. Elizab. cap. 2.

Those Felonies concerning the Queene, arise thus: first, the felonie 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 defamacion of her 23. El. cap. 2. and the deuising 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 ca-
bles 14. El. cap. 1. & 2. And the embezeling of a-
ny her habilitments of war, or of any Victuals pro-
uided 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 spi-
rits and witchcrafts, against the law of God & the
statute, 5. El. cap. 16. The sinne of Buggerie com-
mitted with a beast, against God, nature, and the
law, 25. H. 8. cap. 16. Receiuing of Jesuits, or Se-
minarie priests, contrarie to the statute 27. Eliz.
ca. 2. The refusall of seditious Sectaries, and of Po-
lish recusants, to abiure the realme, and their re-
turne 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 siluer, con-
demned by the Act, 5. H. 4. cap. 4. The causing of
Masons to congregate themselues in Chapiters,
restrained by a special law 3. H. 6. cap. 1. The de-
parting of souldiours, Mariners, or gunners, from
their Captaines, prohibited by the statutes 18. H.
6. ca. 19. 2. & 3. El. 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
horses.

Felonies against the Common wealth.
Coniuration.
Buggerie.

Jesuits.

Rebellious assemblies.
**Multiplica-
tion.**
Masons.

Souldiours.

Horses.

Sheepe.

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 Agyptians, the returning of a dangerous Rogue, that was banished: and the idle wandering of Souldiers & Mariners, togither 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 uniuersal common wealth, doth (or may) receiue detriment, & for which hardly any one singular person can commence his private suite, 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 upon 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 Felony 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 aunsweare to that which is objected: and therefore to break the prison, is to flee from the triall of law, and is woxthily adjudged a Publique 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 Rescuse: & 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.

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

Now, (as to this purpose) it is called a Breach *Escape*, of prison, whether it be an escape, out of the gaole, or out of the stokes, or out of the possession of any person that hath the keeping of the partie arrested for Felony, 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 flee 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 relieft the felonie in them onely, & not in the prisoner: who cannot be said to break the prison, out of which he is freely dismissed. *Stanford upon the case.* *Coron.* Fitzh. 149.

On the other side, if a stranger doe either break the prison, and let out one that is there for felonie, or doe rescuse such an one as is vnder arrest for felonie, then is it Felony as well in the stranger, as in the prisoner himselfe. *Coron.* Fitzh. 48. 134. & 158: Howbeit, if that stranger shall but offer disturbance onely before the arrest, so that the arrest is hindered thereby, then will it prooue no Felony 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. A.S. pla. 9. against the opinion of P. Fitz. in his Justice 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, howsoeuer 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 John strike Richard, for which the Constable arresteth him, and afterwarde letteth him goe, and then Richard dieth of the blow within the peere, *Commentar. 401. 11. H. 4. 1.* much lesse, to suffer one to escape, that is arrested for the killing of another, *Se defendendo, or by misfortune, or for petite Larceny, or that hath his judgement to bee deliuered, paying his fees: because none of these doe amount to Felonie.*

Homicide

But now, to pursue those Publique Felonies that do yet remaine. Those felonies of Gallyhalf-pence, Bussing, 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, every other man hath accessse vnto 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 Justice of peace had to doe with it.

There may bee more doubt of the Felonies by purveyours, 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) compell their prisoners to become Approovers, against the act, 14. E. 3. cap. 10. because in al these, some particular person is chieflie pinched: But yet forasmuch as they doe it by colour of their offices (which are Publike) I can be contented to range them amongst publike Felons also.

From these Common and farre spreading of private felonies, I must fall to those that I called Private, nies, and their in respect that particular men are immediately diuisioun, (and almost onely) 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.

Againe, seeing that the bodie is either touched in the point of life, or by other violent or fleshy abuse vingeth not death, I am firsst to entreate of Homicide

Felonies.
Homicide, which I called Manslaughter, and therein to note some few things that bee common thereto, and afterwardes 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 deaf, and dumbe: nor an infant vnder the age of 12. yeres, valesse it may by some evident token appeare, that he had vnderstanding of good and euill: for then, in him *Mali-cia supplet atatem*: and to these (by the opinion of M. Bracton) you may adde the Lunatike during that disease for a fourth, *quem tuerit* (as hee saith) *consilij inopia*, 3. H. 7. 1.21. H. 7. 31. *Coron.* Fitzh. 193. & lib. Aſt. 26. pl. 27.

Moreover, to hurt a woman great with childe, whereby the childe either dieth within her boode, or shortly after that she is deliuere of it: or to strike any person, so, as he dieth not thereof, till the yeare and day be fully past: will not wrap a man within the danger of these Felonious manslaughters: lib. Aſt. 3. Pl. 2. 1. E. 3. 24. 3. H. 7. cap. 1. & *Coron.* Fit. 303. For in the former case, the childe is not reckoned to be *In rerum natura*, vntil it be borne, though M. Bracton (fol. 121.) taketh it to be Homicide if the blow be giuen *Postquam puerperium animatum facrit*: 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 Justice of the peace, and charged with any of these Homicides (except that which is done in the ouerly 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 Justice in the Bailement of him: to the ende, that the party may be discharged by arraignement and Triall: without the which (or other finding of the truth before the Coroner, or otherwise) I see not how the Justice of peace may safely dismisse him. And for this purpose, I refiere you to the statute of Gloucester ca. 9. and *Coron.* Fitz. 288.

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

And therefore, neither the Judge that by ouer of Justice condemmeth the guilty man to death: nor the officer that ouerly executeth that iudgement according to his warrant: is guiltie of any offence for which upon examination he ought to bee committed to prison, Seeing they haue done no more then law commanded.

Next unto this, is the case of those whom law Homicide allowed to slay a man, and holdeth them unpunishable for it: whether it be vpon a certaine necessarie for the aduancement of Justice, or for the defence of his house, or goods, or for the more terror against

Homicide
commanded
by the law.

against offendours. And therefore the Sherife, bailye, or any other, that hath a warrant to arrest a man entited 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 yeld themselues, but stand at defence or flie away: by the opinion of Thorpe, Tit. Coron. Fitzh. 261: and so is it also, if a man that is arrested for felonie, 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 recover him, Coron. Fitzherb. 288 & 328.

And if the Justices of Peace come to arrest Riotters, and they resist, whereby one of the Riotters is slaine by any of the Justices or their seruantes, 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 undone.

Oflike account is it, when a Gaoler doth slay any of his vrueley prisoners that shall assault him, 1. 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 Justices of the Peace, or any other lawfully authorised 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 driven to set upon them, and thereby any of the offendours be slain, this slaughter is warranted, both in the Justices themselues, and for euerie other of their company, by the same Statute.

And if any Forrester, Parker, or Warreiner, or such as be in their company for their aid (after huy and cry made vpon offendours within their charge to yeld themselues, which neuerthelesse wil make resistance, or flie) do without former malice kill any of them, they are neither to bee imprisoned nor to forfaine any thing for it. Stat. de malefact. & ribus in pacis, 2. 1. E. I. 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 forfaine 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. &c 261. and so also was the Romanie Lawe of the twelue Tables: *Nocturnus fur quoquo modo, diurnus autē si se telo defendet, impunē occiditur.* For of necessitie men must either defend themselues, or be oppresed by these & such other wrongfull invasions. And therefore, if there be malice betweene A. & B. so as they haue fought together: and afterward they meete sovainly 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.

hauie to doe with him, and goeth to the wall from him, and thereof taketh witnessesse 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 forfaiture. 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 slayre, there is no speciaall liegeance (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 *Moth*, came the Latine *Mors*, and therof our elders (the Saxons) called it *Mord*, and *Mord* as we now sound it.

Afterward (about the time of *P. Bracton*) murder was restrained to a secrete killing onely: and therefore he in the definition of Murder saith, that it is *occulta occisio, &c.* with whom Britts agreeith also. But since the statute (14. Edw. 4. cap. 4. by which the presentment of Englishmen was taken away) Murder is taken in a middle degree, neither so largely as it first was, nor so narrowly as it afterward became to be. For Murder is now construed to be, where one man of malice prepensed killeth another 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 prepensed) 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 precedent malice, and the same either apparant, & bewrayed by the partie himselfe, or els implied and supplied by the understanding 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 awaite 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 gave the first blow, by the opinion of *Sir Robert Catlin* late chiefe Justice, as *Crompton* reporteth.

And if a man of premeditate malice, striketh at another, and after in the fight flieth to a wall (beyond which he cannot go) the other pursueth him to the wall, and is there slaine by him that began the assay: this seemeth to be Murder, notwithstanding his flying to the wall, by the opinion of *Catlin* chiefe Justice 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 Catlin chiese Justice, 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 minde, howsoeuer it be kept secret from the sight of other men Dalyson.

The ancient law that measuren the fault, not by the euent, but by the intent, wyl, and purpose of the offendour, tooke it for Felonie (saith M. Stanf. fol. 16. out of the booke 2. E. 3.) in the owner of a beast that killed a man, if so be that the owner did know it to be accustomed to doe harme, and did not tye it vp, or otherwise restraine it: but that case (3. E. 3. which you may see Coron. Fitzh. 311.) goeth not so farre (as I thinke) but onely saith, that if the owner were attue, hee shoulde bee arraigned of the death, and amerced towards the king. Againe, Brytton (fol. 14.) hath the case, that if one which is not a Phyliston or Surgeon, will take vpon 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 none to be indited accordingly: But the statute (34. H. 8. cap. 8.) leaueth so great a libertie of such practise to vnskilfull persons, that it will bee hard now to make any felony in such a case. Howbeit if any of these two latter offences should be drawnen 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 doth 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 deliuerned, 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 agaist 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.

Againe, 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

P

that

that he will atchieue 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 never saw before, and whom he intended to robbe onely, it is murder in the iudgement of lawe, which im- plyeth 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 ano- ther man, which doeth it in his presence, and the partie dieth thereof, it is murder in them both, *ibid.*

475.

It appeareth in P. Dalysons Report (4. & 5. Phil. & Ma.) that a Precedent was shewed to the Justices, 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 adjudged murder, and he was hanged for it. And of like sorte is it, if Riot- ters, or such as be otherwise unlawfully assembled, doe kill any of those that come in aide of the Shrie- rife or Justices of the Peace, for the repelling of them.

Furthermore, the law (not thus contented) doth many times extende this murdering malice, to- wards other persons then the offendour may seeme to bende it: yea, and to punish it in some that haue a shew to be very farre from it. And therefore, if a man (of his former malice against one) do shoot at him, and thereby killeth another, with whom hee was not ostened, 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 vpon 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 vpon malice soe 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 bee rid of his wife, offereth her a poysoned apple to eat, and she (not seeing the danger) gueith part thereof to her little daughter that standeth by, in the pre- sence of the husband, who (to auid the suspition) suffereth her to eat thereof, and she dieth: this was iudged Murder in the husband, for his wicked in- tent against his wife: and yet the case was, that he loued his daughter dearely. *Comment. 474. & Stat. 1. E. 6. ca. 12.* by which all wilfull killing by poising, is adjudged Murder of malice pre- pensed.

So if a man lie in wait by the way to kil 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, abet- ting, or comforteth him that committeth a Mur- der) be principall Murderers in the eye of the law, as well as hee is by doing the deede, though they strike never 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. & Coment 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 fellowes) doth run upon the keeper, and killeth him: this will make all the rest of the Hunters to bee 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 (having conceiuied a displeasure against Richard) assembled sumptrie persons, and came in sumptrie to the house of Richard, of purpose to fighthe with him, but not with the mind to kill any man: and vsling there some quarrellous speeches together, a kinswoman to them both trauelled indifferently to appease them, and was soudainely stricken on the head with a stone that was throwen over a wall by one of the seruants of George, whereof she afterward died. And (by the opinion of all the Justices, and others) it was declared, upon long advise, that if she came on the part of Richard and not as a straunger 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, howsoeuer it exceede Murder in the grauicte of the crime (as I said) yet in Methode, and true order of handling, it must come after it, as being the lese general.

It is of 2. sorte, 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 termed 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. c. 2. which is but an affirmation of the common law.

So that, if a Clarke do maliciously kil his prelate (or superior) to whom he oweth obedience: or a wife, her husband: or a seruant the master, or mistresse (who haue a ciuill soueraigntie ouer them:) this will be Petite treason lib. Ass. 12. pl. 30. & 22. plac. 49. Coron. Fitzh. 383. 19. H. 6. 47. & 25. E. 3. c. 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 þ hand of the childe should as well be sorte in the range of petite treason as the rest: yet by the opinion of Bromley chief Justice: & 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 busynesse for it as a seruant.

I knote that the imprinted booke at large 21. E. 3. fol. 17. hath (Mere) shortly, & corruptly written, for *Meistre*, whiche did, and may deceiue some Reader: but Fitzh. *Coron.* 447. and Statham also (which do abridge 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 euerie stranger, whereas petite Treason is restrained to these narrow bounds of priuie, that I haue set downe before you.

And therfore if the wife and a stranger do ioyne in killing, or poisoning the husband: or a seruant and a stranger in destroying the maister or mistres of that seruant: this is petite Treason in the wife and seruant, and Murder in the straungers. 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. Eliz. cap. 12. Dalison. But if the wife and seruant do conspire to kil the husband, appointing the time and place therefore, and the seruant, doth execute the same accordingly in the absence of the wife: then is it petite Treason in them both: whereas if it had bene done by a stranger, she shoulde onely

haue

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

Now therfore (to avoide all needlesse multiplication of particular cases) I may leau 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 fornamed priuies. Onely I will adde this one case, which hath an extraordinaire relation therein: the seruant (being departed out of service) killed his late master, for the malice which he had premeditated against him during the time that he was his seruant: 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 therfore called *Felo de se*: for the Lawe deemeth that he doth it *Felonie*, and with a meditate hatre 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 internalla*, his death shall yeeld that forfeiture which belongeth to the fault: as Walter 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 kil him, but whilist the other that lieth on the grounde draweth his weapon, and holdeth it before him, hee in haste to kill the other, falleth vpon that weapon

P 4

and

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

Homicide, by
Chance
medley.

There doe yet remaine two sortes of voluntarie homicide (but without preceding malice) the one commonly called Manslaughter, but more properly Homicide by Chance medley: the other *Se defendendo*, that is, in his owne defence, the former is stily named Chaunce medley, for that in it men are medled (or committed) togither by meere chaunce, and vpon some vnlookef 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 severite against the former faults: so that bearing (as it were) with the infirmitie 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 therof, 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 priuie. So, if Richard and Robert fight together vpon premeditate malice, and a straunger (having no malice) doeth sodainly

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

And if two play at the bucklers together without former malice, and the one slayeth the other, this is reputed to 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 Justice Fineux did hold, 11. H. 7. 23. But M. Brooke *Coron.* 228, noteth, that the Justices in the time of H. the 8. were of another opinion.

In some case, the killing of a man may ensue vpon the maintenance of an iniurious act, and yet shall bee deemed but Manslaughter by Chance-medley, as thus: Robert entreth forcibly with his companie into the house of Richard: and putteth out the wife and family of Richard, the next night after Richard commeth with a great companie weaponed to the house, to 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 iustifiable killing, since the other side came not to rob, or kill, 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

Hooting

shooteth at aduenture 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 misaduenture, seeing hee that shot had a purpose to hurt, or kill withall.

Moze plainly is it Manslaughter by Chancemedley, where Henrie was in possession of a house diners yeres 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 precedēt 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. Eli. 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 boyn malice mutually, and be reconciled together, & then afterward they meeete, and the one chargeth the other

ther with words of misreport, wherupon by agreement they go immediatly 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: unlesse the respice and distance of time haue beeene such, that (by reasonable coniecture) the heat of the first anger might in that mean while haue beeene asswaged.

Richard and Robert fight together vpon former malice, and Richard woundeth Robert, and so they depart for that time: afterwarde they meeete 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 he received, Report Crompton. Whether to of the principall parties to the fight, now of others that happen to haue to do therewith.

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 wel 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 Chancemedley, Coron. Fitzherbert

180. So, if two fight upon the sodaine without former malice, and the one of them breakerh his stasse; and a stander by which is not of their company lendeth his stasse 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 own 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, *Omnem honestam rationem expediende salutis: So the lawes of men do sometime reach unto 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 subiect. If or albeit he may boldly defende himselfe, his goods, or his house against a murtherer or cheefe, on euen hand (as it were) and without anie shinking from him: yet, if he be assailed by another maner of man, he must flee so far as he may, and till he bee letted by some wall, hedge, ditch, prease of people, or other impediment: that his necessitie of defence may be esteemed altogether great and inevitable: 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 subiect, Stat. Glouc. cap. 9.

M. 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 commeth to a strait, beyond the which hee cannot flee: A. will pursuerh 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 divers blowes also (without giving 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 M. 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 booke, 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. unlesse 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 availe, 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 Comicque said: and our law calleth a mans house his Castell, meaning that he may defend himselfe therein.

Homicide by
misadventure.

Hauing 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 worthy of death that ignorantly killeth another , but protec-
teth him in the cities of refuge) our law saueh 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 Axe, and (in the fetch-
ing of his stroke) the head of the Axe happen to slie off from the helue, and doe kil one that standeth by; or if a man doe throw a stone at a bird, or shoothe an arrow at a fowle, or at a marke (without euill in-
tent) and an other man is slaine vntwares therby: or if (in the felling of a tree) he giueth lond war-
ning, when the tree is ready to fall, and yet it fal-
leth upon 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 commeth vnder , and is slaine with a stroke of a tile : Or if a schoolemaster 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. Braston and allowed by M. Stanford) in this case of Mis-
aduenture, is worthy recitall. *Distinguendum est* (saith he) *vtrum quis dederit operam rei licite an il-
licita: vt, si lapidem projiciebat quis versus locum per
quem homines consueverunt transire: vel dum in-
sequitur equum, vel bouem, & aliquis alius ab equo vel
boue percussus fuerit: hic imputabitur ei. At si magi-
ster causa discipline discipulum verberavit: vel si
quis dum senum de curru deponebat, vel dum arbo-
rem incidebat, & adhibuit quam potuit diligentiam,
scilicet, respiendo & proclamando, neque id nimis
tarde aut dimisso, sed tempore congruo & ita clamore,
vt alter fugere aut sibi praecavere potuisset, non impu-
tabitur ei.*

Thus haue the felonies appeared, that doe kill
the bodie: it is now time to speake of those that a-
buse the bodie without destruction of it. And here
first offreth it selfe, that felonie, which (of set pur-
pose, & prepenced malice) cutteth out the tongues,
or putteth out the eies of any of the Queenes sub-
iects, 5. H.4. cap. 5. next the sin of Buggery,
is committed with man, against the order of man-
kinde, 26. H.8. cap. 16. after that, the taking of a
nie maide, widow, or wife, unlawfully against her
will, that hath lands or tenements, goods or chat-
tels, 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 tou-
ching the bodie
but without
the death,
thereof.

Buggery.

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 receive the same woman. Then followeth the felonie of the carnall and unlawfull abuse of the bodie of any woman (or rather a woman childe) being vnder the age of ten yeeres, the which, for resolution of the doubt that master Dier noteth, (14. Eliz. Reg.) was declared to be felonie (by the Statute 18. Eliz. cap. 6.) whether she consent, or no, since the law iudgeth her vnable to consent at her so tender age.

Besp.

And lastly, commeth the rauishing of any woman against her will, where she neither consented before, nor after: and the rauishing of her by force, though she consented after: which was ordained to be felonie (by the Statute of Westminster the 2. cap. 14.) ten yeres after such time as the imprisonment of two yeres laid vpon the offendour (by westminster 1. ca. 14.) was not found sufficient to represe the fault: which maner of punishment also, M. Stanford thinkech to haue been rather a mitigation, then any increase of those paines, that the elder lawes did lay vpon rauishing: and where as that Statute of Westminster 2. in the first branche thereof, vseth the wordes thus: Rauishe, where shee doth not assent, &c. and in the second branche thus: Rauisheth 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 rauishing is accompanied with force & therewith agreeeth the Etymologic of the word Rauishment it selfe, which is derived from the Latin Ra-
pere, that is, to take, catch, or snatch, by force or violence.

But here, if the partie complayning to be rauished, shall thereby conceiue a childe, then Britton taketh it to be no Rape at all: because her conception proueth her consent. So, if she were kept, and vseid by the rauisher, as his concubine, Master Bracton fol. 14.8. thinketh that he cannot be saide to haue rauished her: yet, if she were an harlot to another man, the rauisher shal not be excused thereby (as it there seemeth) because shee consented not to him: And howsoeuer the wicked man force her, yet can it bee no Rape in him, vntesse that either hee take carnall knowledge of her, or bee present and ayding to an other, that so forceth, and abusest her, 11. Hen. 4. 13. and Stanford fol. 24. and 44.

Thus farre we haue dealt with the bodie alone: *Felonies con-*
now must we ioine the bodie and the house (or the ching the body
goods) together: and within this measure, there fall two diuers faults, 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 invaded, & the goods sought for there, but also a great terror, and dreadfull daunger is often brought thereby to the body and person, And seeing that feare is most fearefull in the

M.

time

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

Burgharie,
and the cir-
cumstances
thereof.

Burgharie seemeth plainly to take the name of Burghlar: which is derived 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 concurre 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 sol. 30. truely obserueth) the Inditements of Burgharie bee alwaies of this forme, *quod nocturnus 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 rysing, 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 rysing (whereof the one is called *Aurora*, and the other *Crepusculum*, and the beginning of the one, and end of the other, as by Ptolome 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 lighe) 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 comprehen-
deth 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 Burgharie, vntesse some person
be at that time within it: because (as I said) the
law in this offence beholdeth the place and the per-
son 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 wryte: and seeing like reason getteth like law, so must it be, if the offence be perpetrated in a barne of the house, or other out house that is so adioyning.

Ech Colledge in the Uniuersitie, each Inne of Court and Chancerie, and every other like place, that is distributed for the seuerall lodgings of sundrie particular persons, is but one entire dwelling houle for this purpose. So that if any chamber (or lodgynge) there, be broken vp 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 Burghlarie, because it is not into any house, 12. H. 4. 8.

The maner.

The maner of the burghlarie consisteth, partie 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 Burghlarie, shalbe hanged for it, although he haue not put the thing thorowly in vse.

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

Mounta-

Mountague, and sir Robert Brooke, late seuerall chiefe Justices of the Common place: the first of them holding, that if one do but make an enterprise (by night) to enter into a house to robbe there: the next, that if 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 Burghlary, they withdraw in the house, shall cast out their money for feare, and the attemptors take it away: that in euerie of these cases, it is a full and complete Burghlarie.

He also reporteth that Justice Portman, 3. Ed. 6. did execute one for Burghlarie, 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 shall be taken drawing the latch of a doore, that is not otherwise fastened.

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

If one do breaue the glasse window of a house by night, and then with a hooke draweth out any goods: or doe breaue a hole in the wall of any house by night, and shoothe in thereby with a gunne or bowe, at one that is within the house, to kill him, and yet misleth 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 dieth to his chamber for feare, crying for helpe,

Q. 3 and

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

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

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

As, if theeuues 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 theeuues, 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 theeuues doe enter into a house by night (with a munde to steale) thorow a hole in a wall that was broken before, or thorow a doore then standing open, & doe then depart without dooing any other harme, & be taken upon pur-

sult:

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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 entreth & committeth it, the rest of them standing neare to the doore, 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 meete in the *The end*, making of a Burghlarie, is the end, and intent for which the offendour commeth: which of necessarie must be, either to kill, or robbe some person, or to doe some other Felonie, lib. A. 2. pl. 95.

For if a man shoulde breake, and enter a house by night, of purpose onely to beate a man, that is but trespass, 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. A. 22. pl. 39. But if the intent were to perpetrate a Rape (which was not Felony, at the common law, as some haue thought) then is there some doubt and question made upon it.

Thus much of Burghlarie: whereunto those of Robbing in a fencis be somewhat neare, that are set forth by the house, bothe Statuts, 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 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 statuts halbe 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, bothe, 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 moxe, in any part of any dwelling house, or outhouse (belonging, and bised to, or with any 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 moxe 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 malitiously, he shal die the death for it: and Britton fol. 16. describeth the manner, witing that he shalbe burned for it: besides the which, Westmynst. 1. cap. 15. forbiddeth the Replevin (or bailment) of such an offendour. And the burning of a house Felonie (saith M. Brian 3. H. 7. 10.) was felonie at the common law.

So is it, to burne a barne (in the night) that is adioyning to a dwelling house, 11. H. 7. 1. Cur. or to burne a barne (in the day) that hath any corne (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, Cōment 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 Etymologie, the

the grecians called such offenders λαπεντας, & the Latines Expilatores: that is to say, Fleekers, or flakers of men. And in this kinde of felonie, the law regardeth not so much the value of the thing robberyed, 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. A. 22. pl. 39. And hereof M. Bracton, and Iustinian do terme this offendour, *Furrem improbum, & predonem, qui rem alienam rapit.*

So that Robberie is the felonious (or theefish) 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 prove 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 unto him with his owne hands: yet this is plain Robberie, because he doth 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 (fighting with him, and finding himself

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

So if theeues take a man, and compell him (by menace of killing) to sweare vpon a booke to bring vnto them a certaine summe of money, or other goods: and thereupon he goeth, and bringeth the same vnto them: this is adjudged 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 theeues 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 constru'd in this description, that (to make vp Robberie) the goods must needs be amered (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 sorte) be taken from the person: or els the fact will prove

proue no robberie: for if a man doe lie in awaite to robbe me, & (drawing his sword vpon mee) he willeth me to deliuer my money: and I likewise betake mee to my weapon, and thereby repell him and take him, either by figh, or by Huy and Cry made after him: this will not bee Felonie at this day (saith D. Stanfورد, agreeing in opinion with Jenney. 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 robberie: as for example it happened (26. Eliz.) that one came to a Fisherman that trauelled by the high way with fish to sell: and praied to haue fish of him for money: the Fisherman refused to sell vnto him: 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 Justices of the Session thought good to be aduised, Report Crompton.

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

meane while escaped: this was adiudged robbery in both the theeuers, Report Crompton: and yet the one of them was neither within the sight of that robberie, 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 cheefe that stealeth when the person (or the owner) is absent, standeth the craftie cutpurse, or pickepurse, that taketh goods (or money) from the person by sleight onely, the owner neither being made afraid, nor witting of it.

This fact as it is no robberie, because it is boide of assault, force, and feare: So neither is it any felony vnto death, vntesse the thing taken be of more value then xij. d. in money, Collect. 12. Dier. fo. 224.

And in this kind of offence, it is thought necessarie, that the cheefe haue an actuall possession of the thing, seuered from the person of him from whom it is taken. So that, if the offendour 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 fal, that wil proue him a felon; because he had a manuel possession of h purse, remoued frō the person: Crompton. And now I am (by the course of mine owne order, and diuision) drawne from the body, and diuen

Cutpurse:

dyuen to take in hand that Felonie that wozketh
yon the goods alone.

This doth M. Stanford call Larcenie: a name
setched 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 borow from her. M. Bracton
callith it *furtum*, and Varro said that *fur* was de-
rived *& furuo*, (that is, darke) because theenes doe
willingly worke by night, as hating the light of
the Sunne that may bewray them. But Gellius
notech him of errour, and thinketh that *fur* came
of the old Greeke word *φάρω*, which signified a
theefe (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 theefe commeth.

M. Bracton defineth it thus: *Furtum est con-
tractio rei aliena fraudulenta, animo furandi, inuitu-
domino*: which definition is tollerable, although
M. Stanford doe not like it. Soz, Bracton meant
thereby to describe all manner of theft, whether it
were robberie it selfe, or great or petite Larcenie;
even as the Cvilians 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 gods (remoued from
his bodie, or person) without his will, to the end
to steale them.

And

And albeit petite Larcenie be not punishable by *Petite Larc-*
death (as the greater Larcenie is) yet be they both *uite*.
felonious and fraudulent takings, &c. for the en-
ditement of petite Larceny (saith Judge Fitz. 27.
H. 8. 22. must be *Felonicē cepit*, and he shall forfait
his goods for such a felony. So that there is no dif-
ference either in the nature of the offence, or in the
mind of the offendour, 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 Jurie to ex-
ceed xii. d. in value, he shall die for the fault: and (if
it be of, or vnder that wozth) he shall be corrected
by the discretion of the Justices that may heare and
determine it: West. I. 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 xii. d. then may they bee put together into one
Enditement, and he shall suffer the paines of death
therefore. *Coron.* Fitz. 415. and on the other side, if
two or mo persons doioine in the stealing of goods
that doe surmount xii. d. they all must die for the
fault, *ibid.* 404. for (as saith M. Stanford) that fe-
lonie is severall in Law, even as those others were
seuered in act, and deed.

But for the more cleere understanding of Lar- *Of what*
cenies, I will first shew of what thinges Larceny *things Larc-*
may be committed: and then, after what maner, & *nie may be*
with what mind, the same may be performed: for
as touching the persons that may be charged with
that

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 numbered amongst moueable goods, or no, I will proceed in particularitie.

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

It may be felonie also, to take some that be of a wilde nature: as to take yong pigeons, or young hawkes out of their nestes (or aries) before that they can flie. So, to take fishes that bee kept in a trunke, stew, or pond, 10.E.4.18.E.4.8.1.1. Ass. 22. pl. 98. & 18.H.8.2. For, as a man hath a propertie in those first things that be domesticall, and therefore it is plainlye 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) use their nature, and forsake him: and therfore 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 live abroad in riuers, or streames, because they are *nullius in bonis*, and therefore *occupanti conceduntur*. And yet, by Statute law there is one exception: For if a man

find

find a Falcon, Tarcelet, Laner, Lanere, or other Falcon that was lost, and do not soorthwith 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 Phesants, Partridges, Hares, Conies, Herons, Swans, or Deere that are abroad: or to take Dogges of any kind, Apes, Parrots, 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 wilde nature, as those others are whereof I speake before, 18.H.8.2. And therefore Justice 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 wilde 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 hodie behinde, will be felony, Report Dalyson.

And now you must remember, that in the descrip-

tion I sayd, of another mans personall goods: for to take chattells 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 indeuour to steale (as it were) his inheritance from him.

Againe, 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 Felome: because these thinges bee part of the freehold, til they be seuered, and cannot therefore be reputed for any chattells, *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 seuered when he tooke it.

Moreover: to take treasure that was hidden, or goods or cattell that bee valued, or wrecked, or strayed is no Felomie, *Coron. Fitzher. 187. & 265.* and *Stan. 25.* because it doth not yet appear 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 mortuignoti, or bona domus, aut ecclesia 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 shal charge himselfe in Felomie: for albeit he were owner of them, yet had the other therein a speciall propertie also, by which he might haue an appeale or action of trespass, against a stranger that shoulde 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 engag'd.

So, (by the opinion of Mar.) if I lend my place to one that melteth it, & I take that metall feloniously, it is Felony in me, because the propertie is altered by altering of the fassion.

Thus far of the thinges that are subject to this Felomie. Now let vs see what maner of act and de-
meanor 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 & aportavit, or cepit & abduxit.* And in either of these two, the letter and word is not so much to be regarded, as the meaning & sence therof, for the moxe seuerre & assured suppression of offendours. So as it is clearely felonie, if a man take my goods (with a mind to steale them) without any de-
livery by me: so may it proue felony also, though he

come first unto them by deliuerie from mine owne hand.

And therefore is a Tauerner deliuere a goblet to one to drinke his wine, and he carrie the goblet away, it is Felony, because the Tauerner gaue him no possession therof, but the vse for y^e time onely, 13 E.4.10. So if I deliuere to a man certaine bales of Dade, or a tunne of Wine, to carrie to Canterbury (giving him money for the carriage thereof) and he carrieth them to Yorke, and there breaketh vp the bales or tunne, and converteth part of the Dade or wine to his owne vse, it is Felonie in him, *ibidem*.

But if I deliuere my goods to a man to keep, and he fraudulently consumeth them, or otherwise converteth them to his owne profit, it is no felonie, *ibidem*: for that booke agreeth, that if the other had converted all the Wine, or all the Dade (as he received them) to his owne vse, it had beene no Felonie by reason of the deliuerie: but heere may it be truly sayd unto him, that neither the Dade nor Wine were deliuered to him in y^e plig^t whereto himselfe hath brought them, and so (upon 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 vessele, plate, or horseles, which they haue in their keeping, it is felonie, because they haue no deliuery: insomuch that whil^e those thinges were in their handes within my house, the possession of them is continually remay-

ning

ning in my selfe, and not in them: But (3.H.7.12) their is some strong opinion against it.

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

A man may gather by Glanuile, that the anci-
ent 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.) *Furtum
non est, ubi initium habet sua detentionis per dominum
rei*: and thereupon grew those differences of op-
inions concerning goods in the charge of seruantes
for the appeasing whereof (in some part) the Sta-
tutes (21.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 bee
understood of him that is bound by Indenture, by
the name of an apprentice) shall go away with, or
convert to his owne vse, any mony, jewel^s, goods
or catells of his masters: or mistresses, and of his
or her deliuerie to keepe, of the value of xl. shil-
lings to the intent to steale the same.

But euen as to labo^r to take away all doubts in
law, is nothing els, but *Hydra caput amputare*: So
within soxte yeares after that Statute (which

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

First, if a man deliuered an obligation to his servant to keep, and he tooke vp the money due there-by, and went away with it: and then, if a man de-liuer 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 delivered, 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 que-
stion, the first parte of the former reason holveth also.

Howbeit, if the servant received xx. li. in gold, which he changed into siluer mony, and then ran away with that, his fault wil rise to felonie, because that gold & siluer were both but money, though diuers mettals, Collect. Dier. fol. 5. & Report Cromp.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 felonie within the mea-ning of that statute, because it shal be said to be the deliuerie of the master him selfe.

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

ceased

ceased master: But that felony groweth vpō their default of appearance in the kings bench, after pro-
clamation, & therefor our Justice of the peace can not take knowledge of it.

The other point that (as I said) must concurre to make vp this Felonie, is the caryng 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 euill 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 Felonie 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 deprehended 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 she chargeable if the husband compell her to com-mit the Larcenie alone, lib. Ass. 27. pl. 40. But if she doe it by his onely commandement, without o-
ther constraint, then M. Bracton affirmeth it to be Felonie in her, and M. Stanford doubted of it.

What per-
sons are
chargeable in
Larcenie.

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

Accessories to
Felons by the
common law.

The principal felons of all sorte being thus per- used, 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, i. ca. 15. that in ancient time the Law tooke know- ledge of three sorte 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 recei- ued or comforted felons knowing of the offences that they had made.

And M. Stanford (fol. 71.) saith, that all Abet- tors, consenters, & procurers be taken to be within the reach and measure of accessories before the of- fense committed.

But

But, forasmuch as it is evident by many booke (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 adjudgeth them principals no lesse then him that doth actually perpetrate and worke the offence (as it may sufficienly 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 sorte of accessories, but those onely, that bee either before, or after the time of the felonie done and committed.

And here (at the first) I am fallen vpon a too folde question: the one, whether there may be any accessories to such felonies as were not at the com- mon law, but were afterwardes created felonies by statutes, unlesse the same statutes doe special- ly so appoint it: and if there may bee such accessa- ries before the offence, yet then whether there may bee any Accessories to such a felonie after the of- fense also.

And, albeit the first of these questions might haue received 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 shold not haue been commit- ted: yet they of the Parliament house haue (in the making

Accessories by
statutes.

making of sundrie new felonies) thought it conuenient for the avoiding of all doubt, to comprehend in plain speech the Accessaries, both before and after. For so you may see it done, by the severall statutes, 1. Mar. cap. 22. made against Rebellious assemblies: 1. & 2. Ph. & M. cap. 4. against Ægyptians: and so of such others.

And this caused M. Stanford (fo. 44.) to write, that there coulde be none accessaries) after the offence) to the felonie of embezelling Records, declared by H. 6. cap. 12. nor to the felonie of coniuration, set forth by the Statute 33. H. 8. ca. 8. because those two Statutes haue no expresse mentioun, but onely of the Accessaries before the offence committed: And that there coulde be none Accessarie at all, to the felonie of taking of maydens, widowes or wiues against their wils (enacted 3. Hen. 7. cap. 2.) because thereby, the procurers, abbetors, and receiuers are adiudged to bee principall felons.

But, for a more certaine rule in al 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 invited vpon that Statute (3. H. 7. cap. 2.) for the taking of a woman against her wil feloniously: and two other men were then also invited, for that knowing the felonie) they did receive, and comfort the first said offendours. In this case, albeit the Statute doth make as well the procurours, and abbetors of the felonie, as

nie, as also the receiuers 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 bee deemed no principals: yet, all the Judges of that Court were then of the opinion, that these receiuers bee accessaries to this felonie, by the Statute, no lesse then if it were to a felonie at the common Lawe. For, when a Statute (say they) maketh a felonie, it is a felonie, and hath accessaries to it, euin in the same manner as if it had beene felonie at the common Law. As in a Rape, which is declared by the Statute (Westm. 2. cap. 34.) saying, If a man rauish any woman, where shee affented not before, nor after, let him haue iudgement of life and member: yet, if another (knowing of the fact) shal receive the rauisher, hee shall be an accessarie, no lesse then if it were to a felonie that had bin by the common Law.

The ground of accessaries being thus leuelled by the line of this iudgement, I will walke eueningly through it, and handle (under one) both the accessaries before, and after, as wel 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 presens at the dooing thereof, are accessaries before the felonie done, and thereby felons when the felonie is done.

And

Accessaries
before the of-
fence was
done.

And albeit, that the chiese offender doe not accomplish the fault altogether in the selfe same sorte, as it was beforehande 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 unto it. As if A. willett B. to beate or to rob C. and he attemptethit, & thereby so beateth him that he dieth therof, 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 þ house of B. though he never 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 sequela 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 poysone 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 seale 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 more strange) if the husbande conspirre with another to poysone the wife, and hee for that end procureth and bringeth poison to the husband, who tempereth it with an apple, and glueth it to his wife to eate, and she (thinking none euill) deliuereth a morrell thereof to her daughter there present, who also eateh it, and dyeth of the poison: yet is that other person none accessary to this murdver that the husbande hath committed: because it is a distinct thing from that which he purposed: and (against him that is not the immediate murderer) the sequela of the fact shal not be drazaine to charge him beyond that which was intended by him. *Commentar. 476.*

But nowe, in all these, and like cases of Accessaries before the fault, it is of necessitie that the commander, hirer, 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 boorne: Yet if a man shall maliciousslie 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 vntill it be executed by the Murder which followeth the birth. Collection Dier 186.

But otherwise if he shall repente him of his malitious minde, and thereof giue notice to the other, and withall charge him that hee make no such attempt, and hee doth neuerthelesse bryng the same to effect, then is such commaunder or procurer no more Accessarie to the fault, then if hee had never imagined, or thought vpon it. Comment. 476. Neither doe I thinke, if a man forknow 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: vntille he haue also vtered 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 mispysyon (or contempt) for which he shall bee fined: euuen as if it happened him to be present at the dooing of a felonie) whereof he neither had knowledge, nor came therefore, nor gaue aide thereunto) and would neither disturbe the Felon, nor leue Hie and Crie after hym. 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, receive, harbour, fauour, or otherwise comfort the felon, whether it be in the same countrey 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. A. 1. 26. pla. 47. But if a man do (vpon Hie 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 accessarie to the felonie, if not as a principall felon: for so is the doubt moued, Lib. A. 1. 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 ciuiliter, or criminaliter, at his owne pleasure, as Mast. Bracton wryteth: but if he take money of the theefe, to the end that hee shall not giue euidence against him, whereby the theefe scapeth, then is he become an Accessarie to the felonie 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 receive, harbour, or relieuue with money, a man that is bailed for felonie, and bound to appeare for his triall, breedeth no daunger of being an Accessarie,

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

And although the preamble of the statute (2. & 3. E.6. cap. 24. seemeth to cal him an accessarie, that receiuesth the goods onely: yet that must be vnderstood of him that receiuesth the goods, and the felon together. For it was not the purpose of the statute (as I thinke) to make any new accessarie 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 calld an Accessarie to an Accessarie lib. *Aff.* 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 doore against them that pursued the felon, and conueted him out of the house by a backe doore, whereby hee got to the Church: and this brother was adjudged an Accessarie 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 Accessarie, though (knowing him

him to haue committed a felonie) 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 felonie at the verie time in which he becometh an Accessarie to it. For, if a man doe give a mortall wound to another vpon the first day of August, and a third person (knowing thereof) receiuesth him, two or thre daies together, and leeteth him go, and then afterward hee that was striken dieth of the wound within the yere and day: yet this receipt maketh the other none accessarie, because the principal fact was then no felonie, 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 accessarie 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. 105. But as he confesseth that the law was otherwise taken in ancient time, & that the partie might be charged as an Accessarie before the offence also,

as it may appeare Coron. Fitz. 424. So I finde, that the late opinion of all the Justices (1. & 2. Ph. & Mar.) was agreeable to the same: because the principall fact is one offence, and the accessory fact (whether before, or after) is another offence, and distinct from it: insomuch, that although a par-
don of all felonies, will not discharge a murder, yet it is availeable for all the Accessaries there-
to, 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 attainted: so is the same much moxe to be holden, concer-
ning accessaries to felons that be attainted, and of
recoede. For to receive 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, wit-
tingly to receive him that is attainted of felonie,
by way of vtilawze: Coron. Fitz. 285. And in this
latter case, there is some opinion, that a man shall
be an accessarie for receiving a felon attainted (es-
pecially in the same Countie) though he know not
of the attainerder at all. Coron. Fitz. 377. & Col-
lect. Dyer 355. for euerie man (say they) is bounde
to take knowledge of a matter of Record, at the
least in the same (though not in a 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 record (and especially the pronouciation
of an vtilawzy) be so notorius, that every man may
easilie

easilie come to know the same: yet, were it an ou-
uer great extremitie, that ech man shoulde (vpon the
peril of his owne life) enforme himselfe; and take
understanding of it.

I haue nowe (as you see) gone ouer this large
field of principals, and accessaries, in all these sun-
drye sozys of felonies: so much the moxe slowle 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 use, and
fit for every Justice of the Peace to heare, and un-
derstande.

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

The assesse, made at the Easter Sessions, of the Stocke of the
Peace vpon euerie Parish in the countie, shal pere-
ly in default of the parishioners, and (in default of
the Churchwardens and Constables there) be ra-
ted by order of such Justice of Peace as shall dwel
in that Parish, or (if none so bee dwelling) in the
parts next adioyning: And in default of the saide
Churchwardens and Constables any Justice of
peace within the limit, may leuie the same & by di-
stresse 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 Justice of that limit
may commit to prison such person without Baile
till he pay the same, 43 El. cap. 2. c. 10. What things
some one Justice
may doe.

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

Any one of these two Justices 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 themselues in work, according to this statute, 43. El.cap.2.

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

Every person finding or seeing any to offend the statutes made against the shooting in Croslebowes and Handgunes may arrest and bring, or conuey him to the next Justice of the Peace of the countie, where he was found offending, who (upon due examination and prooife 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 forfaiture of this Statute to the Queene, and the other moitie to such first binger or conuey, 33. H.8.ca.6.

In this, and such other cases the Justice of peace, haunting (as it seemeth) the whole matter committed to himself alone, ought to be warie and circum-

spect, least either he rashly condemne the guiltlesse, or negligently suffer the guilty to escape: And upon the offence sufficiently prooued, it is necessarie that in his *Mittimus* (or Precept to the Gaoler) there be conteined, 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 Record of the matter, and to send the Eſtreit of it into the Escher, whereby the Barons may (upon intelligence thereof) cause the Queenes duetie to be levied to her use. And although the forme of the *Mittimus*, might bee easily fashioned by some other Precedents in this booke, yet for the more ready helpe of the Justice in this, and towards other like, I will not sticke to leaue him a paterne both of that, and of the Record it selfe also.

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

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

I John 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, awel 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 convicted 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 forfaiture 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 moity thereof to our said soueraign Lady, & the other moity 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. Hereof faile you not, as you will

wil answe 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, defendor of the faith &c.

By me the said

I. Leueson,

MEmorandum quid xx. die Martij anno regni Kanc.

Dom. nostra Elizabetha, De gratia, &c. Ang. Francie, & Hyb. Reg. fidei defensoris, &c. 41. A.B. & C.D. de Halling, in comitatu prædicto Ycoman, quædam I. at S. de Friesburie in dicto comitatu Mariner inuenientur, & viderunt apud Cucstone in com. prædicto, die & anno supradicti cum quodam tormento (Anglicè vocat. a Handgun) operato puluere tormentario & globo plumbeo (anglicè charged with gunpowder and a leaden bullet) in quendam cuniculum adiunctum existentem in quodam loco ibidem vocato Churchfield, sagittantem & exonerantem dictum tormentum, contra formam statuti (in Parliament Dom. H. nuper regis Anglia octauo, apud Westminster, anno regni sui 33. tent.) prouisac editi: Ac proinde die & anno supradicti prafat I. at S. arrestauerunt, & apud Halling prædict coram me. I. Leueson milite, (uno, & dicto loco proximo Iusticiariorū, dict' dom. reg. ad pacem in dicto com. conseruandam, nec non ad diuersas transgress. & alia malefacta in eodem comitatu perpetrata audiendum & terminandum assignatorum) adiuncte vna secunda adduxerunt, petentes

petentes inde iusticiam fieri. Qua quidē petitione auditā, Ego prefatus Ioh. Leueson, apud Halling predict. die, & anno supradictis, debitē superinde examināsi prefatum I. at S. ac probationes predict. A.B. & C.D. in hac parte cepi: Ac propterea quid tam per probationes predictas, quām per confessionem ipsius I. at S. adhuc & ibidem apparuit mihi manifestē quid prefat. I. at S. (cum non haberet in iure suo proprio, nec in iure uxoris sue ad usum suum proprium, nec aliqui alij ad usum eiusdem I. at S. haberent, terras, tēnimenta, feoda, annuitates, aut officia, ad clarum annum valorem centum librarum) in tormento predicto modo & forma predictis sagittasset contra formā statuti predicti. Ego prefat. Iohannes Leueson, pronominatum I. at S. die & anno supradicti, proxima Gaole dict. dom. Reg. apud Maidstone in comitatu predicto de transgressione predicti coram me consilium commisi, ibidem moraturum quousque panam & foris facturam decem librarum legalis monetae Angliae verē solueret, viz. unam medietatem inde dicta Dominica Reg. & alteram medietatem inde dictis A.B. & C.D. primis eiusdem I. at S. coram me duobus. In quorum omnium fidem & testimonium. Ego prefatus Ioh. Leueson, his presentibus sigillum meum apposui, Datum apud Halling predicti die & anno primum supradictis.

Per me prefatum
I. Leueson.

Handgun and
Crossebow.

And euerie person (other then such as are so authorized by the yearely value of one hundred li. as is aforesaid) ought if he bee licenced to shoothe in crossebow

crossebow or handgunne, and doe inhabite in the country, to present his name to the next Justice of Peace adioyning. And thereupon the Justice ought to present & recorde the same before the Justices 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 supervisoys for amendment of the highwais, ought within one moneth next after any offence 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 certifie the same at the next generall Sessions within the same County, 5. Eliz. cap. 13. & 27. Eliz. ca. 11.

The occupiour of any Iron worke, for every Highwais. Loade 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 highwais within the Wealdes of Sussex, Kent, or Surrey, shall for euerie three such Loades, and also for euerie such Tunne, pay to the Justice of peace dweling neare to the places in that Countie where the Highwais shalbe made or to his assignes three shillings in money: the same (in default of such payment) to be levied by distresse by such Justice or his Assigne, 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

Highwais.

ten Tuns of Iron, carried in the said Highwayes, betweene the 1. of May, and 1. 2. of October, in any pere, shall lay one load of Synder, Grauell, ston or Chalke in places to bee appointed by such Justice, or els shall pay within eight dayes after demand, at every such Iron worke, iij. s. for euerie such loade, to the hands of such Justice, wha vpon default of payment, shal leuite the same by distresse: the same moneyes to be likewise bestowed by such Justice vpon the same High-waies, at his discretion. And such Justice may yearly (within 40. daies next after May day) assigne the places for bestowing the said Sinder, Grauel, Stone, Chalke, or moneyes therefore, 39. Eliz. cap. 19.

Disabled soldiers.

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

Hedge-breakers.

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

Seafaring men.

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

not having to relieue himselfe homewardes) doth land, may giue him a Testimonal vnder his hand containing the time and place of his landing, with the place of his pitch or dwelling, to which he is to passe, and with a conuenient time for his passage thither. By which he may accoordingly passe in the usuall and direct wates thither, and aske and take reliese, 39. Eliz. cap. 4.

The Justice of Peace, in or neere the place where any idle or wandzing Souldier or Mariner (comming from his Captaine from the seas or from beyond) doth land, ought (vpon request) to

giue him a Testimonal 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 Justice of peace, next adioyning to the place, or direct way, where any Souldier or Mariner, (comming from, or beyond the Seas) landeth or trauaileth, & maketh knowne his pouertrie, may licence him to passe the next and direct way to the place whither he is to reprise, & may limite him time necessarie onely for his trauaile thither: whiche licence if he purle, hee may aske and take (without danger) for his necessarie reliese in such his trauaile, that whiche any persons shall willingly giue him, 39. Eliz. cap. 17.

One Justice of the peace, of the Shire or Riding next adioyning to any citie, Borow, or towne corporate, beyond the River of Trent where Northerne clothes bee made, may also ioyne with them

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

Now forasmuch as this 2. booke (containing the power of one Justice to be exercised out of the Sessions) hath great varietie, and is thereby growen somewhat long, I wil hereto (for his easse) annexe a summarie and shoxt Table, by which he may sud- denly and at once (as it were) behold whatsoeuer he alone (out of the Sessions) may take vpon him to accomplish.

A Recapitulation of all that which
one Justice of the Peace may doe
out of the Sessions.

Suertie of the peace.

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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 shor collection or note of them, wherin (howsoeuer 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) sliue vnto 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, ech 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, suffisiently to abridge them, but that he shal do wrong to the substance, and bodie of the Law, which cannot speake plainly, except it speake fully and altogether.

The

THE THIRD BOOKE
containing the Practique of two
(ormoe) Justices of the Peace,
out of the Sessions.

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

C A P. I.

TH E authoritie and power
of one Justice 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 uniuersally true, that whatsoeuer thing
one Justice of the Peace alone is permitted to do,
either for the conseruacion 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) Justices: except it bee in a
verie few cases, where some Statutes do seeme
specially to appropriaee the execution thereof
to some one certaine Justice, 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, two Justices
(wherein the office of this Justicer chiefly consisteth) and for that also we haue (in the 5. chapter
of the second booke) disclosed what an unlawfull
Assemblie, Rout, and Riot be, to the end that one
Justice (which hath some portion of power in the)
might thereby understand, 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 Justices,
that power in punishing those 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 repelling, 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 Justices of peace, or three
or two (at the least) of them, and the Sherife (or
Undersherife) of the countie shal come with the
power of the County (if need be) to arrest them,
and shall 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. I.5. 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 deeds and circumstan-
ces thercof: which Certificate shall bee of like force as the verdit of twelve men, &c. And if such offenders doe trauele the matter so certifi-
ed, then the Certificate and Trauerse shall bee sent into the Kings Bench, to be tried and deter-
mined, 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 hun-
dred pounds, to bee paide to the King, as oft as they shall bee found in default, 13. Henr. 4.
cap. 7.

Maintenanc
e & 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 Iu-
tors: 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 pounds (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, shal forfeit twenty pounds to the King, and shall be committed to Warde, there to remayne by the discretion of the Iustices

19. H. 7. cap. 13.

Pereunto also the Statute (2. Hen. 5.) adiogneth further, That the Kings liege people (be-
ing 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 Assem-
blies, vpon paine of Imprisonment, and to make fine and raunsome to the King. Provided al-
waies, that the saide Iustices, Sherife or Vnder-
sherife shall doe their sayde offices at the Kings costes, in going, tarrying, and returning, by pay-
ment thereof to bee made by the Sherife, by In-
dentre 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, with-
out being let out of prison by bayle, mainprise,
or in any other manner, during the yeaer aforesaid: and that the Ryotters (attainted of petite Riottes) shall haue Imprisonment as best shall seeme to the King and to his Councell:

T 2

and

Maintenanc
e & embracerie.

At the Kings
charges.

and that the fines of such Riotters attainted, shall bee by the same Justices 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 Justices and other offi-
cers aforesaid, in this behalfe, 2. H. 5. ca. 8.

*Capias and
Proclamatio.*

Now, if it be witnessed by two Justices of the Peace, and the Sherife, by Letters vnder their Seales, to the Lord Chauncellor of *England*, that any murders, Manslaughters, batteries, robbe-
ries, assemblies of people in great number in manner of insurrection, or other rebellious Ry-
ots haue beene done, & that such offendors 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 Parlament, & so discontinued: but it was reuived by 8. H. 6. & made perpetuall; which more-
over, ordaineth, that (before this Writ of *Capias* shall be awarded) two Justices of the Peace, and the Sherife of the Shire where such riot is supposed, ought to witnessse, 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 Hen-
ry the fourth: as well for arresting the Riotters,

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

Forasmuch as the power giuen by the Statute *Some part of 17. R. 2. c. 8.* for repressing of great assemblies the occasion of and riots, was deliuered with such confiunction, & 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 perorme the service, or that they ought all to ioyne together therein: There-
fore this Statute (13. H. 4.) cleareth those questi-
ons, and putteth expresse power into the handes of any three (or two) Justices of the Peace, and of the Sherife (or Vndersherife) not onely to ar-
rest such Riotters, but also to conuict them of their offences, by recording of that which they shoulde 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. Countie. 2. cap. 6.) committed to some: but it was by and by after (euen in the selfe same yeare of the same King) resumed, as a thing ouer-hard to bee borne (that a Freeman shoulde be imprisoned, without an Enditement, or other Triall by his peeres, as *Magna Charta* speaketh) vntill that the experiance of greater euils had prepared, and made the sto-
mache of the common-wealthable and fitte to digest it.

Now, whereas here is mention of the power of

the Countie: by vertue of those words, M. Marr. thinketh, that the Justices of the peace, Sherife or Vndersherife, ought to haue the aid & attendance of all knyghts, gentlemen, yeomen, labourers, seruants, apprentices, and villaines: and likewise of Wardes, & of other yong men that bee aboue the age of xv. yearesh: because all of that age are bound to haue harnes by the Statute of Winchester. But women, ecclesiasticall persons, & such as be decrepit, or do labour of any continuall infirmitie, shall not be compelled to attend: for the Statute (2. Henr. 5. cap. 8. which also worketh upon the same ground) saith, that person sufficient to trauel, shal be assistent in this seruice. And it is referred to the discretion of these Justices, Shirife, or Vndersherife, how many or how fewe they will haue to attend upon them in this busynesse: 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 Justices, and Sherife, or Vndersherife, that certayne persons be riotously assembled at Dale, and they do thereupon gather people to supprese them, and when they come to the place, they find no Riot there: yet are they excusale for this assemblie of yower 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 shal not onely be excusale for calling together such company vpon their owne motion,

but

but may also lawfully proceed to punish the offendours, Fitzher. 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 vpon shal resist it. So if they meet with the offendours in their way riotously arraigned, and comming from the place, they may neverthelesse arrest them for their unlawfull assemblie: and after this arrest to make the power of the countrey ought to aby the Sherife for conueighing the Rioters unto the Gaole: without which the Arrest were but nagation. And in this point it differeth (by the opinion of M. Marrow) from the arrest of a Felon by Huy & Crie: for there (saith he) when they haue once deliuered the Felon unto the Sherife, they are no longer compellable to waite vp on him.

The Arrest thus made, these Justices, Shirife, or Vndersherife, ought to make a record in writing of that which they see and finde: the which (since it is a conuiction in it selfe against the offendours) ought to be somwhat and certayne, as well for the time, and place, as for the number, weapon, maner, & other circumstance. For the parties shalbe concluded thereby, and shall not be received to trauele, or deny it: because the view of a Riot (as M. Fitzherbert saith) is not to be trauesed. Insomuch as if either they doe Record, that they saw a Riot, where in truth there was none at all, or that it doe afterwardes appear by the Record it selfe

C 4

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 holbeth) nor pleade not guiltie, in a *Scire facias* vpon his Recognisanc.

If therefore a man be slaine, or maimed, or a rescous be done to the officer, by such a Riot, then the record ought to bee, *Riotosè occiderunt, or riotosè mabimauerunt, or riotosè rescusserunt*: and not *Felonid* nor *simply rescusserunt*: because their autho-ritie in this case is restrained to the riot onely: and extendeth not to the felony, but so that the parties may (not withstanding that record) plead not guiltye to the felonie, or to the rescusle howsoeuer (for the riot) they are estopped.

And this record ought to remaine with the one of them: and they, (and none other Justices of the peace) shall impison the rioters, 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 Justices, & other officers in this behalfe, as well in going and tarrying, as returning: whereof painment ought to be made by the Sherife, by Indenture therof betwene him and them.

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

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

And now, if these Justices, Sherife, or Vnder-sherife, shall goe to see one riot, and then an other riot falleth out in their presence, yet may they make a record of that: Marr. So, if they bee assembled for some other cause of service, or for some priuate busnes (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 rioters shall make a riot vpon the Justices, 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 themselues, whilſt they be assembled for any other cause then for to suppreſſe a Riot, though M. Marr. seemeth to denie it.

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

If two Justices of the Peace (without the She-riſe or Underſherife) 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. Justice del P.9. whereto he addeth (in his booke of Justices of the Peace fol. 17.) that if two such Justices shall make such a Recorde, (where in trueth they saw no such Riot), that yet the parties shall be el-topped, 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: vñlesse it be understood of a Riot, committed in their presence whilist they be sitting in Iudicall 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. Justice del P.9.

The Recording of a Riot by the Justices, and Sherife, or Undershersfe, may be after this (or the like) maner.

MEmorandum quod xx. die Ianuarij Anno regni domine nostrae Elizab. Dei gratia &c. Nos Henricus Brooke miles, Dominus Cobham, Dominus Guardianus quinque portuum, & Ed. Hoby Miles, duo Iusticiariorum dict. domina Regina ad pacem in com. predicto, &c. assignatorum, & Martinus Barnham adhuc vicecomes eiusdem comitatus, ad granem querimoniam & humile petitionem A. B. de

de C. in dicto comitatu Yeman, 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 dict. a dom. Reg. perturbatores ignotos, ad numerum decem personarum modo guerrino arraiatos, viz. gladiis pugionibus, galeis, loricis, arcubus & sagittis, illici & riotos & aggregatos, & eandem domum obsidentes, & multa mala in ipsum A. B. comminantes, in magnam pacis dict. a dom. Reg. perturbationem, ac populis i terorem, & contra formam Statuti in Parlamento Domini Henrici nuper Regis Angliae quarto anno regni sui decimo tertio tento editi & prouisi. Ac propterea nos prefati dominus Cobham, & Edw. Hoby, & Martinus Barnham, predicti. D. E. F. G. H. I. &c. tunc & ibidem arrestari ac proxima gaola dict. dom. Reg. in comitatu pred. duci fecimus, per visum & recordum nostrum de illicita congregacione & Riot a predicti. coniuctos, ibidem moraturos quousque finem dict. domin. Reg. proinde fecerint. In cuius rei testimonium huic presenti recordo nostro sigilla nostra apposuimus. Datum apud C. pred. die & an. primum predictis.

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

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

provided, that if the offendours bee gone, yet their fault shal not escape with them. And therfore these Justices 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 Vnder-Sherife be not associated, as they were before in arresting the rioters 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 Justices 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: upon every 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 Justices shall enquire, yet if any other Justices 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 voide, for the Justices of the Peace may Enquire thereof at any time by force

forcē of their Commission: but if it be not within the moneth, every of them that be the next, is in danger to loose 100. l. for it. And therfore, if these Justices doe charge the Jurie within the moneth, and doe giue day unto them for yeelding their presentment after their mouth, 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 Justices to make the Enquirie: yet ought the Justices to proceede *Ex officio*, as knowing that either some of the Jurie may haue knowledge of the fact, or that (upon Proclamation made to giue euidence for the Queene) some other persons may come foorth ready to enforme them.

The trueth of the matter being found by this Enquirie, these Justices haue authoritie by this Statute not onely to make out Processe 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 upon suerties taken for it: or otherwise to receive their trauerse, and thereupon (if the matter will so serue) to discharge, and dismissle 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 Terrible the Riot. be not brought to light, being hindered either by the malicious peruersitie of the Iurors, or by the unlawfull maintenance, countenance, or embracement of

rie of other men that put themselves into the cause: yet ought there (within one moneth after such Enquiry) 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 Justices, who by reason of his presence at the Enquiry, 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 answere.

For, altho' the words of the Statute do make the certificate equal in force with the verdict of twelve men: yet, soasmuch as it followeth in the same Statute, that the Certificate may be traversed, that is a plain proofe, that it is no conviction at all, but is ony of the nature of a declaration, presentment, or entitement, at the common Law, and therfore also, it ought to comprehend the certaintie of the time, place, persons, & other circumstances, though perhaps (as M. 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 vitawrie doth lie upon it.

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

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

Moreover, where the Statute willeth that they shall certifie before the King and his Counsel: it seemeth to mee, that the same ought to be done either to the boide (and boord) of the priuy Counsel, or into the Starre Chamber at the least: because the Statute it selfe doth by expresse words distinguish the King and his Counsel here, both from the Chancery, 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 Justices of the peace into the Starre Chamber, and for that it is penal to those Justices, Sherifffes or Undersherifffes, if they shall not addresse their Certificate, as the Statute doth appoint them.

But now, if two Justices, and the Sherife goe to see a Riot, & other two Justices make the Enquiry: then the one soylt or the other of them (with the Sherife or Undersherife) may make the Certificate, Marrow. And if fourre Justices, the Sherife, & Undersherife goe to see a Riot, and two of those Justices 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 over shadowed

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

And the same rule must holde, where the Enquiry, and Certificate shall disagree: for, if the Enquiry shall finde that the Riot was made by 12. persons, where in truth it was made by 100. or if the Enquiry 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 Enquiry 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 Enquiry, and before the Certificate, the Sherife die, or one of the Justices be put out of the Commission, no Certificate can then be made. Marr. But if the Riot were recorded by the Justices, and Sherife, and the Riotters doe escape, yet may that Justice of the peace (so put out of the Commission) toyne with the other Justice 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 willeth the Justice of Peace (most nigh in euerie Countie, to the place where such

The peine of
100. li. vpon
the Justices.

such Riot, or Route shal be) to doe execution of this Statute, vnder the paine of 100. li. vpon euerie of them for every default. Upon which words, these notes may be gathered: First, that no Justice of the Peace (dwelling out of the countie where the Riot is) can be charged, although he be the next unto the place: Secondly, that if any other Justices (that be not next unto the place) shall execute the Statute, then that will excuse those Justices 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 authoritie of any two Justices generally, although the Statute doth specially (and that by a greater paine) bind them that be the next. Yea, all the Justices of peace (within the commission and county) ought to supple the default of y next Justices, if they haue notice of such unlawful 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 Justices 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 Justices 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 Justices shall be excused for their C. li. And M. Marr. thinketh that in this last case, the Justices be bound to send for the Sherife or Undersherife,

rise, and not they for the Justices: and in the same case also it seemeth that the Justices shall be fined, if they arrest not the Rioters, or do not moreouer al that which without the Sherife or Undersherif, 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 every part thereof respectively as to such Justices, Sherife, or Undersherife, 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 & undecided. Collect. Dier 110.25.

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

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

Michael Soudes miles, & Mathæus Hadde
Armig. duo Iusticiariorum, &c. assignatorum,
vicecomiti eiusdem comitatus, Salutem: Ex parte
dictæ dom. Reg. tibi præcipimus, quod venire facias co-
ram nobis apud C. in comitatu predicto, 29. die Ianua-
rii proximè futuro 24. probos, sufficientes, & legales
homines de comitatu predicto, quorum quilibet habe-
at terras & tenementa, infra dictum com. liberum tene-
mentum per chartam ad annum valorem xxx. solid. ant
per copiam rotulorum Curie ad annum valorem 26.
solid.

solid. & viij. denariorum, aut per utrumque ultra om-
nes repreisas ad inquirendum pro dicta Domina Regi-
na ac pro indemnitate nostra in hac parte super sacra-
mentum suum de quibusdam illicitis aggregationi-
bus & riotis apud C. in comitatu predicto nuper com-
missis ut dicitur. Et hoc nullatenus omittas sub pena
xx. lib. quam incursum es si in executione premisso-
rum defeceris. Et habeas ibi tunc nomina Iuratorum
predictorum, & hoc præceptum: Datum sub sigillis
nostris. xx. die Ianuarii, Anno regni dicitur domina no-
stra Eliz. &c.

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

Inquisitio pro domina Regina, &c. (as before in Kent.
Inquestible entries) coram Mich. Sondes milite &
Mat. Had. Qui ad hoc iurati & onerati, dicunt su-
per sacramentum suum predictum, quod D. E. F. G.
& H. I. simul cum alijs malefactoribus, & pacis dictæ
Dom. Regina perturbatoribus ignotis, (ad numerum
septem personarum) modo guerrino arraiati, vi & ar-
mis, viz. Hawberdis, gladijs, arcubus, & sagittis xxx.
die mensis Ianuarii, vlt. præterito, apud C. in comit.
predicto inter horas octauam & nonam, post meridi-
em eiusdem diei, domum mansionalem A. B. de C. præ-
dict. Yeoman, situatam in C. predicta, riotos & frege-
rant, & intrauerunt, & in ipsum A. B. tunc & ibidem
insultum fecerunt, ac ipsum tunc & ibidem verberau-
erunt, vulnerauerunt, & indignis modis tractauerunt,
ita quod de vita eius desperabatur, in magnam pacis

dicta domina Reg. perturbationem & populi terrorem
ac contra formans Statuti de Riotis, Rontis, & con-
gregationibus gentium illicitis in parlamento dom.
H. nuper Regis, Angl. 4. Anno regni sui 13. anno pre-
nisi & editi.

And as for the Certificat (which ought to bee
made to the Queene, and the Cōūsel) that may
be done in English, by way of a Letter, com-
prehending the trueth of the matter present,
as the case shall require.

And heere, let vs leaue these unlawfull Assem-
blies, Routs, and Riots, and addresse our stile to o-
ther Statutes.

Any two Justices of the peace, vpon complaint,
that any servant 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 servant, 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 impison for ten daies, the ma-
ster that giueth, and for xxi. daies the servant that
taketh, moxe wages then after the rates thereof
made: and may impison for a whole yere, such ser-
vant 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.

Scravants
and Labou-
ers.

worker: and they may appoint any woman (being
unmaried, of the age of xii. yeres, and vnder four-
tie) that is out of service, and whom they shall
think meete to serue, to be retained by their discre-
tion, & may vpon her refusall commit her to Ward,
til she wil be so bound to seru. . Eliz.ca.4.

Any two Justices of the peace, may make testi-
monial to a Serving man, that is turned away from **Seruagmen-**
his master, or whose master is dead: 14. Eli.ca.5.
& 18. Eli.ca.3. & 27. Eli.ca.11.

Any two Justices of the Peace may giue assent **Apprentices**,
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 Justices of Peace may dispose of the **Porther-**
monies rysing by the deceipfull stretching of the Cloth,
Portheren cloth &c. 39. Eliz.ca.20.

Any two Justices of Peace may by Warrant
under their hands and seales, cause to be leuied (by
distresse, and sale of the goods of the offendour) all **Rogues**.
Fines and Forfaits, that shall grow by the Confes-
sion of the offendour, or by proofe of two lawfull and
sufficient witnessses, before them vpon this statute
of Rogues, 39. Eli.ca.4.

Any two Justices of Peace may duely conuict **Malting**,
by two witnessses, or by the parties Confession, a-
ny person that shal disobey the restraint of Malt- **Quare of this**
ing made [against] in the open Quarter Sessions, [against] I
and shall commit him to prison without Baile, or **thine it hold**
be out. Main-

Mainprise for three daies & vntill that he become bounden in xl. li. to some one Justice to perorme such restraint, 39. Eliz. cap. 16.

Such two Justices may Licence diseased persons to goe to Bath or Buckstone, to Bathe, or to Buckstone, for remedy of their griefe 39. Eliz. cap. 4.

Change a high way. By the oversight of any two Justices, & twelve discrete men of the Hundred, and Hundreds adioining, 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 Overseers of Cloth. Two such Justices may once every yeare appoint Overseers (for that whole yeare following) of cloth to be made or solde, in any Towne (not being corporat) and may charge them upon their oathes, to see execution of some parts of the Statute, 3. E. 6. cap. 2. yet in force.

Disturb a Preacher. Within sixe daies (after accusation had, that any person hath disturbed a Preacher, and after his committing to safe custodie by one Justice of the Peace) one other Justice 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 continuanc of this Statute, as b: soze.

Jesuits and Seminaries Colledge. Any two Justices of the Peace of the Countie (where any of her Maiesties subiects (not beeing a Jesuit, Seminarie Priest, or other Priest, religious,

ous,

ous, or ecclesiastical perso, &c.) now being, or which hereafter shall be of, or brought vp in, any colledge of Jesuits, or Seminaries, shall arriue within sixe moneths next after Proclamation to bee made in that behalfe in the city of London vnder the great Seale of England) may within two daies next after such returne, receive his submission, vnder the oath set forth by Act in the first yere of her Maiesties raigne, 27. Eliz. cap. 2.

If any person, that ought to be set to the subsidies, doe by his craft or couine escape the Taxation, & that he prooued before two Justices of peace of that Countie: then shal 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 Justices, 39. Eliz. Reg. and diuers former acts of Subsidies.

Any two Justices of the peace may require any Popish Recusant (not making submission according to this Statute) to abiure the Realme, vpon his corporall oath before them. And two such Justices, may (with the assent in writing of the Bishop of the dioces, or of the Lieutenant of the shire, or deputie Lieutenant) give licence for such time as shall be comprised in such licence, to such person as is appointed by this Statute to abide within the ffe miles, to goe (for his necessarie occasions) out of that compasse, 35. Eliz. 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 use in the handling of the cause, (as being neither of kinred, 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 thieselye repose the trust in these that bee so chosen and electe.

Bailement.

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

Difference betwenee Bailement, Mainprise, and Replevin.

This sauing then (or deluerie of a person out of prison, before he hath satisfied the Law, is uttered by three termes in our Statutes, that is to say, Bailement, Mainprise (or manuaption) and Replevin. And they be indifferently vsed, 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 *translatiō in balliuū vel replegiari*: And the Statute of 2. E. 3. cap. 9. making mention of the wit: *De homine Replegiando* to be directed to the gardein of a Forest, declareth the effect thereof to be, that he should repleuy the prisoner by good Mainprise: The Statute 23. H. 6. ca. 10. that commandeth the Sherife to let out of prison (such as bee hath arrested vpon *Enditementis de Trespaſſe*) vpon reasonable suertie 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 *equivalent*, and of the same signification.

Neverthelesse it seemeth, that Repleuin had his *Replentia* originall of þ word Pledges, which denoeth them that undertake for the partie, that he shall abide to be iustified by law: And it is vsed in diuers other cases, as in Repleuine of cattell vpon a distresse, repleuine of franchises in a *Quo warranto*, repleuine of Land vpon a *Grandcapi*, in olde time, and repleuying of the person of a man in the case of Villenage.

Bailment is derived frō the French terme *Baillement*:

And that also commeth of the Greeke Bailemē, 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 Sureties for him, whereof also the word *Manu-captio* (or Mainprise, which is all one) giueth good evidence: the one mentioning the deliuerie, the other the receiving 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 vndertake for him.

Mainprise.

But Bailement and Mainprise haue beeene taken to differ in the practise of our common law: for he which is properly Bailed by the Justices of any Court, hath bin neverthelesse reputed to be a prisoner there still, and his sureties to be (as it were) his speciall gardetors: otherwise it hath beeene thought of him that is let to Mainprise, as may bee seene by the Booke cases, 33. E. 3. & 36. E. 3. *Corone* F. 1. 2. & 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 adjudged 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 forasmuch as in our course (concerning Justices of p[re]ce) it is not so needful to stay vpon the difference between the words, as to proceed to disclose the vse & maner of p[re]ching: Let vs examine the

the power of the Justices of peace in this behalfe.

It seemeth, that Justices of the peace might (after the Statute 34. E. 3. cap. 1. that made them complete Judges) haue letten to baile such persons as were indicted of felony before them in their Sessions, euen as the Justices 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 Judges ouer them. And for help herein, it was ordained (1. R. 2. cap. 3.) that every Justice 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 Justices 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: & willett that they shal the certifie such baile taken, vpon pain to forfeit for every default (therewpō recorded) ten pounds to the king, 3. H. 7. c. 3.

And here againe there sprang vp another inconuenience: for then Justices 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 Justice, nor Justices of peace, should let Bailement of to baile any person contrary to the said Statute prisoners, and of West. 1. cap. 15. And that no person, being arrested for manslaughter, or felony, or for suspicion before they bee examination of bailed.

of eyther of them (being baileable by the Law) should be bailed by any Justice of Peace, if it be not in open Sessions, or by two Justices of the Peace at the least (the one of them being of the *Quorum*) and the same Justices 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 Justices, 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 Justices shal certifie at the next Gaole deliuerie, within the limites of their Commission : And the saide Justices shall haue authoritie by this A^ete, to bind all such by Recognisance (or Obligation) as do declare any thing materiall to proue 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 evidence against the partie, at the time of his

so manifold
and so many
imprisone
ments to be
done.

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 theeuers: those that are appealed of prouours, so long as the prouours be living (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 ordinary commandement of the kings Justices, or for the Forrest : be not repleviable by the common Writ (nor without Writ, by Sherifes, nor other gardiens of prison. But he that is taken for light suspicion : or is indited of *petitie Larcenie*, (not

Persons baile
able and not.

Bailement, (not being guilty before of other *Larcencie*) those that be charged with the receit of theeuers, or Felons, or of commaunding, or force, or aide: or charged with Trespass, 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. prohibi-
teth those that bee in prison by condemnation,
execution, *Capias Vilagatum*, excommunication:
for Suerie of the peace: or by speciall com-
mandement of any Iustice, to bee bailed, by Shirife,
Keeper of prison, or other Officer or Minister:
But willett & 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 *Trespass*, be let out of prison vpon reasonable
sueries of sufficient persons, hauing sufficient
within the Countys where they be, to bee let to
baile or mainprise, to keep their daies in such places
as the said wris, Bils, or warrants shal require.

Both these last Statutes (as appeareth) were at
the first made to giue a rule unto Sherifses & 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 foorth as a line whereby the Iustices of
Peace are to guide themselves: so it seemeth to
me, that they ought to haue an eye unto the other
Statute also: soasmuch as certaine other persons

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, see Baile for
meth to distinguish these wordes (Death of a man) *Manslaugh-*
that are read in the Statute of *Westminst.* the first,
and in this place to restraine them to Murder one-
ly: seeing that it admitteth, that (for some death,
or Manslaughter) *þ* slaier may be lawfully bailed:
which also is the common practise in that behalfe.

We learne also, that (within the yeare) is ac-
quited of murder, or manslaughter, at the Queens
site, must be remitted to prison or let to mainprise
til the end of the yeare, and the partie grieved, may
in the meane time commence hisappeale, 3. H. 7.
cap. 1.

It seemeth moreouer, that hee which is indited
of *Felonie*, is not baileable, L. 1. Ass. 41. pl. 30. nor
he which confesseth the *Felonie* whereof hee is ac-
cused: for that Statute (West. 1.) meaneth to ex-
clude the one, when it saith, that he which is indi-
ted of *Petite Larceny*, may be bailed: and the o-
ther, when it denyeth Baile to a Prouour, who
must begin with confession of his owne fault, be-
fore he may be admitted to burthen another man.

And if a man be taken vpon Processe of rebel-
lion, issuing out of the Chancerie, or Star-cham-
ber, those Iustices of Peace may well be thought
voide of discretion, that shall take vpon them to
baile him.

Further, mee thinketh that I may set downe
this

this as a rule (euen at the common law) concerning Bailements. That the Justices of the peace can not meddle with the Bailement of any prisoner, except he be prisoner for such a cause, whereof the Justices of peace be competent Judges: which also was the cause, that one Justice of the Peace could not by force of the commission onely, haue bailed suspectes of Felonie, before that they were endited thereof as I haue tolde you. For out of their Sessions, and before indictment, they were no judges of such a matter.

And on the other side, it seemeth that two Justices of the Peace (the one of the being of the *Quorum*) may out of the Sessions, baile such as come into prison by the processe of the Sessions made vpon penall lawes, not for bidding Baile: because two such Justices bee competent Judges of all those matters, insomuch as they may haue and determine them.

Aduise concerning baile-
ment.

Sundrie doubts (I confess) may be made concerning the busynesse of Baile, which I am not able to dissolve, & therefore not much willing to moue. Onely this I will say for all, that it becommeth Justices of the Peace to bee verie circumspect in granting Baile, both for feare of wrong by denying it to him that is repleviable: 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 meeke with many statutes, which doe not onely take baile from the offenders thereof, vpon their solemne conuiction after Judgement, but also vpon the Record of some one or two Justices of the Peace, or by examination, or prooife by witness(es), or such other private 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 convicted before the Justices of Lueries, the peace, vpon the Statute of Lueries, 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 convicted before them, for abusing a licence of transporting victuall, shall likewise be Licence to committed by them, and shall remaine there a transport. whole yeare without Baile or Mainprise, 1. &c 2. Phil. & Mar. 5.

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

4 And hee that is convicted 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 forfiture, 4. & 5. Phil. & Mar. cap. 3.

5 Againe, if any one Justice of the peace shall Gamers, fine

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The 3. booke.

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 use unlawfull games, 33. H. 8. cap. 9.

Seruant.

2. So, he that is convicted before two Justices 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 Justices 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.

Wassard.

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

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

Prophesies.

5. Eliz. cap. 15. touching Prophesies.

Witchcraft.

5. Eliz. cap. 16. concerning Witchcraft.

Periurie.

5. Eliz. cap. 14. of Periurie.

Heretic.

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

Schoolemaste.

23. Eliz. cap. 1. touching Schoolemasters.

Preachers.

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

27. Hen.

Bailement.

The 3. booke.

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

Tithes.

2. Edw. 6. cap. 2. of *Souldiours* selling harnessse.

Souldiours.

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

Bridges.

33. Henr. 8. cap. 9. of *Aliens*, conueyng long

Bowes.

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

Apparell.

8. Eliz. cap. 3. of *transporting sheep*.

Sheepe.

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

Hawkes &c.

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

Flesh.

9. Hen. 5. cap. 8. Parl. 2. of *false Weights*.

Weights.

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

Assemblies.

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

Riots.

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

Gaole money.

35. Eliz. cap. 1. touching *Recusants*.

Reculants.

3. Rich. 2. cap. 2. of *Forcible holding*.

Force.

13. Eliz. cap. 21. of *Purueiance* neere to the *Uni-*

versities : and 23. Hen. 6. ca. 14. of *Purueiors* *Purueiors*,

of noble men.

1. & 2. Phil. & Ma. cap. 5. of *caryng Corne*.

Corne.

39. Eliz. cap. 3. for refusing to contribute to the

poore.

poore, or to accompt, or to pay forfeitures.

Poore.

39. Eliz. cap. 11. touching *Logwood*.

Logwood.

139. Eliz. cap. 16. vpon restraint of *Malting*.

Malt.

And so, if there be any other few, wherein Justices 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 ptemerit.

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

Memorandum quod 20. die mensis Iulij, Anno regni dominae nostrarum Eliz. &c. Venerunt coram nobis Thoma Robertes, & Henric. Lyndley, duobus Iusticiariis, &c. assignatorum, apud H. in comitatu prædict. A.B. & C.D. de E. in dicto comitatu. Y eomen, & cuperunt in ballum, usque ad proximam gaole deliberationem in dicto comitatu tenendam, quendam F.G. &c. Labourer, captum, & detentum in præsone pro suspitione causam Felonia, &c. Et assumperunt super se, scilicet quilibet prædict. A. B. & C.D. sub pena 20. libr. bona & legalis monete Anglia, & prædict. F.G. assumpsit pro seipso sub pena 40. lib. similis moneta de bonis & catallis, terris & tene-
mentis eorum quorumlibet, & cuiuslibet eorum ad opus dicta domina Regine, Heredum, & successorum suorum leuandarum si prefatus F.G. ad eandem proximam Gaole deliberationem personaliter non comparebit coram Iusticiariis dicta domina Regina ad dictam Gaolam delibrandum assignatis ad standum recto de Felonia prædicta & ad respondendum dict. dom. Regina tunc & ibidem de & super omnibus que illi obycentur. Datum sub sigillis nostris, die & anno pri-
mum supradictis.

The Liberate

Hon 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 maiprise to appear before the
Iustices of the gaole deliuerie at the next general
gaole deliuerie to be holden in the said County,
there

there to answere to such things as shal be then on the behalf of our said Soueraigne Lady obiected against him, and namely to the felonious taking of two sheepe (for the suspition 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 greeue or detaine him any longer, but that you deliuer him thence, & suffer him to go at large, and that vpon the paine that will fall thereon. Y eouen vnder our Seales, this 20. day of Iulij, &c.

The authozie 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 Recognu-
sance for good rrule to be kept in such ale-house, &c. by their discretion. And they may also commit and imprison (for thre datus) those that keep common ale-selling of their owne heade, against prohibiti-
on, or without allowance thereof, and may after take Recognusance of the with two suerties that they shall keepe none, s. Ed. 6. cap. 25.

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

Lord Warden of the Five Ports, Lord Chamberlaine of her Maiesties houesold, and one of her Highnesse ympeire Councell.

Alehouses.

For euerie
place is not
meete.

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 Justices 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) scituat in the high streeete 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 Alchouse there, shall not suffer any vnlawfull play, at the Tables, Dice, Cardes, Tennis, Bowles, Cloth, 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 drisse, 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 receive into his said house or any part thereof, any person notoriously defamed, of, or for theft, incontinencie, or drunkenesse, 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

son to be received 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 gien 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 Justices of the Peace doe condescend upon certain Articles, framed by their discretions, and generally to bee propounded to all common Ale-sellers, taking the bondes for performance of the same Articles, a copie whereof they vs usually deliuer to euerie of them: which maner is answable also, though not so assured as the former.

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

Oath of Undersherife.

Two Justices of the Peace (the one being of the *Quorum*) may take the oath of the Undersherife 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 Sherifes, and Undersherifes, and of euerie other person that shall take vpon him to intermeddle with the returning of Jurors, or with the execution of Processe in any Court of Record, 27. El. cap. 12.

Hospitall.

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

Bastard childe.

Two Justices of the peace (the one being of the *Quorum*) in, or next to the limits where the parish Church is, in which a Bastard childe (left to the charge of the Parish) shall be borne, ought to take over by their discretion, as well for the relieve of the parish, and keeping of the child, as also for the punishment of the mother, and reputed father ther- of, 18. El. cap. 11.

Tithes.

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

Quorum) vpon complaint by any competent Judge of Tithes, for any misvemeanor of the defendant in a suit of tithes, may cause him to be attache, or committed to ward, till he finde suertie vnto them by Recognisance to the Kings use, to obey the Processe and Sentence of that Judge, 27. H. 8. ca. 20. & 27. Eliz. cap. 11.

And also vpon complaint in writing by an Eccl. Tithes, clesiastical Judge that hath gauen definitiue sen- tence in case of Tithes against one (which wilfully refuseth to pay the Tithes, or summes of money so adiudged) two such Justices may cause the party to be attache, and committed to the next Gaole, till he finde such suertie (as is aforesaid) to perorme that sentence, 32. H. 8. cap. 7.

After execution had for the partie robbed against assesse the the men of the Hundred, & vpon complaint made Townes. by them so charged, two Justices of the Peace (one being of the *Quorum*) of the same Countie, inhab- iting within the said Hundred, or neere vnto it where any such execution shall be had, may assesse and take, ratably & proportionably by their discre- tions, all and euery the Townes, Parishes, Villages, and Hamlets, as well of the said Hundred, as of the Liberties within the same, towardes an e- quall contribution to be had for the relieve of them against whom such execution was had, 27. Eliz. 3. cap. 13.

Two Justices of Peace (wherof one to be of the *Highways*, *Quorum*) which were present at the Session, wher- in any person was conuict for any offence against this

this Statute of Highwais within the Wealde of Kent, Surrey, or Sussex, may make Warrant for levying the forfaites thereof, to any officer: and they also may appoint by their discretion such waies and means to levy the doubles for not paying those forfaites within yr. daies next after lawfull demande of the same by such Officer, 39. Eliz. cap. 19.

Rogues.

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

Souldier, or
Mariner.

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

Cloth.

Two Justices of Peace, dwelling next any Cittie, or Towne, where any retailer of woollen cloth shall present unto them any defective cloth against this Statute (being conferred with the Statute 4. & 5. Phil. & Mar. ca. 5.) hal cause the same to be cut into three equal parts, wherof the one to be to the Queen, the other to the Presentors, and the third to the Justices themselves, 5. H. 6. cap. 6.

Fisherman.

No Fisherman shall be taken to serue as a Mariner by the Queens Commission, but by the chiose of two Justices of the Peace adjoining to the place where he is to be taken, 5. El. 6. cap. 6.

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

alliance, counsell, or fee, to the Lord or owner of a Denide the woodde) appointed by the more part of the Justices fourth part of of Peace at their Sessions vpon complaint of the Lord made unto them, may denide 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 Justices of the Peace, whereof the one to be of the Quorum, (appointed by the Custos Rotulorum, or by the elder of the Quorum, in his absence) in the County Court. are to oversee, and controll the Sherifes booke & amercements, and the esteins of the laid amercements, are to be made by Indenture betwene the and the Sherife or Undersherife; and to be sealed with their seales: And they may vpon suggestion make processe as in an action of Trespass against the offendours of that Statute to answer before them, 1. H. 7. cap. 15.

Two, or more Justices of the peace (whereof one to be of the Quorum) dwelling in or neare the Parish, or division 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 euerie Parish to bee Duerseers of the poore of the same Parish. And the Churchwardens and Duerseers of euerie Parish, shall with the consent of two or more such Justices of Peace set the poore on worke, and taxe euerie inhabitant and occupier of land there towards the same, and to bind children Apprentices.

And

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

And two such Justices 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 & Duerseers of every parish to leuie the Taxations, by distres and sale of the offenders goods: And in defect of distres, may commit the partie refusing to contribute, to the common Gaole, without Baile or Mainprise.

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

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

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

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

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

2. & 3. Phil. & Mar. cap. 15. & 13. El. cap. 21. & 27. Elizab. cap. 11. For prohibition of purueances within five miles of either of the Universities.

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

23. Eliz.

Norwich.

Wales.

Northum-
berland.

Universities.

Kent, and
Sussex.

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

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

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

London.

Weltminster

Wylton

Bridge.

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

CAP. III.

He authoritie as well of any two Justices of the Peace generally, as of some certaine two Justices specially, being thus at some length vnsolded, it remaineth that (for an end) we speake somewhat of thre, and the greater number.

Thre Justices of the peace (one of them being Unlawfull of the Quorum) may discharge out of prison any assem-
bly, person committed thither for his offence in not de-
claring to a Justice (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.

It is requisit, that the Certificate (that is to be made to the head Officer of a Citie or Towne or poate, where a childe is to be put Appzente to a Marchant, Mercer, Draper, Goldsmith, Iron-
monger, Imbroderer, or Clothier, that the father or mother of such childe may dispense for the shillings
Certifie for an
appzente.