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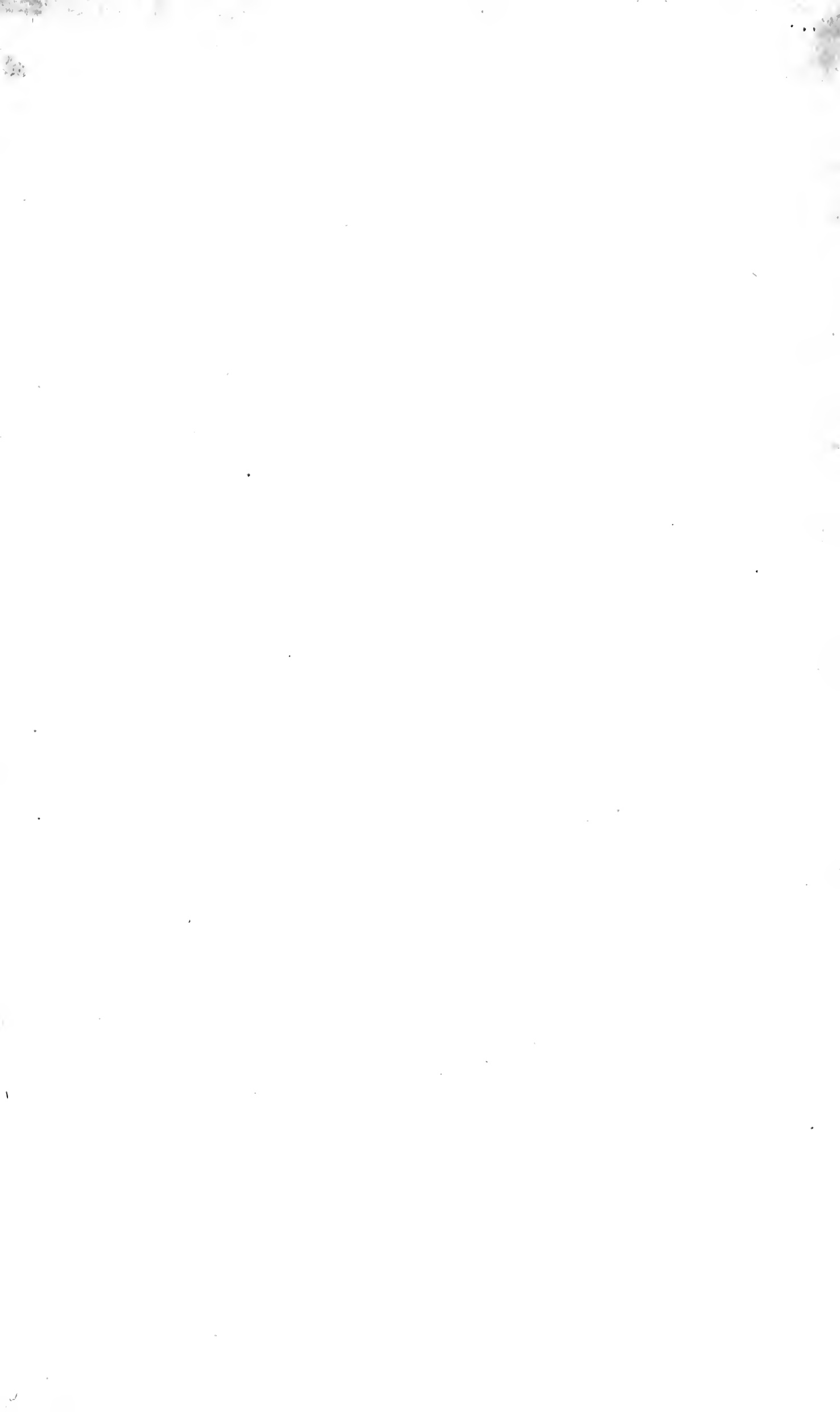


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The Country Justice :

CONTAINING

The PRACTICE, DUTY and POWER

O F

The Justices of the Peace,

As well in as out of

THEIR SESSIONS.

By MICHAEL DALTON of Lincolns-Inn, Esq;
And one of the Masters in Chancery.

WHEREIN

All the STATUTES in Force and Use from *Magna Charta* 9 Hen. III. to 15 & 16 Geo. II. and also All the CASES in LAW, relating to the Jurisdiction and Authority of Justices of the Peace, are carefully collected and digested under proper Titles.

AND

For the better Help of such JUSTICES of PEACE as have not been much conversant in the Study of the LAWS of this REALM, there is added,

An APPENDIX;

BEING

A Compleat Summary of all the ACTS of Parliament, shewing the various Penalties of Offences by STATUTE, and the particular Power of One, Two, Three, or more Justices, in their Proceedings and Determinations, under several distinct Heads, in Alphabetical Order.

With Four Tables,

The First, of the Heads of the Chapters.

The Second, of All the Statutes relating to Justices of the Peace.

The Third, of the Divisions and Sub-divisions contained in the Appendix: And,

The Fourth, of The Principal Matters.

And The Precedents Translated into *English*.

ALSO

A D D E N D A, containing

The Statutes of 16, 17, 18 & 19 Geo. II. with all the Modern Cases of Authority published since the Year 1742, down to the Present Time.

Justice is the Staff of Peace, and the Maintenance of Honour.

Cic.

In the SAVOY:

Printed by HENRY LINTOT (Assignee of *Edw. Sayer, Esq;*) and Sold by *S. Witt*, at the *Bible and Ball in Ave-Mary-Lane*; *D. Browne*, at the *Black Swan without Temple-Bar*; and *J. Shuckburgh*, at the *Sun next the Inner Temple-Gate in Fleetstreet.* M.DCC.XLVI.

2000

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To the RIGHT HONOURABLE

Sir *HENRY MOUNTAGUE*, Kt.

Lord Chief Justice of the Pleas, holden before
the KING'S MAJESTY.

My Honourable good Lord,

AFTER I had spent many Years in the Study of the Laws of this Realm, and was called to the Ministration of *Justice* in my Country, I thought it not sufficient to apply my self only to the Precepts and Directions of former Times, but to observe such new Accidents as daily happened within my Experience, the better to perform the Duties of my Place. Whilst I thus endeavoured my self, I observed that *Justices* of Peace in their Places grew in Neglect, and many Times were over-
swayed by superior Sollicitations, and sometimes so disgraced, that I could have been content rather to have sat down in Quiet, than with Study and Pains to incur such Hazards and Discontentments. But again, whilst I stood thus doubtful, it pleased the Fountain of Justice (I mean, His *Royal Majesty*) so to grace, and to shew his high Esteem of the Authority of *Justices* of Peace, not only (in his Majesty's late Speech in the *Star-Chamber*,) valuing them with the nearest employed about him, but (to the great Honour of this Realm, and of the Government thereof) also establishing this Country Government by *Justices* of Peace in his Majesty's Native Country of *Scotland*; so as I saw the Current of Justice to run clear through the Land, and my self to receive new Vigour and Encouragement: Whereupon I began to recollect my confused Notes and Observations, willing, for my private Help, to digest them into some Order and Method, such as my Understanding could best contrive. Thus prepared, I yet questioned with my self, whether it were better to adventure the Publishing of these my Labours, or to keep them for my private Use. In this unsettled Consultation,
being

The Epistle Dedicatory.

being brought unto your Lordship by my good Friend, (who also discovered to your Lordship this my Labour) and finding your Lordship favourably to respect me and it, I took Encouragement to put the same in Print, after I had obtained (according to my humble Suit) your Lordship's Favour for Allowance and Patronage thereof.

Now it remaineth farther, to crave of your Lordship, not only for my self, but for all that shall uprightly labour in this justiciary Course, that we may receive from your Lordship such Encouragement, as that we may undergo the Charge imposed upon us, without Fear of Oppositions, or other Disturbances. So by your Lordship's Favour and Means shall Justice be the more duly administered, and his Majesty's Peace be the more firmly maintained, to the Honour and Safety of the King's Majesty, and the good and peaceable Government of all his Subjects. And so his Majesty will no Doubt proceed (as he hath begun) still to increase your Honour, for your Care in honouring him, and his Royal Throne thereby; and the People, who shall feel the Benefit of your Zeal for Justice, will heartily pray for your Happiness; and God, beholding how you make Justice and Peace go together, will, according to his abundant Mercies, give you the everlasting Reward of Justice and Peace: For all which I will continually pray, and besides, rest

Your Lordship's in all Humility

And Duty ever to be commanded,

MICHAEL DALTON.

TO the RIGHT WORSHIPFUL

Sir *JAMES LEE*, Kt.

The King's Attorney of his Court of *Wards* and *Liveries*; and to the Right Worshipful, and my very good Uncle, *Thomas Spencer*, Esq; and to the Residue of my Masters of *Lincoln's Inn*.

IT may seem strange, that after so many learned Writers in this Kind, I (a Man of so weak Parts) should presume to offer to the View of the World a Work of this Nature: Yet my Reasons being considered with indifferent Favour, I hope to be excused not only with you, but with all others who are Lovers of their Country, and seek the Peace thereof. I confess my self a long, yet an unprofitable Member of your Honourable Society; but seeing that my Calling is to a Country-Life, and considering that he who is of the meanest Condition, and hath the smallest Talent, may not (without just Reprehension) retire himself so to his private Pleasure or Profit, as that he should neglect to shew some Fruit and Token of his Love to his Country, (lest therein the Heathen Philosopher might justly condemn him, who said, Non solum nobis nati sumus, sed partim Patriæ, &c.) I have been the bolder, according to my small Power and Capacity, to offer this my Mite into the Treasury of my Country; this Work (whatsoever it be) being written first as private Notes for my particular Help in this Business, wherewith my self and many others are daily employed, without yielding any Pleasure or Profit at all to us, otherwise than for the publick Good.

The Sweet of like Labours you, my great Masters, (which I do most gladly behold) do from Time to Time reap more fully, rising daily to great Honour and Wealth, through your Wisdoms, Deserts, and great Pains. That which remaineth to us Country-Justices (for the most part) is the Wearying of our selves, the Spending of our Time, and Estates, ut alii inde pace fruuntur, being requited many Times not only with much evil Will from or by the Means of such as we have in Justice to deal withal, but oftentimes also rather disgraced than encouraged by some in higher Place.

I speak not this without acknowledging it to be both just and meet, that the Actions and Proceedings of the Justices of Peace should be well and duly looked into, and themselves punished, when through Malice, or other Corruption, they shall do unjustly: But if through unwilling Ignorance they happen to err, they are rather to be better informed than ill intreated. Nemo nascitur sapiens, & humanum est errare.

I am bold to write unto you, my worthy Masters and Friends, and the rest of this Honourable Fellowship, knowing that there are many among you rising to great Places, whose Honour it will be to maintain the Life of the Law, and Justice of the Realm, in causing due Execution thereof to be had and done; redressing the Abuses and Defects thereof,

The Epistle.

and encouraging such as shall carry themselves juste, fideliter, & sincere: Again, that there are many among you of great Learning and Judgment; by whom this my unperfected Work may, and I hope shall be more published and perfected. And seeing some others amongst you whose Fortunes prove (as mine doth) to withdraw themselves into their Countries, I would gladly encourage them to employ their better Talents to the common Good.

I acknowledge there are divers Books in this Kind more Learned and Methodical; but withal I observe the Business of the Justices of Peace to consist partly in Things to be done by them out of their Sessions, (and sometimes privately, and upon a sudden, without the Advice or Association of any other) and partly at their Sessions of the Peace. Of Things of this last Kind I purpose not in this Treatise to meddle, for that at such publick Meetings and Assemblies they are far more able to direct themselves: But for the private and sudden Help of such Justices of Peace, who have not read over the former Writers, and if they have, yet the Multiplicity of Statutes (whereupon the Office and private Practice of Justices of Peace doth principally consist) is such, and at every Parliament so altered, by Expiration, Discontinuance, and otherwise, as that it is a Work very hard and laborious for Gentlemen not conversant in the Study of the Laws (although otherwise very industrious) to proceed as by the Commission they ought and are prescribed, sc. secundum Leges & Statuta Regni; upon these Considerations, and for their Ease principally, I have published this Work; knowing that there are divers, both Honourable and Worthy Persons in the Country, some of whom for want of Knowledge of the many particular Statutes in Force, and Tedioufness of the Study of them, do seek to be exempt out of the Commission of the Peace; others being in, do forbear to meddle, or meddling do not that good Service therein which they are desirous to do. I have herein endeavoured to set down Things so plainly and briefly as I could, with Reference to the Statutes abridged, whereby the Reader may the better resolve and satisfy himself, what he ought to do in every particular almost that should come before him, or them, out of their General Sessions of the Peace. And yet for that in Cases of Ambiguity, Satius est fontes petere quam sectari rivulos, I could wish all Justices of the Peace to have ready by them the Statutes at large, as well as the Abridgments, and to use this Book or the Abridgments of the Statutes, as Tables and brief Memorials, but to trust and ground themselves upon the Books at large.

I am now only to intreat your Favours: And although I might rest confident by the honourable Patronage I have obtained of him, whose high Place and Presidency for Matters of Justice and judicious Understanding drew me to covet the same, (and not a little induced thereto, in Regard of the near Alliance by Marriage into the honourable House of the Spencers;) yet withal I could not, out of that Duty and Love which I owe to this Honourable Society, (my first Breeder in the Studies of the Law) and Hope of your tender Respect, to uphold the Credit of an affectionate Member of your Society, but be bold also to crave your farther Countenance in these my Labours; and that you would be pleased to accept this loving Remembrance as a thankful Gratuity to you, to whom I must ever acknowledge my self deeply obliged, and ever to rest at your Commands.

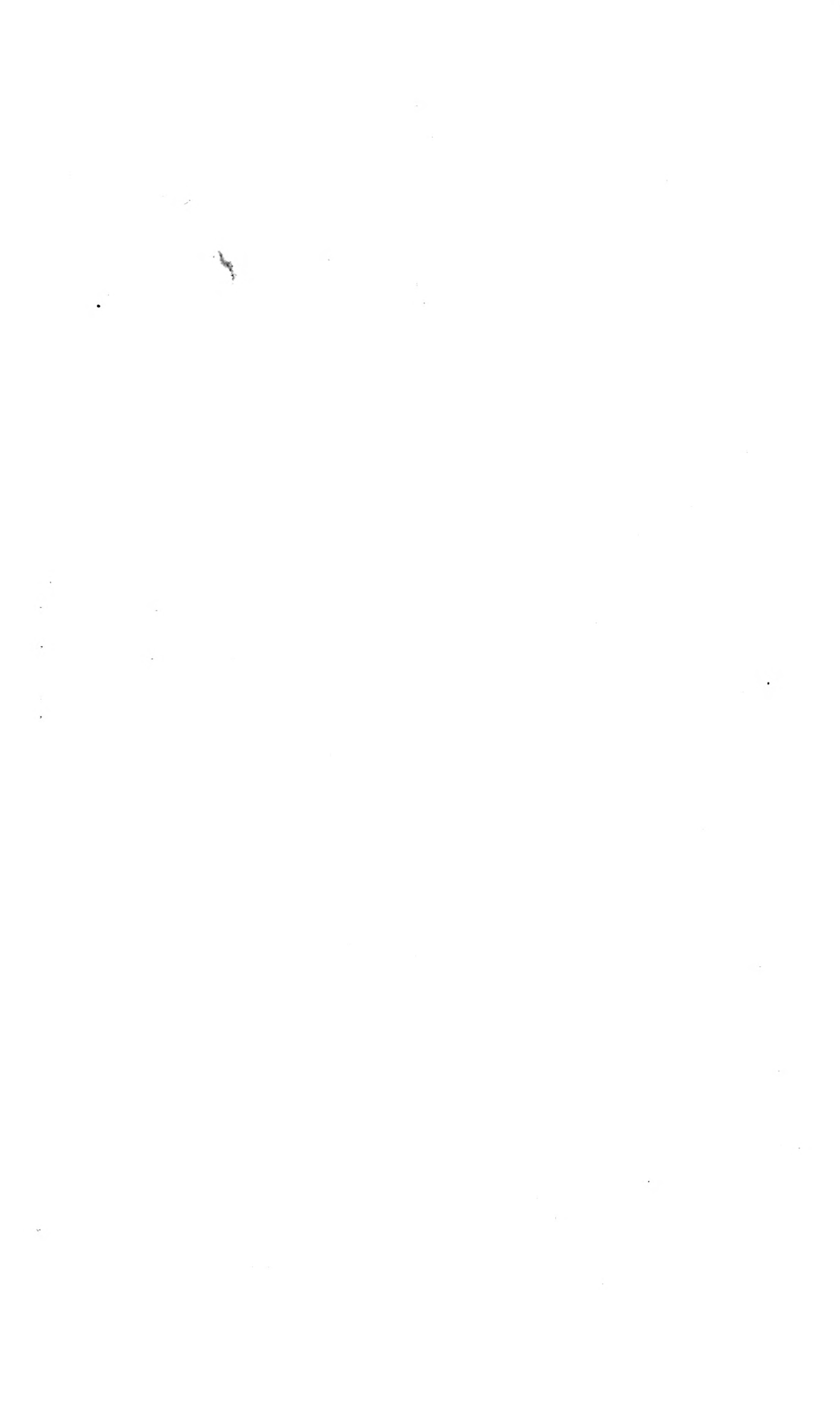
MICHAEL DALTON.

T H E

T H E
E D I T O R's
P R E F A C E.

IN this Edition Abstracts of the Statutes relating to the Authority and Jurisdiction of Justices of Peace, down to the sixteenth Year of his present Majesty, inclusive, and several References have been added. Many Errors, Typographical and others, which had crept into former Editions, have been Corrected; and Expired or Repealed Statutes and frivolous Repetitions struck out. The *Latin* Precedents are now Translated. The Statute Table in an Alphabetical Order of Heads, inserted by Mr. *Nelson*, was thought superfluous, the Statutes being found in that Order in *Dalton* and in the Appendix; in its stead the Reader will find a Table of Statutes in the Order of Time, with the Chapters where they are abstracted in this Book.

To distinguish the Additions from *Dalton's* Text, the Marks (*a*) and (*d*) are used instead of the *Italicks* and inverted *Comma's* which disfigured the Edition of 1727; the Mark (*a*) after the Number of a Chapter, as in *Page 89 Chap. XLI.* (*a*) signifies that the whole Chapter is an Addition to *Dalton*; in any other Place (*a*) shews all that follows to be an Addition, either to the End of the Chapter or to the Mark (*d*) where *Dalton* begins again. This Distinction could not be regularly made before the Press was advanced to *Chap. XLI.* because the first Edition of 1618, the only one we thought we could trust in this Respect, did not come to Hand sooner.



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For the better finding out of the Authors herein alledged,
observe that,

F signifies *Fitzherbert*.

Br. *Brook*.

Dir. Certain Directions or Resolutions of all the Judges of Assizes, *Anno* 1663. and imprinted for *William Coke*, *Ann.* 1636.

Fi. *Finch*.

Raft. *Raftall's* Abridgment of the Statutes, printed *Anno Dom.* 1583.

Lib. Intr. The Book of Entries, *Impress.* 1596.

Lbt. or Lambt. *Lambert's* Justice of Peace, *Impr.* 1559.

P. Poulton's Abridgment of the Statutes, *Impr.* 1606.

Cro. or Crompt. *Crompton's* Justice of Peace, *Impr.* 1606.

P. R. *Poulton de Pace Regis*.

Ba. *Sir Francis Bacon's* Elements of the Common Law.

Ba. V. His Use of the Law.

Resol. Resolutions of the Judges of Assises *Ann.* 1633. to certain *Quares*.

Mo. *Moor's* Reports.

Hawk. P. C. *Hawkins's* Pleas of the Crown.

1, 2 H. H. P. C. *Hale's Historia Placitorum Coronæ* Vol. 1st, 2d.

The other References are as usual in Law Books.

A TABLE of all the STATUTES in Force and Use relating to Justices of the Peace, from *Magna Charta* 9 Hen. III. to 16 Geo. II. inclusive.

The first Column shews the Years of the several Reigns, the second the Chapters of the Statutes, and the third the Chapters of this Book where the Statutes are respectively abstracted. Where App. is referred to, it signifies the Appendix.

Henry III.			Henry V.			Henry VIII.			
Anno	Cap.	Chap. of Dalton.	Anno	Cap.	Chap. of Dalton.	Anno	Cap.	Chap. of Dalton.	
9	25	112	2	4 (St. 1)	4, 185	14 & 15	10	55	
51	Stat. 1.	Ibid		8	82, 135	21	7	58, 155	
	Edward I.			9	82		11	164	
3	9	162	1 (St. 2)	2		22	5	16, 167	
	15	166 part 2, 167		Henry VI.				7	102
	20	160	8	7	167		10	36	
13	11 (ft. 1)	167		9	44, 128, 130	23	11	160	
	47	42		12	160		1	190	
	Stat. 2	84, 104		29	125		4	112	
27	3 (St. 1)	166 part 2		8	20	25	5	88	
	Edward III.		9	8	20		6	17, 160	
1	16 (ft. 2)	2	18	17	112		11	110	
2	3	9, 44		19	160		13	89	
	15	62	23	10	12, 39, 166 pt. 2		17	111	
5	5	62		15	167	26	7	51	
	14	104	33	1	40		13	141	
14	10	160		Edward IV.			27	16	57
25	2 (ft. 5)	140, 142	1	2	90		20	167	
	10	112	3	4	20		24	3	
27	10 (ft. 2)	112	17	4	103	28	1	190	
34	1	2, 82		Henry VII.			15	160	
	22	160	1	7	55, 160	32	3	190	
37	19	160	3	1	162, 186		13	52	
	Richard II.			2	160		27	167	
7	13	9		14	159		1	34	
12	10	185		23	167		6	47	
13	8 (ft. 1.)	42	4	3	19		9	46, 167	
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14	11	185		15	90		1	34	
15	2	44, 125		17	68		Edward VI.		
16	3	112		21	167	1	1	85	
17	9	42	12	5	112		5	100	
20	1	9	19	6	71		12	160, 190	
	Henry IV.			11	55	2	10	61	
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	10	170		Henry VIII.				15	29
13	7	82, 135	14 & 15	6	51	3 & 4	19	19	
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						5 & 6	4	23	

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5 & 6	6	24	18	10	50	7	11	68
	9	160	23	1	23, 81, 87, 140		12	189
	14	22, 27, 45		5	111		16	24
	25	7		8	106	21	4	191
7	5	109		10	48, 55, 68		6	157, 188
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	6	140		12	90		12	189
	8	90		13	54, 84		15	126
	9	167		17	24		18	24
Philip and Mary.			29	4	90		20	98
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	11	140		7	31		28	52
2 & 3	3	69		11	128, 133	Charles I.		
	7	52		12	52, 160	1	1	46
	8	50	35	1	81		4	7
	9	46		2	81	3	2	86
	10	40	39	5	53		4	7, 11
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	5	24		17	73, 94, 160	Charles II.		
Elizabeth.				19	51	12	19	33
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	2	23, 81	43	2	31, 73, 96		24	38, 79
	12	24		3	94		25	109
5	1	81		6	167		32	113
	4	58		7	101		34	99
	5	64, 160		10	24	13	5 (St. 1)	71
	9	70		13	160	13 & 14	1	67, 80
	11	140	James I.				4	25
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8	2	167		25	24, 58, 73		19	24
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	4	153		31	72, 124, 160		26	20
	8	52	3	4	23, 81, 140, 160		28	42
	9	112		5	81	15	2	101, 111
	11	167		9	93		7	99, 100
	12	24		10	78, 170		8	19
13	2	81, 140		12	42, 107		11	26, 28
	5	167		13	47, 124	16 & 17	2	24
	9	88		4	24		17	23
	25	111		5	7		18	42, 66, 100
14	3	140		7	187		3	160
18	1	140		3	73	19	3	60
	3	11		4	11, 53, 124, 178		4	78
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	12	21, 50, 195
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	23	46, 68, 195
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11	4	81
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3	11	46
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	23	23, 40, 50, 100, 160
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Anno	Cap.	Chap. of Dalton.	Anno	Cap.	Chap. of Dalton.	Anno	Cap.	Chap. of Dalton.
7	13	58	3	25	186	12	29	196
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	19	46, 68	4	9	160		19	46
	22	160		16	160		24	28, 196
9	3	61		18	160		29	196
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10	10	26		19	195		24	Ibid.
11	22	78, 160		30	13, 46, 160		27	Ibid.
	23	App. tit. Gunpowder.	6	17	38		28	Ibid.
	29	160		30	160		32	Ibid.
	30	26, 38		31	11		33	Ibid.
12	4	61. See App. tit. Malt.	7	10	2		34	Ibid.
	12	7		21	84, 153, 160	16	8	197
	28	33		22	160		15	Ibid.
	32	160	8	16	84		18	Ibid.
	34	160	9	20	60		26	Ibid.
	36	160		23	38, 160		29	Ibid.
13	24	35		25	160		31	Ibid.
		George II.		26	67	17	3	Ibid.
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	19	50, 160		30	160		8	Ibid.
2	1	61. See App. tit. Malt.		33	42		17	Ibid.
	18	27		35	33		29	Ibid.
	21	143	10	28	46		30	Ibid.
	25	70, 160		31	105, 160		35	Ibid.
	26	105		32	46, 160		37	Ibid.
	28	7, 38, 46	11	1	61		38	Ibid.
	31	67		19	81	18	10	Ibid.
	36	64		22	27, 160		20	Ibid.
3	11	107		26	38		27	Ibid.
	20	86		34	160		33	Ibid.
			12	21	160, 196		34	Ibid.
				25	59	19	—	Ibid.
				28	46			

E R R A T A.

PAge 26 Margin, for 6 Geo. 1. c. 22. §. 54. read 6 Geo. 1. c. 21. §. 56. p. 27 Line 47 read 12 Geo. 1. c. 12. p. 30. lin. ult. dele Army Debentures, &c. p. 39 marg. for 6 Geo. 2. c. 33. read 6 Geo. 2. c. 31. *ib.* marg. for 1 & 2 P. & M. c. 3. read 1 P. & M. c. 13. p. 52 marg. for 5 Ed. 6. c. 4. read 5 Ed. 6. c. 14. p. 54 marg. for 33 El. 20. read 39 El. 20. *ib.* for 43 El. 20. read 43 El. 10. p. 58 marg. for 10 Ann. c. 6. read 10 Ann. c. 16. p. 62 marg. for 2 W. & M. read 2 W. & M. p. 65 line 24, and in marg. for 12 Ann. Stat. 2. c. 23. read 13 Geo. 2. c. 24. *ib.* for upon View of a Justice of Peace or Oath of one Witness, read On Oath of one Witness before a Justice of Peace. *ib.* for 205. read any Sum not exceeding 5 l. or less than 10 s. p. 69 dele l. 3 & 4 the Statute 9 & 10 W. 3. c. 4. being expired. *ib.* marg. for 13 & 14 Car. 2. c. 6. read 13 & 14 Car. 2. c. 11. *ib.* line 37 for 12 Car. 2. c. 14. read 12 Car. 2. c. 19. p. 74 line ult. for Gallon read Barrel. p. 91 line 14 for 13 E. 47. read 13 Ed. 1. 47. p. 92. marg. for 4 & 5 Ann. c. 12. read 4 & 5 Ann. c. 21. p. 93 marg. for 9 Ann. c. 2. 6. read 9 Ann. c. 26. p. 117 marg. for 22 Car. 1. read 22 Car. 2. l. 120 marg. for 1 Geo. 1. c. 22. read 1 Geo. 1. c. 52.

p. 128 marg. for 27 El. 17. read 27 El. 13. p. 152 line 22 for 13 Geo. 2. c. 21. read 13 Geo. 2. c. 8. p. 155 marg. for 2 Geo. 1. c. 36. read 2 Geo. 2. &c. p. 190 marg. for 1 W. & M. Stat. 1. c. 88. read 1 W. & M. Stat. 1. c. 18. p. 191 line 39 for 11 & 12 W. c. 9. read 11 & 12 W. 3. c. 19. p. 192 line 24 for shall be guilty of Felony, and transported, read shall be guilty of Felony without Benefit of Clergy, and all concealing such disguised Persons shall be guilty of Felony, and transported, See Cap. 160. p. 236 marg. for 4 El. c. 2. read 43 El. &c. p. 242 marg. for 43 El. c. 1. read 43 El. c. 7. p. 245 marg. for 32 H. 7. 8. read 32 H. 8. 7. *ib.* for 7 & 8 W. 3. c. 35. read 7 & 8 W. 3. c. 34. p. 255 marg. for 27 El. 3. c. 10. read 27 Ed. 3. c. 10. p. 343 marg. for c. 107. read c. 160. p. 352 line 41 for 33 H. 1. read 33 H. 8. p. 364 marg. for 11 & 12 W. 3. c. 23. read 10 & 11 W. 3. &c. p. 366 line 14 for cap. 6. read cap. 7. p. 377 marg. for 2 & 3 P. & M. 13. read 1 & 2 P. & M. &c. p. 391 line 31 for 12 H. 7. c. 21. read 11 H. 7. &c. p. 392 line 7 for West. 1. cap. 5. read West. 1. cap. 15. p. 393 marg. for 5 El. 2. read 5 El. 21.

C H A P. I.

Of the Common Law, and of such as had, and still have, the Conservation of the Peace by the Common Law.

THE Common Laws of this Realm of *England*; receiving principally their Grounds from the Laws of * God and Nature; (which Law of Nature, as it pertaineth to Man, is also called the Law of † Reason) and being, for their Antiquity, those whereby this Realm was governed many hundred Years before the Conquest; the Equity and Excellency whereof is such, as that there is no human Law so apt and profitable for the Peaceable and prosperous Government of this Kingdom, and so necessary for all Estates, and for all Causes, concerning Life, Lands or Goods, as these Laws are. And to that Purpose, at the Common Law (long before Justices of the Peace were made) there were sundry Persons to whose Charge the Maintenance of this Peace was recommended, and who with their other Offices, had (and yet still have) the Conservation of the Peace annexed to their Charges, as a Thing incident to and inseparable from their said Offices. And yet they were and are called by the Names of their Offices only, the Conservation of the Peace being included therein.

First, The King (by his Dignity Royal) is the Principal Conservator of the Peace within his Dominions, (and is *Capitalis Justiciarius Angliæ*) in whose Hands the Administration of all Justice and all Jurisdiction in all Causes first was; and afterwards by and from him only was this Authority derived and given to others.

And yet so, as that whatsoever Power is by him committed unto other Men, the same remaineth still in himself; insomuch that he may himself in Person sit in Judgment, as in ancient Times Kings here have done, and may take Knowledge of all Cases and Causes, unless they concern himself; for in such Cases wherein the King is a Party, he cannot properly sit in Judgment, but must perform that by his Justices, or Commissioners, as in Cases of Treason and Felonies. The King also, as he is the principal Conservator of the Peace, so he may command all others, and may award Process against them to conserve the Peace; but he cannot take a Recognizance for the Peace, because it must be made to himself, &c.

The Lord Chancellor, or Lord Keeper of the Great Seal, the Lord High Steward of *England*, the Lord Marshal, and High Constable of *England*, the Lord Treasurer of *England*, and every Justice of the King's Bench, as also the Master of the Rolls, as such, have the Conservation of the Peace over all the Realm; and they may award Precepts, and take Recognizances for the Peace, as incident to their Offices; and upon Prayer of Surety of the Peace made to them, or any of them, against any Person, they have Authority to grant their Warrant to the Sheriff, Constables, or other the King's Officers, to arrest the Party, &c. and when he is come before them, may take a Recognizance for the Peace. And if the Party shall refuse to find such Surety, they may commit him to Prison. And yet for the Master of the Rolls, it is held that he maketh Process and taketh Recognizance, not as incident to his Office, (as all the other may) but by Prescription.

The Chamberlain of *Chester* is Judge of the Court of Exchequer there, which hath the Jurisdiction of a Court of Chancery, and is by Virtue of his Office a Conservator of the Peace there, as was amongst other Things certified by Sir *James Dyer*, and the Justices of the Court of the Common Bench to *Queen Elizabeth*.

Conservators of the Peace are now out of Use; and in lieu of them there are ordained Justices of Peace, assigned by the King's Commission in every County. Sir *Francis Bacon* his *Use of the Law*, pag. 12.

* *The Law of God is the Law of the Land.*

34 H. 6. 40. Doct. & St. lib. 1. cap. 6. Fitz. 3.

Co. 340.

† *Common Law is common Reason.*

Vide Plo. 36. d. 67. a. 107. b. & 465. a.

Co. L. 142.

Co. 3. 8. & 9 Part, Pref. Fortescue, c. 17.

Lit. 209.

King.

20 H. 7. 7. a. Co. 11, 85.

Officers.

Lamb. 12.

Judges. There be others who, by Virtue of their Offices, have the Conservation of the Peace, but yet only within the Precinct of their several Courts: As namely, the Justices of the Court of the Common Pleas, the Barons of the Exchequer, and the Justices of Assize and Gaol-Delivery. And any Person may pray the Surety of the Peace before any of these in their Courts: And if the Party be present, or within the Place or Precinct of their Court, or within their View, they may send the Warden of the Fleet, or other Officers attending their Court, to bring the Party before them, and they may take Surety of him; and if he shall refuse to find such Surety, they may commit him to Prison. See *Sir F. Bacon*, pag. 12.

Also the *Justices of Assize*, if the Peace happen to be broken in their Presence and Precinct of the Court, may command the Offender to Prison. And if Complaint be made to them that *A.* is minded to break the Peace, or else if they do perceive the same in their Presence, they may command the Parties upon a certain Pain to keep the Peace, and that Weapons be taken from the Jurors or Witnesses that appear before them. But as they be merely Justices of Assize, they may not award any Process or Warrant for the Peace, neither may they take Sureties of the Peace. *Lamb.* 13.

Stewards. Also the *Steward of the Sheriff's Turn*, the Steward of a Leet, and the Steward of a Court of Piepowder, are Conservators of the Peace within their several Courts; for every of them may commit him that shall make an Affray in their Presence whilst they be in Execution of their Offices; for these are Courts of Record; and so in all other Courts of Record. But none of these may grant any Warrant for the Peace.

And the Steward of the Sheriffs Turn, as also the *Steward of a Leet*, (during their Courts) may by Recognizance bind him to the Peace, that shall make an Affray in their Presence, sitting the Court; and may commit him until he hath found Surety for the Peace; and may also take Examination of Felons, and commit them to the Gaol; and may also take the Presentment of any Felony at the Common Law, committed within their Precinct, or of any other Offence against the Peace, except the Death of a Man. See *Br. Leet* 1, 2, 14, 18, 22, 26.

Fine. And so if any other Contempt or Disturbance to the Court shall be committed in any of the said Courts, or in any other Court of Record, the Judge (or Steward) there may impose upon such Offenders a reasonable Fine. See *Br. Leet* 14, 36.

Sheriff. The *Sheriff*, by the Common Law, is a principal Conservator of the Peace in every Place within his County. And (upon Request to him made) may command another to find Surety of the Peace, and may take the same Surety by Recognizance, and that *ex Officio*, and without any Writ of *Supplicavit* to him directed: And this seems to be by Virtue of his Commission, which saith, *Commisimus vobis custodiam Comitatus, &c.* Vide *Br. Judges* 11. & *Recogn.* 5, 14, 16, & 18.

Coroner. Coroners also (by the Common Law) are Conservators of the Peace within the County where they are Coroners: But they (as also all other the Conservators of the Peace by the Common Law) have Power for the Keeping of the Peace only as the Constables have at this Day; *viz.* they may take Surety for the Peace by Obligation. Vide *hic infra*, 3 *E.* 4. 9. & 10 *E.* 4. & *Tit. Forcible Entry, & Crompt.* 6.

Constables. The *High Constables* of the Hundreds are Conservators of the Peace within their several Hundreds and Limits by the Common Law. *Crompt.* 6 & 222. 12 *H.* 7. fol. 18.

And therefore these High Constables, at their petty Sessions, for any Affray made in Disturbance of their Court, may imprison the Offenders. *Co.* 11, 43, 44.

Br. Peace 13. Every *Petty Constable* within the Limits of their several Towns are Conservators of the Peace (at the Common Law) by Virtue of their Office. Vide *Tit. Affray and Forcible Entry.*

And these Petty Constables may do what they can to keep the Peace; but they cannot take Surety of the Peace *at the Request of any Man*. Yet *ex Officio* they may cause such as in their Presence are about to make an Affray, to find Sureties to keep the Peace; and that as well before the Affray as after. See *Crompt.* 6 & 222, & 12 *H.* 7. fol. 18. *a.* & *hic postea.*

There be other Officers of like Authority to our Constables: As the *Borsholders* in *Kent*; the *Thirdborough* in *Warwickshire*; and the *Tithingman*, and *Borrowhead*, or *Headborough*, or Chief Pledge in other Places. But yet the Office of a *Constable* is distinct, and of greater Authority and Respect than those other; as you may see by the Statute of 39 *Eliz.* 4. where the *Tithingman* or *Headborough* is to be assisted in the Punishment of Rogues, with the Advice of the Minister, and one other of the Parish, whereas the *Constable* alone of himself, as well as the Justices of the Peace may appoint or cause

Rogues to be punished. And *M. Lambard* of the Duty of Constables; p. 51, &c. holds Lamb. 51, 52, 53, 54, 55. that these *Borsholders, Thirdboroughs, Tithingmen, Headboroughs*, and other such, being in any Town or Parish where a Constable is, cannot meddle, because Constables are (in Comparison of them) Head-Officers, and that the *Tithingmen, &c.* are but as Assistants to the Constables in their Office; and that there are many other Things which the Constables may do, and wherewith the Borsholders and the Rest cannot meddle at all. And yet in Towns where there are no Constables, the *Borsholders, Thirdboroughs, Tithingmen, Headboroughs* or such other, are there the only Officers for the Peace; as also in such Cases where the Power or Authority of the *Borsholders, &c.* is declared to be equal with the Power of the Constable; in all such Cases their Office and Authority are in a Manner all one. See *Lambard Office del' Const.* 4, 6, 9.

There are also divers *Statutes* which appoint Offenders to be punished by the Constable or other *inferior Officer*. Now who be these inferior Officers, if not the *Tithingmen, &c.*?

And now, because these Petty Constables are often absent from their Houses, being Advice. for the most part Husbandmen, (and so most of the Day in the Fields;) it would prove very serviceable, if, by a Law to be made in Parliament, every Town and Village were to have a Tithingman, or such other Officer, to attend the Service of the Constable, in his Absence at the least, for that for want of such Assistance, Rogues, Vagabonds, and the like, knowing their Times, now travel up and down more boldly.

And yet Mr. *Crompton, fol. 222.* saith, That a *Constable* may make a *Deputy* to execute his Office in his Absence, for that he may be sick, &c. And it hath been resolved, that he may make a *Deputy*, because it is but a Ministerial Office. *Mich. 13 Jac. B. R. Phillips and Winscome's Case.* But some have held, that the Making a Deputy is rather by Toleration, than by Law. *Resol. 29.**

Deputy Constable.
Moor's Rep. P. 845.
* According to 2 Hawk. p. 62.
it is not settled that a Constable can make a Deputy without special Cause, as Sickness, &c. In 2 H. H. P. C. p. 88. it is generally said he may make a Deputy, and he is within 7 Jac. 1. 5. to plead the General Issue, Moor 845. Pl. 1141. Yet in 1 H. H. P. C. 581 it is said, that if a Warrant be directed to the Constable he must execute it himself, and may not substitute another. Ideo quære.

If any Man shall make an Affray or Assault upon another in Presence of the Constable or Borsholder; or if any Man in the Presence of the Constable shall threaten to kill, beat or hurt another, or shall be ready to break the Peace; in every of these Cases the Constable or Borsholder may commit the Offenders to the Stocks, or to some other safe Custody for the Present, (as his or their Quality requireth) and after may carry them before some Justice of Peace, or to the Gaol, until they shall find Surety for the Peace; which Surety the Constable himself may also take by Obligation, to be sealed and delivered to the King's Use: And if the Party will not find such Surety to the Constable, he may be imprisoned until he shall do it. *3 H. 4. 9, 10.*

I have seen the Report of *Skarret's Case, Termino Trin. Anno 35 Eliz. Rot. 1458.* where *Skarret* brought his Action of false Imprisonment against one *Hammer*, for arresting and imprisoning him, &c. The Defendant to the Imprisonment pleaded, that he was High Constable of the Hundred of *E.* in the County of *S.* and that the Plaintiff made an *Affray* within the said Hundred upon one *H.W.* who presently came to him and told him thereof, and swore upon a Book that he was in fear of his Life by the other; whereupon the Defendant came to the Plaintiff, and arrested and imprisoned him, until he had found sufficient Sureties for the Peace; upon which the Plaintiff demurred. And it was adjudged, that the Plea of the Defendant was insufficient; first, for that he was not present at the Assault and Affray; secondly, for that he was the High Constable of the Hundred, and not Constable of the Town. In the Argument of which Case *Anderson Ch. Justice*, held Constables to be Conservators of the Peace at Common Law, and still so to be, and that they ought to preserve the Peace as much as in them lieth; but that (said he) was by parting of Men which they should see breaking of the Peace, and to carry them before a Justice to find Sureties for the Keeping thereof: But to take Sureties himself the Constable cannot. And those, which hold that he may take Surety, cannot tell what Surety that should be; for he cannot take a Recognizance nor Bail, for he is no *Officer of Record*; and if he shall take an *Obligation*, how the same shall be certified, and into what Court, he said he knew not; and that it would be very inconvenient to give such Authority to every Constable. But by three other Judges, namely, *Walmfley, Owen, and Beamond*; although a Constable cannot take Surety for the Peace by Recognizance or Bail, yet he may take an *Obligation*, according to the Book of 10 *E. 4.* And if the Affray be in their Presence, they are Conservators of the Peace, and therefore may use such Means for Keeping it by taking Surety by *Obligation*. And that before Justices of Peace

Peace were, the Peace was preserved, and that by the Constables. And that the *Statute* which ordained Justices of the Peace, did not take away the Authority of the Constable. But the Constable hath no Authority to take an Oath of the Party that is in Fear, &c. Whereunto *Anderſon* Ch. Justice replied, ſaying, I doubt not but that at the Common Law the Peace was kept, but that was to be done in ſuch Manner as the Law appointed, and that is, by Writ out of the Chancery or King's Bench.

Bacon V. 5.

And yet I have ſeen another Author, ſuppoſed to be Sir *Tho. Egerton*, after Lord Chancellor; who writeth in theſe Words, By the Common Law the Constable's Office was, to arreſt the Parties that had broken the Peace, or were (*in a Fury*) ready to break the Peace; ſc. if either he had ſeen it himſelf, or were truly informed thereof by others, or upon the Confefſion of the Party who had freſhly broken the Peace: And that all ſuch Offenders the Constable might imprifon in the Stocks, or in his own Houſe, as the Quality required, until they had been bound by *Obligation* with Sureties to the King to keep the Peace from henceforth; which Obligation was to be ſealed and delivered to the Constable to the Uſe of the King; and the Constable was to ſend it into the Exchequer, or Chancery, from whence Proceſs ſhould be awarded to levy the Debt, if the Peace be broken. *Quod nota.* Vide etiam *Finch*, fol. 127. agreeing herewith, for ſuch as the Constable *findeth* breaking the Peace.

10 E. 4. 18.

21 E. 4. 35.

Every of theſe Conſervators of the Peace are (by the Common Law) to imploy their own, and may alſo command the Help of others, or arreſt and pacify all ſuch who in their Preſence and within their Jurisdiction and Limits, by Word or Deed, ſhall go about to break the Peace.

Affrays.

Now theſe Conſervators of the Peace are only to meddle with *Affrays*, *Affaults* and *Batteries*, or *Threatnings to break* the Peace, done in their *Preſence*; but not with *Riots*, or *Forcible Entries*, or *Detainers*.

And if a Conſervator of the Peace, being required to ſee the Peace kept, ſhall be negligent therein, he may be indicted and fined for the ſame.

Alſo every of theſe Conſervators of the Peace, if they have committed or bound over any ſuch Offenders, they are then to ſend to, or be preſent at, and attend the next Sessions of the Peace or Gaol-delivery, there to object againſt them.

But for the High Conſtables and Petty Conſtables, although they have (by the Common Law) the Charge of the Peace, as incident to their Office; yet their Offices and Authority began not long before the Time that Juſtices of the Peace were ordained: (See here Title *Constable*.) Whereas the Sheriffs, Coroners, Stewards of the Sheriff's Turn, of the Leet, and of the Court of Piepowders, and the Juſtices of all higher Courts, were long Time before the Conqueſt. See *Co. 9 Part*, the Preface.

There were other Perſons who (by the Common Law) had the ordinary Keeping of the Peace, and were named *Cuſtodes pacis*; whereof ſome were by Election (in full County) and ſome by Tenure, as you may ſee in *M. Lambard* 16, 17. There were others which were called to this Office by the King's Writ, to continue for the Term of their Lives, or at the King's Pleaſure, but theſe are now all ceaſed.

C H A P. II.

The firſt Ordaining of Juſtices of the Peace.

See this Oath at large, Brac. lib. 3. and Dr. Cowel 235.

KING Edward the Firſt, (according to the firſt Article of the Oath taken by him, and ſince by other Kings and Queens of this Realm at their ſeveral Coronations, in theſe Words, *Servabis Eccleſiæ Dei, Clero & Populo, Pacem ex Integro, & Concordiam in Deo ſecundum vires tuas. Quibus Rex reſpondet, Servabo.*) in his firſt Parliament holden *An. 3.* of his Reign, *Cap. 1.* did eſtabliſh, that the Peace of Holy Church and of the Land ſhall be well kept and maintained in all Points: Which *Peace of the Church* is (and always hath been by the antient Laws of this Land) protected by the King, the Arch-biſhops and Biſhops of this Realm; and the *Peace of the Land* is, and always hath been, defended and maintained by the ſame King, and his temporal Juſtices or Officers lawfully appointed for the ſame, &c. which *Temporal Juſtices*, at the firſt, were the Conſervators of the Peace, as aforeſaid. But more eſpecially in thoſe Times there were alſo in every County Juſtices of Oyer and Terminer, and alſo there were *Juſtices Itinerants*, which had Power not only to determine all Manner of Quarrels, (as well Real and Perſonal)

sonal) but also all Offences against the Peace, &c. as may appear in our Law Books, and especially in *M. Fitz. Tit. Corone*, amongst the *Iter North' & Cant'*.

For although in our Annals, it is reported that *William* the Conqueror ordained Justices of the Peace about *An. Dom. 1070. An. quarto* of his Reign; yet the Justices of Peace had not their Being till almost Three hundred Years after, *viz. An. Dom. 1327.* at which Time Justices or Commissioners of the Peace were first created by the Statute *1 Ed. 3. c. 16.* By which Statute it was ordained, That in every Shire of the Realm certain Persons should be assigned (*sc.* by the King's Commission) to keep the Peace. And their Authority was after enlarged by the Statutes *4 Ed. 3. c. 2. 18 Ed. 3. c. 2. and 34 Ed. 3. c. 1.* And by many other Statutes made since in every King's Reign. And by the said Statute of *34 Ed. 3. 1.* were they first enabled to hear and determine (at the King's Suit) all Manner of Felonies and Trespasses: And each County had now its proper Commissioners for the Peace, whereas before the Commissions to the Justices of the Peace were not made severally into one Shire, but sometime jointly to sundry Persons over sundry Shires.

And by the Statute *2 H. 5. c. 1. Stat. 2.* Justices of Peace shall be made of the most sufficient Persons dwelling in the same Counties, by the Advice of the Chancellor and King's Council.

But the Statute of *36 E. 3. c. 12.* is the first Statute that nameth them Justices of the Peace. For the Statutes of *2 Ed. 3. c. 6.* and *25 Ed. 3. c. 6, 7, 8.* speaking of Justices, seem not to be of our Justices of Peace; but that of *2 Ed. 3.* as also the Statute of *Winchester, cap. 1.* therein mentioned, to be meant of *Justices Itinerants*, or *Justices in Eyre*; and the other of *25 Ed. 3.* to be meant of Justices or Commissioners specially assigned for Servants and Labourers. See for this last, *Lamb. 24. & 577, 578.* and the Statutes of Labourers made *25 E. 3. c. 6, 7, 8.* and of *42 Ed. 3. c. 6. Rastal. fol. 233. a. b. d.*

They be called Justices because they be Judges of Record, and withal to put them in Mind, (by their Name) that they are to do Justice, which is, to yield to every Man his own according to the Laws, Customs, and Statutes of this Realm, without Respect of Persons. See *2 Car. 19. 6, 7.*

They are named also Commissioners of the Peace, because they have their Authority by the King's Commission.

The Name in *Latin*, *Custodes pacis*, is equivalent to that of *Justiciarii pacis*, as was resolved *Pasch. 10 Jac. B. R.* the King against *Litle*, where upon a *Certiorari*, it was returned *quod ad general', &c. coram A. & B. custodibus pacis, Dom. Regis, &c.* an Indictment was found, and this taken for an Exception that some were *Custodes pacis*, that were not *Justiciarii pacis*, yet the Exception was disallowed. *Rolls 2. p. 95*.*

It hath also been resolved, That the Description of Justices of Peace by the Name of Justiciarii Domini Regis ad Pacem conservandam, &c. is good without saying ad Pacem Domini Regis, for that is necessarily implied. The King and Hawkins, Mich. 3 Geo. 1. 2 Hawk. P. C. 38.

And here it shall not be amiss shortly to put our Justices of Peace in mind, how Justice may be perverted many Ways, (if they shall not arm themselves with the Fear of God, the Love of Truth and Justice, and with the Authority and Knowledge of the Laws and Statutes of this Realm.) As namely,

1. *By Fear*; when fearing the Power of another, they do not do Justice. *Deut. 1. 17. Ye shall not fear the Face of Man, for the Judgment is God's, who is Capitalis Justiciarius totius Mundi*, Chief Justice of Heaven and Earth, and they are his Lieutenants. *2 Chron. 19. 6.*

2. *Favour*; when they seek to please their Friend, Neighbour, or other, *Deut. ibid. Ye shall have no respect of Persons in Judgment. Thou shalt not favour the Person of the Poor, nor honour the Person of the Mighty, but judge justly. Levit. 19. 15.*

3. *Hatred or Malice* against the Party, or some of his. *Levit. 19. 18. Thou shalt not avenge, nor be mindful of wrong.*

4. *Covetousness*; when they receive or expect Fee, Gift or Reward; for as the wise Man saith, *Rewards and Gifts do blind the Eyes of the Wise, and make them Dumb, that they cannot reprove Faults. Eccl. 20. 28.*

5. *Perturbation of Mind*; as Anger, or such like Passion. *James 1. 20. The Wrath of Man doth not accomplish the Righteousness of God.*

6. *Ignorance*, or want of true Understanding of what is to be done. *Ignorantia mater Erroris.*

7. *Presumption*; when without Law they (presuming of their own Wits) proceed according to their own Wills and Affections. *There is more hope of a Fool, than of him that is wise in his own Conceit.* Prov. 26. 12.

8. *Delay*; which in Effect is a Denying of Justice. *Negligentia semper habet comitem infortunium, & mora trahit periculum.*

9. *Precipitation*, or too much Rashness; when they proceed hastily; without due Examination and Consideration of the Fact, and of all material Circumstances, or without hearing both Parties: For *the Law judgeth no Man before it hear him.* John 7. 15. And the Philosopher could say, *Qui aliquid statuerit, parte inaudita altera, Æquum licet statuerit, haud æquus est*; He that shall judge or determine of a Matter, the one Party being unheard, although he shall give just Judgment, yet he is not a just Judge. And again, *Omnia non properanti clara certaue sunt, Festinatio autem semper improvida ac cæca est*; all Things are plain and certain to him that is not rash nor heady; but Haste is always improvident and blind. See *Deut.* 17. 4. *Ecclesiasticus* 11. 7, 8. and *Prov.* 18. 13.

Seneca.

His Majesty's
Speech in the
Star-Chamber,
An. 1616.

All these, King James hath shortly, yet fully observed in his Charge given to the Judges, *sc.* charging them *that they do Justice uprightly and indifferently, without Delay, Partiality, Fear or Bribery, with stout and upright Hearts, with clean and uncorrupt Hands; and yet not to utter their own Conceits, but the true Meaning of the Law, not making Laws, but interpreting the Law, (and that according to the true Sense thereof, and after deliberate Consultation,)* remembering that their Office is *ius dicere, and not jus dare.*

Judg. 19. 3.

According to this last also is the Rule given in the Book of Judges, *sc.* *In all Causes doubtful, first to consider of the Matter, to consult, and then to give Sentence: Which Sentence must be agreeable to the Merits of the Cause and Crime, else it is not equal.*

Gen. 3. 8, 9,
11.

Yea, God himself hath given us Precedents of such deliberate Proceedings; as you may see in *Genesis, chap. 3. ver. 8, &c.* and *chap. 18. ver. 21.*

These are worthy Directions for all Justices of Peace, and other Magistrates, that they carry themselves in their Places uprightly and indifferently, not uttering their own Conceits, nor upon the sudden to over-rule Things, but after deliberate Consideration and Consultation, then to proceed to execute the Authority committed to them.

Properties of
Justices.

Now there be four essential Properties required in Magistrates and Justices, *viz.*

1. They must be Men of *Ability, of Body and Estate*, and of Courage for the Truth, and in the Truth.

2. They must be Men *fearing God*; not seeking the Place for Honour or Commodity, nor respecting Persons, but the Cause.

3. They must be *Men dealing truly*, searching out all the Truth, and hating Covetousness.

4. They must *judge the People at all Seasons*, using all Diligence in hearing and ending Causes; and not to neglect the Publick, for private Employments, or Ease. See *Exodus* 18. 21, 22. and *Job* 29. 12 *ad* 17. *For they bear not the Sword in vain.* Rom. 13. 4.

Their Description
or Definition.

Justices of Peace are Judges of Record, appointed by the King to be Justices within certain Limits for the Conservation of the Peace, and for the Execution of divers Things comprehended within their Commission, and within divers *Statutes* committed to their Charge.

9 E. 4. 3.
14 H. 8. 16.

Now, first, that the Justices of Peace are Judges of Record, (yea, that every Justice of Peace by himself is a Judge of Record, and one upon whose sole Report and Testimony the Law reposeth itself very much) appeareth more plainly, if you observe these Things following:

1. He is made under the Great Seal of *England*, which is a Matter of Record.

2. Every Justice of Peace hath judicial Power given unto him by the Commission, *sc.* in the first *Assignavimus.*

Force.

3. Also by some *Statutes* they have judicial Power given them; for they may make a Record of a *Force* by them viewed, and may thereupon fine and imprison the Offenders; yea, one Justice of Peace in some Cases, may also hear and determine Offences, and punish an Offender as convict upon his own View, or upon the Confession of the Offender, or upon Examination and Proof of Witnesses. *Vide Tit. forcible Entry.*

Lamb. 67. 94.
14 H. 8. 18.
Co. 10. 76.

4. His *Warrant* (tho' it be beyond his Authority) is not disputable by the Constable, or other inferior Minister, but must be obeyed and executed by them. But this must be understood when the Justice of Peace hath Jurisdiction of the Cause, for or concerning which he hath granted his *Warrant*; for otherwise the Constable or other Officer executing their Warrant, seemeth to be punishable. *Vide Tit. Warrants.*

5. He may take a Recognizance (for the Peace, &c.) which is a Matter of Record, Lamb. 67. and which none can do but a Judge of Record. See *Br. Recog.* 8, & 14.

6. His Record (or Testimony) in some Cases is of as great Force as an Indictment upon the Oath of twelve Men, and in some other Cases of greater Force than an Indictment. See hereof *Tit. Force, Highways, Peace and Riot.*

7. He also may make out Procefs upon Indictments, or Informations against Offenders, &c. and that out of their Sessions, (in some Cases) as you may see hereafter, *Tit. Procefs.*

Great Cause therefore have the Justices of the Peace to take heed that they abuse not their Authority, either to the Oppressing of the Subject, by making untrue Records, or Defrauding of the King, by suppressing the true Record.

By the *Statute of 12 R. 2. cap. 10.* there should be but six Justices of Peace (in every *The Number.* Commission of the Peace) with the Justices of Assize.

After, by the *Statute 14 R. 2. cap. 11.* it was ordained, That there should be eight Justices of Peace assigned, besides the Lords.

And *two Lawyers* (at least) shall be assigned in every County, to hear and determine Felonies and Trespasses done against the Peace. *18 E. 3. c. 2. 34 E. 3. c. 1. & 17 R. 2. c. 10.*

Also Justices of Peace ought to be resident and dwelling within the same County, (except Lords and Judges, &c.) *2 H. 5. c. 4. & 2 H. 5. Stat. 2. c. 1.*

Authority given to Justices of Peace ought to be pursued, and so it ought to appear in their Orders. *2 Salk. 475.*

Their Orders being judicial Acts, are only voidable, for they continue Orders till avoided. *2 Salk. 674.*

By the *Statute 5 Geo. 2. c. 18.* No Person shall be capable of being a Justice of Peace *5 Geo. 2. c. 18. §. 1.* for any County in *England* or *Wales*, who shall not have an Estate of Freehold or Copyhold in Possession, for Life, or some greater Estate, or for Years determinable upon Life; or for a certain Term originally created for Twenty-one Years or more, in Lands or Hereditaments in *England* or *Wales*, of the yearly Value of 100 *l.* above Incumbrances.

No Attorney, Solicitor or Proctor, shall be capable to be a Justice of Peace in *England* *Ib. §. 2.* or *Wales*, during such Time as he shall continue in Practice.

If any Person not qualified by this Act, shall do any Act as a Justice of Peace, he shall, *Ib. §. 3.* for every Offence forfeit 100 *l.* one Moiety to the King, the other to him that will sue.

This Act shall not extend to any City, Town or Liberty, having Justices of Peace *Ib. §. 4.* within their Limits; nor to Lords of Parliament, their eldest Sons, nor Persons qualified to be Knights of a Shire by *Stat. 9 Annæ, c. 5.* See also *Sect. 6 & 7.* of this Act, *Ib. §. 5.* some other Exceptions, with respect to the *Green Cloth*, Commissioners of the Navy, the two Under Secretaries of State, and the Heads of Colleges.

And by *7 Geo. 2. c. 10. sect. 3.* the Act of *5 Geo. 2. c. 18.* shall not extend to de- *7 Geo. 2. c. 10. §. 3.* prive the Vice-Chancellor of the University, or the Mayor of *Cambridge*, from being Justices of Peace in the County.

C H A P. III.

Of Peace.

PEACE, in Effect, (saith *M. Fitzb.*) is the Amity, Confidence, and Quiet that is *Peace what.* between Men; and he that breaketh this Amity or Quiet, breaketh the Peace. *Fitz. Just. of*

Yet Peace (in our Law) is taken for an Abstinence from actual and injurious Force; *R. 13.* and so is rather a Restraining of Hands, than an Uniting of Minds. And for the Maintenance of this Peace chiefly were the Justices of Peace first made.

The Breach of this Peace seemeth to be any injurious Force or Violence moved against *Breach of it.* the Person of another, his Goods, Lands, or other Possessions, whether it be by threatening Words, or by furious Gesture, or Force of the Body, or any other Force used *in terrorem.*

The Office of the Justices of Peace is principally to be exercised to the Keeping of the Peace, and suppressing and bringing to Punishment Persons using such injurious and unlawful Force or Violence. And yet (the Commission of the Peace being *pro bono*

bono Pacis, ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi,) I see not why the Justices of Peace should be restrained from preventing and repressing such other Offences, Misbehaviours and Deceits, as may break the Amity, Quiet and good Government of the People, and whereof Discords, and so Breaches of the Peace do often arise, (though there appear neither Force nor Violence in the Offence itself;) as *Li-bellings, Cozenages,* and such other Offences. *Vide Tit. Good Behaviour.*

Latch p. 48.

But it is no Part of the Office of the Justice of Peace to forbid lawful Suits; albeit they shall do well to be Mediators of Peace in such Suits and Controversies as shall arise among their Neighbours. Neither shall any Man be punished for Suing any Writ in the King's Courts, *soit ceo de Droit ou de Tort.* Co. L. 61.

Conservation of Peace.

The Conservation of this Peace (and therein the Care of the Justice of Peace) consisteth in three Things, *viz.*

1. In Preventing the Breach of the Peace, by taking Surety for the Keeping of it, or for the Good Behaviour of the Offenders, as the Case shall require.

2. In Pacifying such as are Breaking of the Peace. See *postea*, Tit. *Affray*.

3. In Punishing (according to Law) such as have broken the Peace.

But of the Three, the preventing Justice is most worthy to be commended to the Care of the Justices of Peace.

Who may make them.

The Constituting Justices of Peace is inherent, and inseparable from the Crown, and because this amongst others had been severed therefrom, to the great Diminution and Detriment of that Royal State, and the Hindrance and Delay of Justice, as speaks the *Statute* of 27 H. 8. It was thereby enacted, That no Person should have Authority to make any Justices of Peace, but only the King, his Heirs and Successors, by their Letters Patent; nor was, nor is, his Power to be delegated, for the King cannot grant a Man Power to make Justices of the Peace, as is the Book of 20 H. 7. 7. a.

Stat. 27 H. 8. c. 24.

Three Sorts of Justices.

Justices of Peace (at this Day) are of three Sorts, and are appointed or created by three Means.

Ely.

1. First, By Act of Parliament; as the Bishop of *Ely* and his Successors, and their temporal Stewards of the *Isle of Ely* (for the Time being) shall be Justices of Peace within the said Isle, and shall use and have within the said Isle all such Power as doth belong to any Justice of Peace within any County.

27 H. 8. 124. P. Just. 2.

York and Durham.

And so of the *Archbishop of York*, and the *Bishop of Durham*, and their Successors, and their temporal *Chancellors*, &c. *ibidem*.

Mayors.

2. Secondly, By Grant made by the King by his Letters Patent under the Great Seal, as Mayors, and the chief Officers in divers Corporate Towns: And such the King cannot discharge again at his Pleasure, but they shall continue and enjoy their Jurisdiction according as their Letters Patent do enable them; and therefore if the King granteth to a Mayor, or other Head Officer of a City or Corporate Town, and to their Successors, to be Justices of Peace in their City or Town, and after maketh out Commission of the Peace to others there, yet the Authority and Jurisdiction of the Mayor, &c. remaineth good, for that it was granted to them and their Successors, and is not revocable at the King's Pleasure, as the Commission of the Peace is.

By Grant.

Lamb. 26.

Br. Commiff. 5.

Which Grants and Charters may notwithstanding for some great and general Defect of, or Miscarriage in the Execution of the Powers and Authorities herein granted, be repealed, and the Liberties seized, so also may the King's Majesty upon reasonable Cause moving him, *ne deesset populo in Justitia exhibenda*, grant concurrent Commissions of the Peace within such Incorporations.

And such Justices of Peace by Grant or Patent have thereby the same Power as the Conservators of the Peace had by the Common Law; and such Power also is given to the Justices of Peace (or to any one Justice of Peace) by express Words in any Statute: But none of them have thereby the whole Power which is ordinarily given to the Commissioners of the Peace by their Commissions. And so of the first Sort of Justices of Peace by Act of Parliament, *sc.* the Archbishop of *York*, and the Bishops of *Durham* and *Ely*, and their temporal Chancellors and Stewards.

Lawyers.

Also concerning such Justices of Peace by *Grant or Patent*, if the *Grant* be made to such as be not learned in the Law, yet if it be *Ad Pacem conservandam*, &c. or *Ad inquirendum tantum*, this is a good Grant: But if the *Grant* be made, *Ad audiendum & terminandum*, this is a void Grant, (*ut dicitur*) unless some one learned in the Laws be also joined with the other in the Commission; and then such a Commission made *Ad audiendum & terminandum* is good in Law. For in all Cases where the Commission or Grant is *Ad audiendum & terminandum*, it is meet that some, or one of them at the least,

should be learned in the Laws of this Realm. See the *Statutes* 18 E. 3. cap. 2. & 13 R. 2. cap. 7. & 17 R. 2. cap. 10.

3. The third Sort of Justices of Peace are by Commission (made of common Course By Commissioners. under the Great Seal of *England*;) And these are appointed by the Discretion of the Lord Chancellor, or Lord Keeper of the Great Seal. And yet the Justices of Peace within the County Palatine of *Lancaster* are to be made by Commission under the Seal of the same 18 H. 6. cap. 11. Duchy, by the *Statute* 27 H. 8. c. 24. Raft 184. d. Lancaster.

But these Commissioners of the Peace their Authority doth determine by divers Means, yet more usually by three Means. How they determine.

First, By the *Death of the King*, or by his Resignation of his Crown: For by the Commission he maketh them *Justiciarios nostros*, so that he being once dead, or having given over his Crown, they are no more his Justices, and the Justices of the next Prince they cannot be, unless it shall please him afterwards so to make them. *Lamb.* 71. *Dyer* 165. a.

After the Death of a King of *England*, his Successor by Proclamation signifies, that all in Judicial Places, as Justices of Peace, &c. shall continue and exercise their Offices, yet it is not safe for them to act without a new Commission, as was done 1 *Ca. primi* touching the Justices at *Westminster*. *Cro. Car.* 1.

2. At the King's Pleasure, and that in two Sorts.

1. Either by the King's Pleasure expressed, (as the King in express Words may discharge them by his Writ under the Great Seal) or by *Supersedeas*; but the *Supersedeas* doth but suspend their Authority, which may be revived by a *Procedendo*. 5 E. 4. 32. Br. Coron. 18. 12 Aff. 21. Br. Com. 13.

2. Or by Implication; (as by making other Commissioners of the same Kind, and within the same Limits, leaving out the ancient Commissioners Names.) 10 E. 4. 7. 14. Br. Com. 20. & 3 *Mar.* 1.

But the ancient Commissioners must have Knowledge of such new Commission; for this Determination of the old Commission groweth not immediately by making the new Commission, but either by giving special Notice of the new Commission unto the old Commissioners; or else by and after the Reading (or Proclaiming) of the new Commission at the Assises, Sessions of the Peace, or at the full County; or else by holding of some open Sessions by Virtue of the new Commission, (in which two last Cases the old Commissioners must take Notice of the new Commission :) And in all these Cases, if the ancient Commissioners do sit by Virtue of their ancient Commission, and after such Notice or Publishing of the new Commission, all, whatsoever such ancient Commissioners shall so do, is void: And contrariwise, until such Notice or Publishing of the new Commission, whatsoever mean Acts such ancient Commissioners shall do, by Virtue of their ancient Commission, are good in Law. See 34 *Aff.* 8. B. c. 14. Br. Com. 26. 18. More's Rep. pl. 187.

Also in all Places where any ancient Commission of the Peace is determined by a New, yet no Process or Suit depending before the old Commissioners shall be discontinued thereby; neither shall any other Thing done by the Justices of Peace by force of their ancient Commission be made or become void thereby. 11 H. 6. 6. P. Disc. 6.

3. By the Accession of another Office; as when a Justice of Peace is chosen to be Sheriff of the same County, his Authority of a Justice of Peace there is suspended during his Sheriffwick; but after that another is chosen and sworn Sheriff of the same County, then this Authority as a Justice of Peace remaineth as it was before; without any renewing of the Commission, and without any of the Oaths newly to be taken by him; except his Name be then left out of the Commission, as sometimes had been used to be done; and perhaps only to get new Fees. Sheriff. 1 Ed. 6. 7. 1 M. 8. P. Disc. 4.

The Reason why his Authority of a Justice of Peace is suspended during his Sheriffwick seemeth to be, for that the Sheriff is a Minister, and a Justice of Peace is a Judge; and the one is as necessary as the other. And besides the Office of a Judge being to command, and of a Minister to execute the Commandment; if one Man shall be both Judge and Minister, it would follow, that the Sheriff ought to command himself, or that he should, as an Officer, serve his own Precept made as Justice or Judge, which cannot be.

Also if a Justice of Peace be made a Coroner of the County, this by some Opinions is a Discharge of his Authority of Justice of Peace; otherwise where he shall be made an Escheator, Under-Sheriff, Bailiff, or the like. *Lamb.* 72. *Quare.*

But if a Justice of Peace be made a Knight, or Serjeant at Law, or hath any greater Name or Office of Honour or Dignity given him, this taketh not away his Authority of a Justice of Peace. *Br. Commiss.* 4 & 22. See also the Statute of 1 E. 6. c. 7. 1 E. 6. c. 7. P. Disc. 4.

Demise of the King.
 Dyer 165.
 Co. 7. 30.
 B. Com. 5.
 Br. Com. 19.
 21. B. Offic.
 15.

Note also, that although by the Death of the King, or by his Resignation, the Authority of all Justices of the Peace, which are by Commission (yea, and of all Judges, Commissioners of Oyer and Terminer, Commissioners of Gaol-Delivery, Sheriffs, Escheators, and other Officers that are by Commission) doth cease; yet Mayors and chief Officers in Cities and Corporate Towns, (which have the Authority of Justices of Peace, or of the Conservation of the Peace, by Grant under the King's Letters Patent to them and their Successors) their Authority still remaineth.

So also the Office and Authority of the High Constables and Petty Constables seemeth to remain, notwithstanding the Death of the King, &c. for that their Authority is by the Common Law, and to their said Office the Conservation of the Peace remaineth, as a Thing incident and inseparable from the same.

Coroners.

4 E. 4. 44.
 B. Offic. 25.
 Dyer 165.

Coroners also do remain Conservators of the Peace (within the County where they are Coroners) notwithstanding the *King's Death*, &c. for they are made by the *King's Writ*, and not by *Commission*; and their Office and Authority doth remain until they be removed by the King's Writ; and their Office remaining, the Conservation of the Peace remaineth as incident thereto. They are elected by the Freeholders, and are returned of Record into Chancery; and therefore being judicially made, must be judicially discharged.

1 An. c. 8.

By Statute 1 *An. c. 8. sect. 5.* No Commission of Assize, Oyer and Terminer, general Gaol-Delivery, or of Association, Writ of Admittance, Writ *Si non omnes*, Writ of Assistance, or *Commission of the Peace*, shall be determined by the Death of any King, or Queen of this Realm; but every such Commission and Writ shall continue in full Force for *six Months* next ensuing such Demise, unless superseded and determined by the next Successor.

CHAP. IV.

Justices of Peace: Their Oaths.

P. Just. 4.
 1 El. 1.

EVERY Justice of Peace (before he shall take upon him to exercise the Office of a Justice of Peace) shall take two corporal Oaths; the One concerning the Office of a Justice of Peace, the Other concerning the King's Supremacy.

The Oath concerning this Office seemeth to be by Force of the Statute made 13 *R. 2. c. 7.* And yet see the Oath of the Justices made *Ann. 18 E. 3.* much to the like Effect that now it is; in which Year also *M. Marrow* taketh it that Justices of Peace were first made, they having then first Power given them to hear and determine Felonies and Trespasses against the Peace, as appeareth by the Statute of 18 *E. 3. c. 2.*

The Form of the Oath is at this Day as followeth.

Their Oath.

YE shall swear, that as Justice of the Peace in the County of Cambridge, in all Articles in the King's Commission to you directed, you shall do legal Right to the Poor and to the Rich, after your cunning Wit and Power, and after the Laws and Customs of the Realm, and Statutes thereof made: And ye shall not be of Counsel of any Quarrel hanging before you: And that ye hold your Sessions after the Form of the Statutes thereof made: And the Issues, Fines, and Amerciaments that shall happen to be made, and all Forfeitures which shall fall before you, ye shall cause to be entered without any Concealment (or imbezelling) and truly send them to the King's Exchequer. Ye shall not let for Gift, or other Cause, but well and truly you shall do your Office of Justice of the Peace in that Behalf: And that you take nothing for your Office of Justice of the Peace to be done, but of the King, and Fees accustomed, and Costs limited by the Statute. And ye shall not direct, nor cause to be directed, any Warrant (by you to be made) to the Parties, but ye shall direct them to the Bailiffs of the said County, or other the King's Officers, or Ministers, or other indifferent Persons, to do Execution thereof. So help you God, &c.

The Parts of this Oath are shortly Six.

Part of the Oath.

1. That they shall do equal Right to Rich and Poor, according to the Laws and Statutes of the Realm.

2. That they shall not be of Counsel with any Person in any Matter depending before them.

3. That they shall keep their *Sessions* according to the Statutes, which (by the Statute 2 H. 5. c. 4.) ought to be in the first Week after the Feast of St. Michael, after the Epiphany, after the Clause or Feast of Easter, and after the Translation of S. Thomas the Martyr, being the third Day of July, and accordingly the Quarter-Sessions of the Peace ought still to be holden throughout the Realm. See Lamb. 579, 580. And yet by the Statute of 14 H. 6. c. 4. the Justices of Peace of Middlesex are to keep their Sessions but twice in the Year.

Time when the Quarter-Sessions shall be kept.
2 H. 5. 4.
P. Jult. 5.

4. That all *Issues, Fines, Amerciements, and Forfeitures*, which happen before them, be by them truly entered, and sent into the Exchequer.

5. That they take nothing for doing their Office, but of the King, and the accustomed Fees appointed by the Statutes.

6. That they shall not direct any of their Warrants to the Parties but to the Bailiffs of the County, or to other of the King's Officers, as to the Sheriff, High Constable, Petty Constable, &c. or other indifferent Persons.

Now farther concerning the Times of the Quarter-Sessions, it seemeth to be the Intent or Meaning of the afore recited Statute, 2 H. 5. c. 4. that the Weeks wherein the afore-said Feasts of S. Michael, the Epiphany, and S. Thomas fall, must be first ended before the Sessions can begin. So that if any of these three Feast-Days shall fall upon the Sunday, Monday, Tuesday, or Wednesday, then shall the Sessions (in our County of Cambridge) be upon Thursday seven-night after; but if any of those Feasts shall fall upon Thursday, Friday, or Saturday, then shall our Sessions be upon the next Thursday after; and for our Easter Sessions, upon the Thursday seven-night after Easter Day.

Sessions.
At what Times the Quarter-Sessions shall be kept.
36 E. 3. 12.

The other Oath concerning the King's Supremacy, is by Force of the Statute made primo Eliz. c. 1. But that is now abrogated*, and instead of that Oath this is now enjoined.

P. Crown. 4.
* 1 W. & M. c. 8.

ff. **I** DO sincerely promise and swear, that I will be faithful, and bear true Allegiance to his Majesty King George. So help me God.

The Oath of Allegiance.

I M. D. do swear, that I do from my Heart detest and abjure as impious and heretical, that damnable Doctrine and Position, that Princes excommunicated may be deprived by the Pope, or any Authority of the See of Rome, may be deposed by their Subjects or any other whatsoever. And I do declare, that no Foreign Prince, Person, Prelate, State or Potentate, hath or ought to have any Jurisdiction, Power, Superiority, Pre-eminence or Authority, Ecclesiastical or Civil within this Realm. So help me God.

The Oath of Supremacy.

All Persons who shall bear any Office Civil or Military, shall within three Months afterwards take the said Oaths, and the Oath of Abjuration, as followeth.

13 & 14 W. 3. c. 6.
1 Geo. 1. c. 13.

ff. **I** M. D. do truly and sincerely acknowledge, profess, testify and declare in my Conscience, before God and the World, that our Sovereign Lord King George is lawful and rightful King of this Realm, and all other his Majesty's Dominions and Countries thereunto belonging. And I do solemnly and sincerely declare, that I do believe in my Conscience, that the Person pretended to be Prince of Wales during the Life of the late King James, and since his Decease pretending to be, and taking upon himself the Stile and Title of King of England, by the Name of James the Third, or of Scotland by the Name of James the Eighth, or the Stile and Title of King of Great Britain, hath not any Right or Title whatsoever to the Crown of this Realm, or any other the Dominions thereunto belonging: And I do renounce, refuse, and abjure any Allegiance or Obedience to him. And I do swear, that I will bear Faith and true Allegiance to his Majesty King George, and him will defend to the utmost of my Power, against all traiterous Conspiracies and Attempts whatsoever, which shall be made against his Person, Crown or Dignity. And I will do my utmost Endeavour to disclose and make known to his Majesty and his Successors, all Treasons and traiterous Conspiracies which I shall know to be against him or any of them. And I do faithfully promise, to the utmost of my Power, to support, maintain, and defend the Succession of the Crown against him the said James, and all other Persons whatsoever, which Succession, by an Act, intituled, An Act for the farther Limitation of the Crown, and better securing the Rights and Liberties of the Subjects, is, and stands limited to the Princess Sophia, Electress and Dutches Dowager of Hanover, and the Heirs of her Body being Protestants. And all these Things I do plainly and sincerely acknowledge and swear, according to these express Words by me spoken, and according to the plain and common Sense and Understanding

The Oath of Abjuration.

derstanding of the same Words, without any Equivocation, mental Evasion, or secret Reservation whatsoever. And I do make this Recognition, Acknowledgment, Abjuration, Renunciation, and Promise heartily, willingly and truly, upon the true Faith of a Christian. So help me God.

And all Persons who are required to take the said Oaths, shall at the same Time repeat and subscribe the Declaration against Transubstantiation :

The Declaration.

25 Car. 2.
cap. 2.

13 & 14
W. 3. c. 6.

Wales,

5 Will. 3.
cap. 4.

ff. I M. D. do declare, that I do believe there is not any Transubstantiation in the Sacrament of the Lord's Supper, or in the Elements of Bread and Wine, at or after the Consecration thereof by any Person whatsoever.

The King by his Commission under the Great Seal may constitute such Number of Justices of Peace in *Wales* as he shall think convenient ; and the Persons thus constituted shall have as full Power to execute the Office of a Justice of Peace as any other Justice might have done before the Making that Act.

Yet it is most usual that both of these Oaths are taken by a special Commission, (*viz.* by a Writ of *Dedimus potestatem*, directed out of the Chancery to some ancient Justice of Peace to take the same Oaths) which by them is to be certified into the same Court, at such Day as the Writ commandeth. *The Form of which Certificate, see hic postea.*

The Justice of Peace (or other Person) to whom a *Dedimus Potestatem* shall be directed, to take the Oaths of a new Justice of Peace, if he shall return the Commission, and the Oaths to be taken, when they were not taken, he is fineable in the Court of King's Bench.

So if the new Justice of Peace shall exercise this Office before he hath taken both these Oaths, he shall be disabled to sue, to be Guardian, Executor or Administrator, and be incapable of any Legacy, or Gift, or to be in any Office, and shall forfeit 500*l.* to him who will sue for the same.

Crom. 11.
Co. 11. 98.

Also if a Justice of Peace shall not perform his Oath, (concerning his Office) it seemeth he is fineable, &c. Yet see *Co. 11. 98. a.* That a Man shall not be charged in any Court Judicial for the Breach of a general Oath, which he taketh when he is made an Officer or Minister, &c. But if he do a Thing contrary to his Oath, that aggravates his Offence.

Nota, quod Juramentum debet habere comites, Veritatem, Judicium, & Justitiam. Jer. 4. 2. Et si ista defuerint, non Juramentum, sed Perjurium erit. Nemo se seducat ; qui enim per lapidem falso jurat perjurus est. Quacunque arte verborum, vel mentis reservatione jurat aliquis, Deus ita accipit sicut ille cui juratur intelligit : Et minus malum est per Deum falsum jurare veraciter, quam per Deum verum jurare fallaciter.

Now for that all the Authority and Power of these Commissioners or Justices of the Peace ariseth partly out of their Commission, and partly out of the *Statutes*, I will first set down the Form of the Commission itself, shortly considering the Parts thereof.

C H A P. V.

The Form of the Commission of the Peace.

GEORGIUS, &c. Prædilecto & fideli King, Domino Custod. Mag. Sigilli Angliæ, — Comiti Thesaurar' Angliæ, &c. Salutem.

1.
Ad pacem
conservan-
dam.

Sciatis, quod assignavimus vos, conjunctim & divisim, & quemlibet vestrum Justiciarios nostros, ad Pacem nostram in Comitatu nostro Cantabrigiæ conservandam, ac ad omnia Ordinationes & Statuta pro bono Pacis nostræ, ac pro conservatione ejusdem, & pro quieto regimine & gubernatione populi nostri edita, in omnibus & singulis suis Articulis, in dicto Comitatu nostro (tam infra Libertates quam extra) juxta vim, formam & effectum eorundem custodiendum, & custodiri faciendum ; Et ad omnes contra formam Ordinationum vel Statutorum illorum, aut eorum alicujus, in Com' præd' delinquentes, castigandum & puniendum, prout secundum formam Ordinationum & Statutorum illorum fuerit faciendum ; & ad omnes illos, qui alicui, vel aliquibus de populo nostro de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de Pace vel bono gestu suo erga nos & populum nostrum invenendam coram vobis, seu aliquo vestrum, venire faciendum ;

dum; & si hujusmodi securitatem invenire recusaverint, tunc eos in prisonis nostris (quousq; hujusmodi securitatem invenerint) salvo custodire faciendum. Assignavimus etiam vos, & quoslibet duos vel plures vestrum, (quorum aliquem vestrum A.B.C.D.E.F. &c. unum esse volumus) Justiciarios nostros ad inquirendum per Sacramentum proborum & legalium hominum de Comitatu præd', (per quos rei veritas melius sciri poterit) de omnibus & omnimodis Feloniis, Veneficiis, Incantationibus, Sortilegiis, Arte magica, Transgressionibus, Forstallariis, Regrataris, Ingrossariis, & Extortionibus quibuscunq; ac de omnibus & singulis aliis malefactis & offensis (de quibus Justiciarii Pacis nostræ legitime inquirere possunt, aut debent) per quoscunq; & qualitercunq; in Comitatu præd' factis sive perpetratis, vel imposterum ibidem fieri vel attemptari contigerit: Ac etiam de omnib' illis qui in Comitatu præd' in Conventiculis contra Pacem nostram, in perturbationem populi nostri, seu vi armata ierint vel equitaverint, seu imposterum ire vel equitare præsumpserint; ac etiam de omnibus his qui ibidem ad gentem nostram maibemandum vel interficiendum in insidiis jacuerunt, vel imposterum jacere præsumpserint: Ac etiam de Hostelariis, & aliis omnibus & singulis personis, qui in abusu Ponderum vel Mensurarum, sive in venditione Victualium, contra formam Ordinationum & Statutorum, vel eorum alicujus, inde pro communi utilitate Regni nostri Angliæ & populi nostri ejusdem editorum, deliquerunt, vel attemptaverunt, seu imposterum delinquere vel attemptare præsumpserint in Com' præd': Ac etiam de quibuscunq; Vicecomitibus, Ballivis, Seneschallis, Constabulariis, Custodibus Gaolarum, & aliis Officiariis, qui in executione Officiorum suorum (circa præmissa seu eor' aliqua) indebite se habuerunt, aut imposterum indebite se habere præsumpserint, aut tepidi, remissi vel negligentes fuerunt aut in posterum fore contigerint, in Comitatu præd' dicto: Et de omnibus & singulis articulis & circumstantiis & aliis rebus quibuscunq; per quoscunq; & qualitercunq; in Com. præd. factis sive perpetratis, vel quæ in posterum ibid' fieri vel attemptari contigerit, qualitercunq; præmissorum vel eor' alicujus concernentibus plenius veritatem: Et ad indictamenta quæcunq; sic coram vobis seu aliquibus vestrum capta, sive capienda, aut coram aliis nuper Justiciariis Pacis in Com' præd' facta sive capta (& nondum terminata) inspiciendum: Ac ad Processus inde versus omnes & singulos sic indictatos, vel quos coram vobis in posterum indictari contigerit, (quousq; capiantur, reddant se, vel utlagentur) faciend' & continuand'. Et ad omnia & singula Felonias, Veneficia, Incantationes, Sortilegia, Artes magicas, Transgressiones, Forstallarias, Regratarias, Ingrossarias, Extortiones, Conventicula, Indictamenta præd' ceteraq; omnia & singula præmissa, secund' Leges & Stat' Regni nostri Angliæ, (prout in hujusm' casu fieri consuevit aut debuit) Audiendum & Terminandum; & ad eosdem Delinquentes, & quilibet eorum, pro delictis suis, per Fines, Redemptiones, Amerciamenta, Forisfacturas, ac alio modo (prout secundum Legem & Consuetudinem Regni nostri Angliæ, aut formam Ordinationum vel Statutorum præd' fieri consuevit aut debuit) castigandum & puniendum.

Ad Inquirendum.

Indictamenta capere. Processus facere.

Provisio semper, qd' si casus difficultatis sup' determinatione aliquor' præmissor' coram vobis, vel aliquib' duob', vel pluribus vestrum evenire contigerit; tunc ad judicium inde reddend', nisi in præsentia unius Justiciariorum nostrorum de uno vel de altero Banco, aut Justiciarior' nostrorum ad Assisas in Com' præd' capiendas assignatorum, coram vobis, vel aliquibus duobus, vel pluribus vestrum, minime procedatur.

Ad audiendum & terminandum.

Et ideo vobis & cuilibet vestrum mandam', qd' circa custod' Pacis, Ordination', Statutor', & omnium & singulorum ceteror' præmissor', diligenter intendatis. Et ad certos dies & loca, quæ vos vel aliqui hujusm', duo vel plures vestrum (ut præd' est) ad hæc provide- ritis, sup' præmissis faciatis Inquisition', & præmissa omnia & singula audiatis & termine- tis, ac ea faciatis & expleatis in forma præd' inde quod ad Justitiam pertinet, secundum Legem & consuetudinem regni nostri Angliæ: Salvis nobis Amerciamentis, & aliis ad nos inde spectantibus.

Charge to the Justices. Exceptio.

Mandamus etiam tenore præsentium Vicecomiti nostro Cantabrigiæ, qd' ad certos dies & loca (quæ vos vel aliqui hujusm', duo vel plures vestrum, ut præd' est, ei, ut præd' est, sciri feceritis) venire faciat' cor' vobis, vel hujusm' duobus vel pluribus vestrum (ut dict' est) tot' & tales probos & legales homines de Balliva sua, (tam infra Libertates quam extra) per quos rei veritas in præmissis melius sciri poterit & inquireri.

To the Sheriff.

Assignavimus deniq; te præfatum Johan. Catts Militem, Cust. Rot. Pacis nostræ in dicto Com. nostro. Ac propterea tu, ad dies & loca præd', Brevia, Processus, & Indictamenta præd', coram te & dictis sociis tuis venire facias, ut ea inspiciantur, & debito sine terminentur, sicut præd' est. In cujus rei testimonium, &c. Datum, &c.

To the Custos Rotulor'.

The same in English.

‘ **G**EORGE, &c. To our Wellbelovèd and Faithful King, Lord Keeper of the Great Seal of *England*, and ———— Treasurer of *England*, &c. Greeting. Know ye, that We have assignèd you, and every one of you, jointly and severally, our Justices to keep our Peace in the County of *Cambridge*; and to keep, and cause to be kept all Ordinances and Statutes made for the Good of the Peace, and for Conservation of the same, and for the quiet Rule and Government of our People in all and every the Articles thereof, in our said County, (as well within the Liberties as without) according to the Force, Form, and Effect of the same; and to chastise and punish all Persons offending against the Form of those Ordinances, or Statutes, or any of them, in the County aforesaid, as according to the Form of those Ordinances and Statutes shall be fit to be done; and to cause to come before you, or any of you, all those Persons who shall threaten any of the People in their Person, or in Burning their Houses, to find sufficient Security for the Peace, or for the good Behaviour towards Us and the People; and if they shall refuse to find such Security, then to cause them to be kept safe in Prison until they find such Security: We have also assignèd you, and every Two or more of you (whereof any of you the said *A. B. C.* shall be one) our Justices to inquire by the Oath of good and lawful Men of the County aforesaid, by whom the Truth may be better known, of all and all Manner of Felonies, Witchcrafts, Inchantments, Sorceries, Magick Art, Trespasses, Forestallings, Reagratings, Ingrossings, and Extortions whatsoever; and of all and singular other Misdèeds and Offences, of which Justices of Peace may or ought lawfully to inquire, by whomsoever and howsoever done or perpetrated, which hereafter shall happen howsoever to be done or attempted in the County aforesaid; and of all those who in the County aforesaid have either gone or ridden, or hereafter shall presume to go or ride in Companies with armed Force against the Peace, to the Disturbance of the People; and also of all those who in like Manner have lain in wait, or hereafter shall presume to lie in wait, to maim or kill our People; and also of Inn-holders, and of all and singular other Persons who have offended or attempted, or hereafter shall presume to offend or attempt in the Abuse of Weights or Measures, or in the Sale of Victuals, against the Form of the Ordinances or Statutes, or any of them, in that Behalf made for the common Good of *England*, and the People thereof in the County aforesaid; and also of all Sheriffs, Bailiffs, Stewards, Constables, Gaolers, and other Officers whatsoever, who in the Execution of their Offices about the Premises, or any of them, have unlawfully demeaned themselves, or hereafter shall presume unlawfully to demean themselves, or have been or hereafter shall be careless, remiss or negligent in the County aforesaid. And of all and singular Articles and Circumstances, and all other Things whatsoever, * by whomsoever and howsoever done or perpetrated in the County aforesaid, or which hereafter shall happen howsoever, to be done or attempted in any wise more fully concerning the Truth of the Premises, or any of them: And to inspect all Indictments whatsoever so before you or any of you taken or to be taken, or made or taken, before others, late Justices of the Peace in the County aforesaid, and not as yet determinèd; and to make and continue the Process thereupon against all and singular Persons so indicted, or which hereafter shall happen to be indicted before you, until they be apprehended, render themselves, or be outlawed: And to hear and determine all and singular the Felonies, Witchcrafts, Inchantments, Sorceries, Magick Arts, Trespasses, Forestallings, Reagratings, Ingrossings, Extortions, Unlawful Assemblies, Indictments aforesaid, and all and singular other the Premises, according to the Laws and Statutes of *England*, as in like Case hath been used or ought to be done: And to chastise and punish the said Persons offending, and every of them for their Offences, by Fines, Ransoms, Amerciaments, Forfeitures, or otherwise, as ought and hath been used to be done according to the Laws and Customs of *England*, or the Form of the Ordinances and Statutes aforesaid.

* Note;
Here is neither
Person, Time,
nor Place ex-
cepted.

‘ Provided always, That if a Case of Difficulty upon the Determination of any of the Premises shall happen to arise before you, or any two of you, or more of you; then you, nor any Two or more of you do proceed to give Judgment therein, except it be in the Presence of one of the Justices of the one or the other Bench, or Justices of Assise in the County aforesaid.

‘ And therefore We command you and every of you, That you diligently intend the Keeping of the Peace, Ordinances, Statutes, and all and singular other the Premises; and at certain Days and Places which you, or any such Two, or more of you, as is

‘ aforeſaid, ſhall in that Behalf appoint, ye make Inquiries upon the Premiſſes, and hear
 ‘ and determine all and ſingular the Premiſſes, and perform and fulfil the ſame in Form
 ‘ aforeſaid, doing therein that which to Juſtice appertaineth, according to the Law and
 ‘ Custom of *England*: Saving to us the Amercements, and other Things to us thereof
 ‘ belonging.

‘ And we command, by Virtue of theſe Preſents, the Sheriff of the ſaid County of *Cam-*
 ‘ *bridge*, that, at certain Days and Places which you, or any ſuch Two or more of you,
 ‘ as aforeſaid ſhall make known to him, as aforeſaid, he cauſe to come before you, or
 ‘ ſuch Two or more of you, as aforeſaid, ſuch and as many good and lawful Men of his
 ‘ Bailiwick (as well within Liberties as without) by whom the Truth in the Premiſſes may
 ‘ be the better known and inquired of.

‘ Laſtly, We have aſſigned you the ſaid *John Cutts* Knight, Keeper of the Rolls of the
 ‘ Peace in the ſaid County. And therefore you ſhall cauſe to be brought before yourſelf
 ‘ and your ſaid Fellows, at the ſaid Days and Places, the Writs, Precepts, Proceſſes, and
 ‘ Indiſtments aforeſaid, that the ſame may be inſpected, and by a due Courſe determined,
 ‘ as aforeſaid. In Witneſs whereof, &c.’

Note; By this laſt Clauſe the Keeper of the Rolls ſhall have the Cuſtody of Indiſtments, Preſentments, Bills, Recognizances, and ſuch like Records of Sessions; but not the Cuſtody of Records of Riots, Precepts of Peace, or other ſpecial Records, or other Records not pertaining to the general Sessions.

The Commiſſion of the Peace was, when Juſtice *Fitzherbert* and ſome others wrote, *Correſtion of the Commiſſion.*
 incumbered with many Statutes, and ſtuſt with vain Repetitions, and many Corruptions
 crept therein by the Miſtaking of Clerks: For Amendment whereof all the Judges of 4 Inſtit. P. 171.
England were aſſembled, *Mich. 32 & 33 Eliz.* and upon Peruſal of the former Commiſſion
 of the Peace, and often Conference within themſelves, reſolved upon a Reformation
 of the former, with divers Additions and Alterations as it ſtandeth at this Day both in
 Matter and Method.

This Commiſſion hath two Parts, containing the Power of the Juſtices of Peace.

The firſt *Aſſignavimus* of the Commiſſion doth give Power to any one Juſtice of the
 Peace (more, or all) to keep, and cauſe to be kept the Peace, and all Ordinances and
 Statutes made for the Conſervation of the Peace, and for the quiet Government of the
 People: As namely the Statutes made for *Hue and Cry after Felons*; and the Statutes *Stat. Win. 13 E. 1. 2 E. 3. 6. 2 E. 3. 3.*
 made againſt *Murderers, Robbers, Felons, Night-Walkers, and Affrayers, Armour worn*
in terrorem, Riots, Forcible Entries, and all other Force and Violence; all which are
 directly againſt the Peace. The Particulars whereof you ſhall find more fully hereafter,
 and moſt of them under their proper Titles.

By this firſt Clauſe in the Commiſſion, the Juſtices of Peace have as well all the anci- Lamb. 49.
 ent Power touching the Peace which the Conſervators of the Peace had by the Common
 Law, as alſo that whole Authority which the *Statutes* have ſince added thereto.

The Means which the Juſtices of Peace muſt uſe for the Keeping of the Peace, and
 for the Execution of theſe *Statutes*, are as followeth.

To prevent the Breach of the Peace, he may ſend his *Warrant* for the Party, and *Warrant.*
 may take ſufficient Sureties of him (by Recognizance) for Keeping the Peace, or for the
 Good Behaviour, (as the Caſe ſhall require :) And may ſend the Party to the Goal for
 not finding ſuch Sureties.

But for theſe Statutes made for the Peace, they are to be executed according to ſuch Lamb. 47.
 Order as themſelves do deliver; wherein if no Power at all be expreſly given to any one
 Juſtice of Peace alone, then can he not otherwiſe compel the Obſervation thereof than by
 Admonition only: In which Behalf if he ſhall not be obeyed, he may prefer the Cauſe
 at the Sessions, and work it to a Preſentment upon the *Statute*, and ſo (by the Help of
 his Fellow Juſtices) to hear and determine thereof as Law requireth.

And here note, That whereas before the Making the *Statute 1 Ed. 3. cap. 11.* there 1 Ed. 3. cap. 11.
 were no *Juſtices*, but only *Conſervators of the Peace*, (as is before ſhewed :) And where-
 as by the Commiſſion of the Peace, preſently after, and to this Day, the Juſtices of Peace
 had, and ſtill have, the *Statute of Wincheſter* given them in Charge, to execute the
 ſame; which *Statute of Wincheſter* (being made 13 *E. 1.*) was long before there were
 any Juſtices of Peace. By this it may appear, that the King by his Commiſſion, may
 commit the Execution of the Statutes and Laws to whom he ſhall pleaſe. And ſo alſo a
 Juſtice of Peace, by Virtue of the Commiſſion, may execute any *Statute* whereunto he
 ſhall

shall be enabled by the said Commission, although there shall be no such exprefs Power given to him so to do by the Words or Letter of the same *Statute*.

2. Assigna-
vimus.

Jury.

The second *Assignavimus* in the Commission doth give Authority to any two Justices of the Peace (or more, the one being of the *Quorum*) in these five Things following:

1. To inquire (by a Jury) of all Offences mentioned within the Commission.
2. To take and view all Indictments or Presentments of the Jury.
3. To grant out Procefs against the Offenders, thereby to cause them to come and answer.
4. To hear and try all such Offences (upon any former or future Indictments taken before themselves, or before any other Justices of the Peace) after the Offenders are come in.
5. To determine thereof, by *giving Judgment*, and inflicting Punishment upon the Offenders according to the Laws and Statutes; (*viz.*) By Fine, Imprisonment, or otherwise according to Law: But not to award any Recompence to the Party wronged, otherwise than by Perswasion.

But all the Business included within the second *Assignavimus* belongeth to the Sessions of the Peace.

Note also, That there are divers *Statutes* which be not specified within the Commission, and yet are committed to the Charge and Care of the Justices of Peace; but all such *Statutes* which do give expressly any Power or Authority to the Justices of the Peace, are to them a sufficient Warrant and Commission of themselves, although they be not recited in the Commission; and all such *Statutes* are also to be executed by them, according as the same *Statutes* themselves do severally prescribe and set down.

And for that most of the Business of the Justices of Peace doth consist in the Execution of such *Statutes* as are committed to their Charge, (whether they be specified in the Commission, or not specified there) the Numbers of which *Statutes* are exceedingly increased of late, therefore to give some little Help to such Justices of Peace who (being destitute of the Assistance of such as are learned in the Laws) are daily to administer Justice, and to execute their Office at home, and out of their Sessions; I have for their better Ease herein, endeavoured to set down particularly the several Parts and Branches of every such *Statute* by itself, under their proper Titles, with farther References to the *Statutes* themselves at large, or to the Abridgments.

C H A P. VI.

The Power and Authority of Justices of Peace.

Their Power.

THE Power and Authority of the Justices of Peace as well by the said Commission as by the *Statutes*, is in some Cases ministerial, and in other Cases judicial.

Ministerial, when he is thereunto commanded by an higher Authority.

As upon { A *Supplicavit*, out of the Chancery or King's Bench, for the taking of Surety for the Peace, or good Behaviour. See hereof Tit. *Surety of the Peace*.
A Writ upon the Statute of *Northampton*, upon a Forcible Entry. See hereof Tit. *Forcible Entry*.

In the Execution of which two Writs, the Justice of Peace is to proceed no farther, or otherwise, than he is authorized by such Writ; and is also to return the Writ, and to certify his Doings therein, into the Court whence the Writ came.

So upon a *Certiorari* out of any of the Higher Courts at *Westminster*, directed to the Justices of Peace (or to any of them) to certify any Recognizance, Indictment, or other Record taken before him, or them, or any of them; or in his or their Hands; of which see more *postea*.

But in all other Cases the Power of the Justices of Peace seemeth to be absolute, so as they, and every of them may proceed *ex Officio*, and as a Judge.

Discretion.

And yet for that all considerable Circumstances can neither be comprehended in the Commission, nor foreseen at the Time of the Making of the *Statutes*, therefore some Things are referred to the Consideration of the Justices of Peace, and left to be supplied by them in their Discretion.

The Commission of the Peace (in itself) doth leave little or nothing to the Discretion of the Justices of Peace, but doth limit them to proceed *secundum Leges, consuetudines, Ordinationes & Statuta*: And indeed to leave too much to Discretion, were to open a Gap to Corruption.

But by some late Statutes some Things are referred to the Discretion of the Justices of Peace; some out of Sessions, and some at their Sessions.

I will here only set down some Particulars of such Things as are referred to their Discretions out of their Sessions.

Some Things referred to the Discretion of one Justice of Peace out of the Sessions, which you may more fully see hereafter in this Book, in the several Titles here under written.

ONE Justice may compel any Person meet in his Discretion to be bound an Apprentice.

One Justice of Peace may cause all such Persons as be meet to labour, by his Discretion to work in Harvest and Hay-Time. *Labourers.* 5 El. 4.

Malts that be deceitful may be sold, &c. at such reasonable Prices as one Justice of Peace in his Discretion shall think expedient. *Malt.* 2 E. 6. 10.

Trespassers in Corn, Orchards, Hedges, or Woods, which in the Discretion of the Justices are not thought able to give Satisfaction, shall be whipped. *Trespass.* 43 El. 7.

One Justice of Peace may hear and determine by Examination, or otherwise, by his Discretion, the Offences committed in Tile-making. *Tiles.* 17 E. 4. 4.

Some Things referred to the Discretion of two Justices of Peace out of the Sessions. *Alehouse-Keepers.*

TWO Justices may allow and discharge Alehouse-Keepers, as they shall think meet, but they ought to allow none but such as be capable and needful for the Place. *Alehouse-Keepers.* 5 E. 6. 25. but vid. inf. Ch. 7.

Two Justices may take Recognizance of Alehouse-Keepers for keeping good Orders, &c. according to their Discretions. *Alehouse-Keepers.* 5 E. 6. 25.

Clothiers, their Work-folks imbezilling any Part shall be punished, &c. by the Discretion of two Justices.

Two Justices may grant their Warrant to call before them any Person or Persons which in their Discretions shall be thought fit to discover any Offence in the Making of deceivable Woollen Cloth, &c. 21 Jac. 1. c. 18.

Servants, &c. assaulting their Master, may be imprisoned for one Year, or less, at the Discretion of two Justices. *Labourers.*

Two Justices may (by their Discretion) compel Women to serve, and for such Wages, and in such sort, as they think meet. *Servants.*

Two Justices may tax others of the County, by their Discretions, towards the Relief of Places infected, &c. *Plague.*

Two Justices may tax any in the Hundred (by their Discretions) towards the Relief of the Poor of any Town that is overcharged. *Poor.* 43 El. 2.

Two Justices may dispose of all Forfeitures to grow upon the Statutes of Rogues, at their Discretions, &c. *Rogues.*

Two Justices may assess (according to their Discretions) proportionably all the Parishes within the Hundred, towards a Contribution for the Parties charged upon a Robbery, &c. *Robbery.*

Two Justices shall take Order (by their Discretions) to set poor Soldiers, &c. to Work that cannot get Work; and for want of Work, may tax the Hundred (by their Discretions) for the Relief of such Soldiers, &c. *Soldiers.*

Two Justices may fine (by their Discretions) the head Officers in Boroughs and Market-Towns that do not view, &c. all Weights and Measures, or do not break and burn the defective. *Weights.*

Two Justices may fine (by their Discretions) all Buyers and Sellers with unlawful Weights and Measures.

There be some other Statutes, and some other Cases, wherein the Discretion of the Justices of the Peace out of their Sessions is tolerated: But the Counsel of Cicero herein is to be observed, *Sapientis est Judicis cogitare tantum sibi esse permissum, quantum sit commissum ac creditum.*

Also the Sayings of the Reverend Judge, in his fifth Part, in Rook's Case, and in his tenth Part in Knightley's Case, are worthy of Observation: *sc.* That Discretion is a Knowledge or Understanding to discern between Truth and Falshood, between Right and Wrong, between Shadows and Substance, between Equity and colourable Glosses and Pretences, *Discretion defined.* Co. 5. 101, & 10, 140.

Pretences, and not to do according to our Wills and private Affections, for *talis discretio discretionem confundit*. And therefore in both the recited Cases it was holden that though the Word in the Commission of Sewers do give Authority to those Commissioners to do according to their Discretions, that yet their Discretion ought to be limited and bounded with the Rules of Reason, Law, and Justice, and their Proceeding must be *secundum Legem & Consuetudinem Angliæ*; and so of other like Commissioners. Again, Discretion, saith he, is *scire vel discernere per Legem quid sit justum*; viz. to discern by the right Line of Law, and not by private Opinion. *Co. L. 227*. And therefore every Judge, Justice, (or Commissioner) ought to have *duos Sales*, viz. *Salem Sapientiæ ne sit insipidus*; & *Salem Conscientiæ, ne sit diabolus*.

And (as *M. Lambard* well said) no way better shall the Discretion of a Justice of Peace appear, than if he (remembering that he is *Lex loquens*) shall contain himself within Law, and shall not use his Discretion, but only where both the Law permitteth and the present Case requireth.

In all Cases therefore where the Statutes refer the Trial of Offenders (or Hearing and Determining of Offences) to the Discretion of the Justice or Justices of Peace, out of Sessions, it is very requisite, that the said Justices take due Examination (of the Offenders themselves, and also of credible Witnesses) as well concerning the Fact itself as the Circumstances thereof; and upon Confession, or other due Proof of the Offence, then to proceed according to Law and Justice.

But not to denounce or give Sentence before the Party be cited, and heard to answer for himself: For this Defence is allowed by God's Law. *Gen. 3. 9*. Adam, *Where art thou?* and *Gen. 4. 9*. *Where is thy Brother Abel?* And in the Case of the five Cities, *I will go down and see*. *Gen. 18. 21*.

Note, That in all Cases where the Statute referreth the Trial, &c. to the Discretion of the Justices, the said Statutes themselves seem also to enable the said Justices of Peace to take the Examination of Witnesses, and that upon Oath.

Note farther, That the Justices of Peace out of their Sessions, are now armed with far more ample Authority and Power than the ancient Conservators of the Peace were: For the Justices of the Peace have double Power given them; the one of Jurisdiction to convene the Offenders before them, (by their Warrant, and in divers Cases out of their Sessions) to examine, hear and determine the Cause; the other of Coercion (*sc. after the Cause heard*) to constrain them to the Obedience and Observance of their Order and Decree, (which notwithstanding must be according to the Rules of Law and Justice, as is aforesaid:) Whereas the ancient Conservators of the Peace had no Jurisdiction or Authority at all, either to convene the Offender before them, or to examine, hear or determine the Cause; but had only Coercion, or Punishment of an Offender in some few Cases, as you may see before, *chap. 1*.

And here I must farther put the Justices of Peace in Mind, that their Authority and Power is limited, to be exercised only within the County or Counties where they are in Commission; but they must not intermeddle in any City there, which is a County of itself, nor in any City or Corporate Town there, (though it be no County of itself, but within the County) which have their proper Justices of Peace within themselves by the King's Charter or Commission, especially if in such Charter there be any special Words of Prohibition, that the Justices of the Shire *non se intromittant*, &c. except such Justice shall also be in Commission in such City or Town Corporate.

But in other Corporate Towns which have not their proper Justices of Peace, as also in all Liberties and Franchises (within the County) which have the Return of the Writs, but have not their proper Justices, there the Justices of the Peace of the County ought to execute their Authority, and that by the Words of their Commission.

Again, if a Parish shall extend into two or more Counties, or if Part thereof shall lie within the Liberties of any City or Town Corporate (which have their proper Justices) and Part without; then as well the Justices of the Peace of every County, as also the Justices (or Officers) of such City or Town Corporate, shall intermeddle only within their own proper and distinct Limits and Bounds, (*sc. within so much of the said Parish, &c.* as lieth within their several Liberties and Limits) and not in other Jurisdictions: For it would be against Law and Reason, where Officers and Jurisdictions are several, that the one should intermeddle within the Jurisdictions of the other.

Neither shall any Justice of Peace deal in, or punish any Trespass, or other like Offence, committed in any other County against any penal Statute, though such Offender shall be brought before him, (see the Commission the first *Affig. & postea*, *Tit. Guns, Labourers*

Have no Authority out of their County, nor in Corporations.

Plo. 37.

Corporate Towns.

Lamb. 48. 19.

Crom. 8. &

181.

20 H. 7. 6. 7.

Crom. ib.

See *hic* Tit. Poor.

Co. 4. 46. *Ubi quis delinquit, ibi punietur*. See *hic* Tit. Homicide.

bourers and Partridges) except the Statutes shall especially enable them thereto, as the Statutes 1 Jac. & 7 Jac. which do enable the Justice of the County where the Offence shall be committed, or the Offender apprehended, (See Tit. Partridges) and the like; or that it be for Matters of the Peace, or in Case of Felony. (See Tit. Affrays and Felony.)

By the Statute of 2 H. 5. 4. Justices of Peace may send their Writs for fugitive Labourers to every Sheriff of England. 2 H. 5. 4.

Neither shall any Justice of Peace for the Time that he shall be out of the County (where he is in Commission) take any Recognizance, or any Examination, or otherwise to exercise his * Authority in any Matter that shall happen within the County, where he is in Commission; neither can he cause one to be brought before him out of the County where he is in Commission, into the other County; for being out of the County where he is in Commission he is but as a private Man. *Vide hic* Tit. Affray, Imprisonment, Robbery and Warrants, and Plo. 37. & 13 E. 4. 8.

In the Case of *Helier* against the Hundred of *Benburst*, it was resolved, That where a Person robbed in one County, and made Oath before a Justice of the Peace of the same County being in *London*, that he might well take the Oath where he was, although out of the County, for he acted therein not *virtute officii*, but as a Person designed to a particular End and Purpose, and the Plaintiff had his Judgment: But they held, that if he acted or did any Thing *virtute officii* out of his County it was void. Cro. Car. 211.

And yet a Sheriff being out of his County may make a Panel, or may make Return of any Writ. 9 H. 4. 1.

But now by Stat. 9 Geo. 1. c. 7. sect. 3. for the greater Ease of Justices of Peace for Counties, it is enacted, That if any Justice of Peace shall happen to dwell in any City, or other Precinct, that is a County of itself, situate within the County at large for which he shall be appointed Justice of Peace, although not within the same County, it shall be lawful for any such Justice to grant Warrants or Orders, at his own Dwelling-House, though out of the County where he is authorized to act as a Justice of Peace, and in some City or Precinct adjoining, that is a County of itself; and that all such Warrants or Orders, and the Acts of any Constable, Overseer of the Poor, Surveyor of the Highways, &c. in Obedience to such Warrant or Order, shall be good and effectual in Law. Provided, that nothing in this Act shall extend to give Power to the Justices of Peace, in Cities or Towns, which are Counties of themselves; nor to empower Justices of Peace, Sheriffs, Constables, or other Peace-Officers, to act in any Matters arising within such Cities or Towns, but that all such Actings shall be of the same Effect, and no other, as if this Act had never been made. 9 Geo. 1. c. 7.

Now my Purpose is to set down more particularly what Things the Justices of Peace may do in the Execution of their Commission, or of the Statutes wherewith they are charged. And herein you must observe, that some Things are permitted to be executed by any one, two, or more Justices; and some other Things are more especially appointed and appropriated (by some Statutes) to some one certain Justice of Peace, or two, or more Justices; either in regard that such Justice or Justices is or are next the Place, or are of the *Quorum*, or the like. Authority. One Justice.

And here Note, that whatsoever any one Justice of Peace alone may do (either for the Keeping of the Peace, or in other Execution of the Commission or Statutes) the same also may lawfully be done and performed by any two or more Justices.

But where the Law giveth Authority to two, there one alone cannot execute this: For *Una persona non potest supplere vicem duarum*; & *plus vident oculi quam oculus*. See Co. 5. 94. & Plo. 393. a. b. Co. L. 181. Two Justices. Co. 4. 46.

And yet where a Statute appointeth a Thing to be done by two Justices of Peace (or more) if the Offence be any Misdemeanor or Matter against the Peace, there, upon Complaint made (of the Offence) to any one of those Justices of Peace, it seemeth that one of those Justices may grant his Warrant to attach the Offender, and to bring him before the same Justice or any other Justice, to find Sureties for his Appearance at the next general Sessions, there to make Answer to such his Offence; or else he may bind the Offender to the Good Behaviour, and so to appear at the next Sessions, if the said Justice shall see any just Cause so to do. But one Justice of Peace alone may not hear and determine the same.

Also when Things by Statute are appropriated to one certain Justice or more, there such Justice or Justices are to pursue their Authority accordingly: And yet if such Justice or Justices shall therein join with any other Justice of the same County, it may seem no less lawful and warrantable; *tamen quare*, & *vide* Co. 11. 92. Where an Authority is given to four, Authority.

four, or to one of them; if two of them shall execute this, it seems they have not pursued their Authority. So if an Authority be given to three *conjunctim & divisim*, if two of them do it in the Absence of the Third, it is void, *Dyer* 62. for that the Authority is not pursued. *But* Co. L. 181. b. *taketh a Difference where the Thing is pro bono publico, and where pro privato; as if a Sheriff upon a Capias maketh his Warrant to three or four jointly or severally to arrest the Defendant, two of them may arrest him, for that it is for the Execution of Justice, which is pro bono publico, and therefore shall be more favourably expounded than when it is only for private.*

Sheriff.

Pl. 205.
See Co. 11. 59,
& 64.

Besides, there is a general Rule put in *Stradling's Case* (in *Pl.*) That when a Thing is appointed by any Statute to be done by or before one Person certain, that such Thing cannot be done by or before any other, but that it ought to be done as the Statute hath appointed; and by such express Designation of one, or Power given to one, all others are excluded.

Bastard Child.
18 El. 3.

And yet whereas by the 18 *Eliz.* the Order to be taken for a *Bastard Child* is appropriated to *two Justices of the Peace* (one being of the *Quorum*) in or next unto the Parish where such Child shall be born; if *two such Justices* cannot agree upon the reputed Father (or in making such Order as the Statute requireth, or in other Execution of that Statute) *Quere* what is to be done. I have known the Case lately moved to the Judges of Assize, who thought it fit, that such Difference between the two Justices of Peace should be referred to the Hearing of the whole Bench, and the Matter to be re-examined by them; and what Order should be therein set down by the Bench, the same to stand good. *Vide Tit. Bastard.*

But in such Things appropriate to *some one or more Justices of the Peace*, if without such Justice or Justices, all (or any of) the Residue of the Justices of that County shall intermeddle therein, such their Doing seems no ways warrantable, but their Proceeding to be *Coram non Judice*, and that there is no Necessity to obey therein, as being no lawful Judges of the Cause.

Accessaries. See Chap. 161.

C H A P. VII.

Alehouses. See *Innholders*, and Chap. 176. in *Conditions of Recognizances.*

Of the Authority of Justices of Peace touching Alehouses.

Inns and Alehouses, their Use.

THE true and principal Use of *Inns, Alehouses* and *Victualling-houses*, is twofold; *sc.* either for the *Relief and Lodging* of Wayfaring People travelling from Place to Place about their necessary Business, or for the necessary Supply of the Wants of such poor Persons as are not able by greater Quantities to make their Provision of Victuals: And is not meant for Entertainment and Harboursing of lewd or idle People, to spend or consume their Money or Time there, (as appeareth by the Preamble of the Statute made 1 *Jac.* 1. c. 9.)

But Abuses crept in, and Disorders multiplied, by the Increase of them, as was perceived so long since as 11 *H.* 7. c. 2. whereby Power was given to *two Justices of the Peace* to lessen their Number; yet the Mischief arising by their Increase, and Licentiousness growing every Day more considerable, a good and profitable Law was made 5 & 6 *E.* 6. c. 25. for the Redress of that general Inconvenience, without working that Reformation that was desired and intended.

And therefore to prevent the Mischiefs and great Disorders happening daily by the Abuses of such Houses, divers good and profitable Laws are made for the Redress thereof, as followeth:

Tavern.

Every Keeper of a Tavern (keeping also an Inn or Victualling in his House) and every *Alehouse-keeper, Inn-keeper, and Victualler*, which shall suffer any Townsman, or any Handicraftsman, or Labourer, working in the same City or Town, to remain and continue Drinking in their said House, (except such as shall be invited thither by a Traveller, and shall accompany him during his necessary Abode there; and except Handicraftsmen,

craftsmen, Labourers and Workmen, in Cities, Towns Corporate and Market-Towns upon the Working-day, for one Hour at Dinner-time to take their Diet there, or sojourning or lodging there; or except they be allowed by two Justices of Peace) the said Offence being seen by any Justice of Peace within his Limits, or being confessed by the Offender before the Justice of Peace, Mayor or Bailiff, or Head-Officer, or being proved before any Justice of Peace by one Witness upon Oath; every such Taverner, Alehouse-keeper, &c. shall forfeit for every such Offence 10 s. to the Use of the Poor.

And note, that the voluntary Confession (before the Justice of Peace, or other Person authorized to minister the Oath) of any Offender against either of the Statutes of 1 Jac. c. 9. or 4 Jac. c. 9. shall suffice to convince the Person so offending; and after such Confession, the Oath of the Party so confessing shall be taken, and be a sufficient Proof against any other offending at the same Time. 21 Jac. cap. 7.

And yet note, That wheresoever any Conviction shall be before the Justice of Peace, by or upon the Oath or Testimony of any other Person than the Delinquent himself, there the Justice of Peace must first send for or convene the Delinquent before him, to make answer, &c. and to hear and examine him of the Offence, &c. for it may be, that he can make sufficient Defence or Excuse of the Fact. And this was the Direction of Sir Nicholas Hyde, Lord Chief Justice of the King's Bench, and well agreeth with the Rule here before, *Chap. 2. Qui aliquid statuerit, parte inaudita altera, æquum licet statuerit, haud æquus est iudex.*

Every Person who shall continue Drinking in any Inn or Alehouse, &c. in the Town *Tiplers.* where he then dwelleth, (contrary to the former Statute made *primo Jac.*) the said Offence being seen by any Justice of Peace, or being proved before him, as aforesaid, such Person shall forfeit for every such Offence *three Shillings and four Pence.* 4 Jac. 1. c. 5. 21 Jac. 1. c. 7.

If any other Person (wheresoever his or their Habitation or Abiding be) shall be found (by View of any Justice of Peace, or by his own Confession, or Proof of one Witness) to be *Tipling* in any Inn, Alehouse, or Victualling-house, every such Person shall be adjudged to be within the said Statutes of 1 Jac. 1. c. 9. and 4 Jac. 1. c. 5. as if he inhabited and dwelt in the City, Town Corporate, or other Town or Village, where the said Inn, Alehouse, or Victualling-house is or shall be, where he shall be so found Tipling, and shall incur the like Penalty; and the same to be in such Sort levied and disposed as in the said Act is expressed concerning such as there inhabit. And the voluntary Confession of such an Offender shall suffice to convince himself; and, after his Oath, shall be a sufficient Proof against any other offending at that Time. 21 Jac. 1. cap. 7.

Now these Statutes prohibit, not only the continuing Drinking in those Inns and Alehouses, &c. for longer Time than for the necessary Abode; but also all Tipling there, *viz.* the vain Use of drinking Healths there, &c. For these Houses were not ordained, neither are they to be suffered, for any such Uses; but only for the necessary Relief of Travellers, and to supply the Wants of the Poor, as aforesaid.

Every Taverner (keeping also an Inn or Victualling in his House,) and every Inn-keeper, Alehouse-keeper, and other Victuallers, who shall suffer any Person (wheresoever his Dwelling or Abiding be) to tipple in the said House, contrary to the true Intent of any of the said former Statutes, shall be adjudged within the Statute 1 Jac. c. 9. 1 Car. 1. 4. 1 Jac. 1. 9.

So that now by these Statutes, no Person may tipple in any such Tavern, or in any Inn, Alehouse, or Victualling-house, in the same Town where he dwelleth, nor Dwelling within two Miles thereof, except he be a Traveller. And so Sir Francis Harvey Knight delivered it in his Charge at Cambridge Summer Assise, *An. 1629. But the Statute 21 Jac. & 1 Caroli, forbids all Tipling in such Houses, wheresoever they be dwelling or abiding, and by whomsoever it be.*

Any Justice of Peace in any County (and any Justice of Peace or other Head-Officer in any City or Town Corporate, within their Limits) shall have Power (upon his own View, Confession of the Party, or Proof of one Witness upon Oath) to convict any Person of Drunkenness, whereby such Persons so convicted shall incur the *Forfeiture of five Shillings* for every such Offence, to be paid within one Week next after such Conviction into the Hands of the Church-wardens of the Parish where the Offence shall be committed, &c. And if the Offender be not able to pay the said Sum of *five Shillings*, then he shall be committed to the Stocks for every such Offence, there to remain by the Space of *six Hours.* Drunkenness. 4 Jac. 1. 5. 21 Jac. 1. 7.

And for the *second Offence of Drunkenness*, every Person convicted thereof, as aforesaid, shall be bound with two Sureties in the Sum of ten Pounds, with Condition for the Good Beha- 2d Offence. 4 Jac. 1. 5. 21 Jac. 1. 7.

Behaviour, by any one Justice of Peace, or other Head-Officer aforesaid, by 21 Jac. c. 7. and for Want of such Sureties to be sent to the Gaol.

Every Constable, Church-warden, Headborough, Tithingman, Aleconner and Sidesman shall, in their several Oaths incident to their several Offices, be charged to present the Offences contrary to that Statute 4 Jac. 5. and so likewise to present Offences against 1 Jac. 9. and 4 Jac. 5. 21 Jac. 7.

No Person shall be impeached or molested for any Offence against that Statute, unless he shall be thereof presented, indicted, or convicted within *three Months* after the Offence, and shall be but once punished for each Offence. 4 Jac. 5.

Now, to know a drunken Man the better, the Scripture describeth them *to stagger and reel to and fro*. Job 12. 25. Isa. 24. 20. And so where the same Legs which carry a Man into the House cannot bring him out again, it is a sufficient Sign of Drunkenness.

1 Jac. 1. 9.
P. 6.

Every Justice of Peace (within his Limits) hath Authority to minister the said Oath to such Witnesses. 21 Jac. 1. cap. 7.

The Forfeitures.
Distress.

All and every the *Forfeitures* aforesaid shall be to the Use of the Poor of the Parish where such Offence shall be committed; and the said Forfeitures are to be levied by *Distress and Detainer of the Offender's Goods*, (and after six Days by Sale thereof, &c.) by the Constables or Church-wardens of the same Parish, upon a *Warrant* from any one or more Justices of Peace, under his or their Hand and Seal.

4 Jac. p. 5.
21 Jac. 1. 7.
1 Jac. 1. 9.

The said Forfeitures of the *Taverners, Alehouse-keepers, Inn-keepers* and *Victuallers*, being distrained for, as aforesaid, if within six Days next ensuing they shall not pay the said Forfeiture, then may the Constables or Church-wardens, by virtue of the said Warrant, appraise and sell the said Distress; but they must deliver the Surplusage to the Party of whom the Distress was taken. 1 Jac. 9. P. 7.

Commitment
for Want of
Distress.

For every Offence aforesaid, the *Alehouse-keeper, Inn-keeper*, and other *Victualler*, for Want of sufficient Distress to be taken for such Forfeitures, shall (by any one Justice of Peace) be committed to the common Gaol, there to remain until the said Penalty be paid.

1 Jac. 1. 9.
P. 7.

Stocks.

4 Jac. 1. c. 5.
§. 4.
1 Jac. 1. 9.
21 Jac. 1. 7.

Every Townsman, or other Person whatsoever, &c. that shall continue Drinking, or be found Tipling in any Inn, Alehouse, or other Victualling-house, contrary to the Statute, and he being convicted of it according to the Statute of 1 Jac. 9. (for Want of sufficient Distress, and not being able to pay the said Forfeiture of three Shillings four Pence) shall be set in the Stocks for every such Offence four Hours, (upon Warrant or Commandment from any one such Justice of Peace.)

Default or
Neglect of Of-
ficers.

1 Jac. 1. 9.

If the Constable and Church-wardens shall neglect to levy, or shall not levy the said several Forfeitures of *Alehouse-keepers, &c.* suffering Tipling in their Houses, or for their Measure of Ale or Beer; or in Default of Distress shall neglect by twenty Days to certify the same Defaults of Distress to the Justice of Peace; then every such Constable and Church-warden shall forfeit for every such Default 40 s. to the Use of the Poor, to be levied by Distress (of the Offender's Goods) by like Warrant to any other indifferent Person, from any one (or more) Justices of Peace, &c. under their Hand and Seal: The said Distress to be taken and detained for the said Forfeiture for the Space of six Days; within which Time, if Payment be not made, then the same Goods to be presently appraised and sold, and the Surplusage to be delivered to the Party, &c. And for Want of sufficient Distress, such Constables and Church-wardens to be (by any such Justice of Peace, &c.) committed to the common Gaol, there to remain until they have paid the same Forfeiture. And,

Also if any Constable, or other inferior Officers of the Parish, shall neglect to execute the Justices Warrant for the due Correction of, or for the Levying of the Penalties of Offenders in Drunkenness; such Constable, &c. shall forfeit 10 s. to the Use of the Poor, &c. to be levied as aforesaid. 4 Jac. 5.

Refusing to
lodge.

Br. Acc.
Sur. 92. & 76.
5 E. 4. 3.

If a *common Innholder* or *Alehouse-keeper* will not lodge a Traveller, any Constable (or Justice of Peace) may compel him thereto; but how the Officer shall compel him *Quære*: It seemeth that all the Officer can do, is, either to cause such Alehouse-keeper to be suppressed; or else to present such Offence at the Assises or Sessions of the Peace, that so such Offender may be thereupon indicted. See the Commission.

And at a Lent Assises, *Anno Domini* 1622. Sir *James Ley* (Knight and Baronet, Lord Chief Justice of the King's Bench) delivered it in his Charge, that an *Inn-keeper, or Alehouse-keeper, offending herein, might be indicted, fined and imprisoned* for the same; or else, that the Party grieved might have his Action *jur le Casè* against the Inn-keeper or Alehouse-keeper refusing to lodge him. *Vide Cro.* 50. and 4 H. 7. 22.

But

But no *Innholder*, *Alehouse-keeper*, or other *Viſtualler*, ſhall be compelled to ſell, or let any Traveller or other have any Viſtuals or Lodging, except the Party ſhall firſt tender and pay ready Money for the ſame, if it be required. 10 H. 7. 8. 5 E. 4. 3. Co. 9. 87. b.

Any two Juſtices of the Peace (the one being of the *Quorum*) may allow the Keeping of any common *Alehouſe*, or *Tipling-houſe*, and ſhall (from Time to Time) take Bond with Surety by Recognizance of ſuch Alehouſe-keepers, as well againſt the Uſing of unlawful Games, as alſo for the Keeping of good Rule and Order in their Houſes, according to the Diſcretions of the ſame Juſtices. *Two Juſtices. Liſenſe. 5 Ed. 6. 25. P. 2.*

And yet note, that the Words of the Statute do not warrant the Juſtices of Peace to allow Alehouſe-keepers at their Pleaſure; but the Words are thus: None ſhall be admitted to keep a common Alehouſe, &c. but ſuch as ſhall be allowed in open Seſſions, or by two Juſtices, the one of the *Quorum*, &c. And therefore if two ſuch Juſtices out of the Seſſions ſhall allow more than are needful, or ſuch as are diſabled, or ſuch as have been ſuppreſſed; the Juſtices may be puniſhed, the rather for that the Number of unneceſſary Alehouſes are Cauſes of much Diſorder, poor labouring Men and Servants reſorting thither, and there miſpending both their Money and Time.

There ſhall be paid for ſuch Recognizance but 12 d. and the ſaid Juſtices ſhall certify the ſame Recognizance at the next Quarter-Seſſions (upon Pain of five Marks.) *Recognizance. Ibidem.*

Any two Juſtices of Peace (the one being of the *Quorum*) may remove, diſcharge, and put down any *Alehouſe* where they ſhall think meet. *Put down Alehouſes. 5 E. 6. 25. 5 & 6 E. 6. 25.*

The Juſtices of Peace in their Seſſions by Preſentment, Information or otherwiſe at their Diſcretion, may inquire of Perſons as be allowed to keep Alehouſes, and that be bound by Recognizances, if they have done any Acts whereby they have forfeited their Recognizance, and upon ſuch Preſentment or Information ſhall award Proceſs to ſhew Cauſe why they ſhould not forfeit the ſame, and ſhall hear and determine the ſame in ſuch Manner as by their Diſcretion ſhall be thought fit.

The Alehouſe-keeper put down and diſcharged by any two ſuch Juſtices of Peace cannot be allowed again by any other Two or more Juſtices of Peace, except it be in open Seſſions, as Sir Peter Warburton delivered in his Charge at Cambridge Aſſiſes, *Anno Domini 1613.*

Any two Juſtices of the Peace (the one being of the *Quorum*) may commit to Priſon in the common Gaol (for three Days without Bail) thoſe that keep common Alehouſes, or that uſe common Selling of Ale or Beer, obſtinately of their own Authority, without Allowance by two ſuch Juſtices, or contrary to the Commandment of two ſuch Juſtices. And the ſaid two ſuch Juſtices (before the Delivery of ſuch Offenders) ſhall take Recognizance of them with two Sureties, that he or they ſhall keep no more a common Alehouſe, or uſe commonly Selling of Ale or Beer, according to the Diſcretion of the ſame Juſtices; and ſhall certify ſuch Recognizance, Diſcharge and Offence, at their next Quarter-Seſſions: Which Certificate ſhall be a ſufficient Conviction in Law of the ſame Offence, without any farther Trial thereof to be had: *Selling Ale without a Liſenſe. 5 E. 6. c. 25.* And for ſuch Offence the Fine of 20 s. ſhall be aſſeſſed in open Seſſions. In Places where Fairs are kept, any Perſon may uſe common Selling of Beer as hath been uſed. 5 & 6 E. 6. 25. 3 Car. 1. c. 4.

But for that this former Law made 5 Ed. 6. hath not wrought ſuch Reformation as was intended, it is farther enacted by another Statute made 3 Car. 1. cap. 4. That if any Perſon ſhall upon his own Authority (not being thereunto lawfully licenſed) take upon him, or her, to keep a common *Alehouſe*, or *Tipling-houſe*, or ſhall commonly uſe Selling of Ale, Beer, Cyder, or Perry, that every ſuch Perſon for every ſuch Offence ſhall forfeit twenty Shillings, to the Uſe of the Poor of the Pariſh where ſuch Offence ſhall be committed; the ſame Offence being viewed by any Juſtice of Peace, Mayor, or other Head-Officer of any City or Town Corporate, within their Limits, or confeſſed by the Offender, or proved by the Oath of two Witneſſes. *3 Car. 1. c. 4. One Juſtice.*

Every ſuch Juſtice of Peace (or other Head-Officer aforeſaid) hath Power to miniſter an Oath to ſuch Witneſſes. *3 Car. 1.*

Alſo every ſuch Juſtice (and other Head-Officer aforeſaid) within their ſeveral Limits, may make their Warrant to the Conſtables or Church-wardens of the Pariſh where the ſaid Offence ſhall be committed, to levy the ſame twenty Shillings by Diſtreſs of the Offender's Goods; and for Default of Satisfaction, within three Days next enſuing, the ſaid Diſtreſs to be appraiſed and ſold, and the Overplus to be delivered to the Offender: And this to be only for the firſt Offence. *Ibidem.*

1. *Offence.* If such Offender shall not have sufficient Goods whereby to levy the said *twenty Shillings by Distress*, or shall not pay the said *twenty Shillings* within six Days after such Conviction, then the said Justice (and other Head-Officer aforesaid) shall commit the said Offender to the Constable where the Offence shall be committed, or the Party apprehended, to be openly whipped.
- 3 Car. 1. c. 4. §. 2.
- Whipped.*
- Ib. §. 3. If the Constable, &c. shall neglect to execute the said Warrant, or do refuse, or do not execute upon the Offender the said Punishment of Whipping, the said Justice (or Officer) may commit the Constable, &c. to the common Gaol without Bail, until the said Offender shall be by him punished, as aforesaid, or until the said Constable, &c. shall pay forty Shillings to the Use of the Poor of the Parish.
2. *Offence.* The unlicensed Alehouse-keeper, for such his second Offence, shall be committed to the House of Correction for one Month.
- Ib. §. 4.
3. *Offence.* And for every such Offence after, he shall be committed to the House of Correction, there to remain until he be delivered by Order from the General Sessions.
- Ib.
- Provided that such Offender shall not be punished twice for the same Offence, *sc.* shall not be punished both by the Statute made *An. 5 E. 6.* and by the Statute of *3 Caroli.*
- Feme Covert.* If a *Feme Covert*, against the Will of her Husband, shall keep an Alehouse, or shall use common Selling of Ale or Beer without License, &c. the Husband is punishable therefore, and it seemeth the Wife also (by the Discretion of the Justices of Peace) may be imprisoned for such her personal and wilful Offence, until she shall find Sureties for her good Behaviour, and that she shall no more Use the same.
- 5 E. 6. c. 25. P. 1. 4. Also it seemeth (by the Letter of the Statute) that the Alehouse-keeper put down or discharged by two such Justices, if (contrary to their Command) he shall use common Selling of Beer or Ale again, though allowed by two other Justices of Peace out of the general Sessions, yet the two Justices that first discharged him may put him down again, and may commit him to the Gaol, for selling contrary to their Command.
- 5 E. 6. c. 25: §. 5. And yet the Statutes allow common Victualling, and Selling of Ale or Beer in Fairs, though unlicensed, &c.
- 3 C. 1. c. 4. §. 6. *Brewers.* *Brewers uttering or delivering any Beer or Ale to any unlicensed Alehouse-keeper, shall forfeit for every Barrel 6 s. 8 d.* 4 Jac. 1. c. 4.
- Not licensed.* If any Alehouse-keeper which is *not licensed*, shall suffer Townsmen or any other Persons to tipple in his House, or shall break the Assise, &c. he is punishable for the same by the Statute made *primo Jac. c. 9.* and besides he may also be committed to Prison for three Days by Force of the Statute *5 Ed. 6. c. 25.* or *3 Car. 1. 3.* for selling Beer, &c. without License. Also if any Townsman, or other Person, shall be found to be Tipling in any unlicensed Alehouse, such Persons are also punishable by the same Statute, made *primo Jacobi, cap. 9.*
- 1 Jac. 1. c. 9. Any two Justices of Peace may give Allowance to Labourers, &c. for urgent and necessary Occasions to remain in an Inn, Alehouse, or Victualling-house.
- Inn-keepers that suffer Tipling.* *Common Inns* are appointed for Travellers and Wayfaring Men, and therefore if any Inn-keeper shall suffer Persons inhabiting in the same Town, or any other Persons (contrary to the Statutes) to be usually Tipling in his House, such an Inn-keeper may be accounted as well an Alehouse-keeper as an Inn-keeper; and such Inn-keepers may be bound by Recognizance with Sureties for Keeping of good Order, and observing Assise, as Alehouse-keepers are: And so Judge *Warburton* delivered it in his Charge at *Cambridge Assises, An. Dom. 1613.* And therewith also agreed Sir *James Ley* and Sir *John Dodderidge*, in their several Charges at *Cambridge Assises, An. Dom. 1621.* for that such Inn-keepers (said they) do pervert the End for which they were first appointed. Or else it seemeth they may be punished, or committed, as Alehouse-keepers without License, (by two Justices of Peace, as aforesaid:) Or they may be indicted thereof at the Assises or Sessions of Peace, as it seemeth by the Commission of the Peace.
- Jo. Brakey de, &c. Innholder, &c. convicted for letting his Beer to farm to his Tapster for fourteen Shillings the Barrel, he paying but eight Shillings to the Brewer.* Ord. 2. Sept. 9. Jac. Sess. Pac. Mid.
- It was the Opinion of the Court in the Case of one T. Jennings, That the Keeping of an Inn gave no Warrant to sell Beer without other License.* Ord. 6 Jan. 1 Car. lib. Sess. Pa. Mid.
- 11om. 77. Also it both been agreed for Law, That such Inns as have been erected since the Statute of *5 Ed. 6. cap. 25.* and were not Inns before, ought to have License; and that such Inn-keepers are to be bound by Recognizance, with Sureties, for keeping of good Orders, as Alehouse-keepers are.

And yet at *Lent Assises, Anno Dom. 1621.* Sir *James Ley* delivered his Charge, That Inns were Hosteries by the Common Law, and that every Man might erect and keep an Inn or an Hostery, so as they were *probi homines*, Men of good Conversation, Fame and Report, dwelling in meet Places: But yet that they were not worthy of any Allowance or Licence under the King's Great Seal, &c.

And he delivered farther in his said Charge, That if such Inns or Hosteries be used *ad nocumentum populi Dom. Regis, &c. sc.* do keep any disorderly House contrary to the Law, or be more in Number than are needful, and to the Hindrance of other ancient and well governed Inns; that then they may be thereof indicted at the Assises, or Sessions of the Peace, and there may be either fined or suppressed. And Sir *James Ley* told me after at his Lodging in *Trinity College*, That this was the Opinion of all the other Judges, upon a late Conference had among themselves.

But such Inns or Hosteries, if they shall be inconvenient or disordered, in respect either of the Inn-keeper, or of the Resort thither, or that the Place be unmeet, they are to be suppressed, upon an Indictment found at the Assises or Sessions.

And if they shall suffer Townsmen or other Persons (usually) to tittle there, they are to be punished as Alehouse-keepers without Licence: For these Inns or Hosteries are to be allowed only for Travellers. An. 1616.

His Majesty, in his Speech in the Star-Chamber, hath justly excepted against the Abundance of Alehouses, and more specially against the infamous and blind Alehouses, as being Haunts for Robbers, Thieves, Rogues, Vagabonds, and other idle, loose and sturdy Fellows, who loiter and enquire in these Places where they may have a Booty, or do a Mischief to the neighbouring Inhabitants: And therefore here I thought good to put the Justice of Peace in Mind, that in allowing of Alehouses they have Regard as well to the Person as the Place; for all Persons, especially infamous or defamed, are not fit to be allowed for Alehouse-keepers, neither are all Places meet for an Alehouse. *What Persons are fit to be allowed.*

And therefore Alehouses to be allowed are meetest to be about the Midst of the Town; but not to be in any Blind or By-Corners (much less in Woods or Places remote from Towns) where Thieves and Rogues may be harboured: Nor in Places out of or distant from the Town; except upon the River-side and where there is great Need, and the Persons well known. *Places fit for Alehouses.*
7 E. 6. 5. Resol. 34.

The Keeping of Taverns, Alehouses or Tipling-houses, by Bailiffs, Serjeants or other Minister, is found generally mischievous, for when they Arrest any Person, upon Pretence of Favour they carry them to their own Houses, and there lodge and entertain them so long Time as their Money lasts, and then and not before carry them to Prison; whereby both the Party arresting is many Times defrauded of his Debt, and the Person arrested under Colour of Liberty cheated of his Money, and at last left to perish in a Gaol, and therefore have I known many of these suppressed in the King's Bench; and, as I remember, a Rule of Court was made that none such should be licensed, which is a worthy Example for other Justices of Peace to observe, to prevent which Inconveniencies an Act of Parliament was made 22 & 23 Car. 2. whereby is provided, if any Under-Sheriff, Bailiff, Serjeant, or other Officers shall by Virtue or Colour of any Writ, Process or Warrant, have any Person in Custody, such Officer shall not carry, or convey or cause, &c. the said Persons to any Tavern, Alehouse, or Victualling, or Drinking-house, without his voluntary Consent, so as to charge him with any Sum or Sums of Money for any Thing there, but what he shall call for, nor take any Reward for Keeping such Person out of Gaol than the Party will freely give, nor take any more for each Night's Lodging or Expences than is reasonable, or shall be adjudged by the next Justice of Peace, or at the Quarter-Sessions, to pay for any Thing else than what the Party calls for. *Bailiffs.*
22 & 23 C. 2.

As if the Party be in a Livery, or a Retainer to any Man, Bailiff of a Hundred or Liberty, Constable, &c. or be one that is not of good Fame, Conversation or Government; such Persons are not fit to be allowed to be Alehouse-keepers. See *Fitz. N. B.* 172. That no Victualler ought to sell Victual so long as he is in Office, &c. Statute 12 E. 2. cap. 6. *The Persons.*

Again *dicitur*, that no Person, using any Trade, ought to be allowed to keep an Alehouse, for that were to take away the Means, and so the Life of another: *Tamen quere inde*, for that by the Common Law no Man is prohibited to use divers Trades. *Vide hic Tit. Labourers.*

T. Byworth suppressed from keeping an Alehouse, for that it appeared to the Court that he is a Steel-forging, which is a good Trade, sufficient for him to live by. Ord. Sess. Pac. Mid. 26 Jul. 8 Car. which see to resolve the Quere aforesaid.

Also there are some Persons that by Law are disabled to keep an Alehouse (at least for a certain Time;) as,

7 Jac. 10.
21 Jac. 7.

1. The Alehouse-keeper convicted for any Offence against 1 Jac. 9. and 4 Jac. 5. or being convicted (according to the Statute *vicefimo primo Jac. 7.*) for suffering Townsmen, &c. (or any other Person) to continue Drinking in his House, contrary to the said Statute, (which see here before) such Alehouse-keeper is disabled to keep an Alehouse for three Years after such Conviction. 21 Jac. *cap. 7.*

4 Jac. 5.
7 Jac. 10.
21 Jac. 7.

2. The Alehouse-keeper that shall continue Drinking in another Alehouse or Inn in the same Town where he dwelleth, (the said Offence being seen by any Justice of Peace within his Limits, or being proved before him by two Witnesses upon Oath) every such Alehouse-keeper also is disabled for three Years after such Conviction to keep any Alehouse, as it seemeth upon comparing those Statutes of 4, 7 & 21 Jac.

3. So the Alehouse-keeper that shall be drunken, and thereof lawfully be convicted, (by Indictment at the Assises, Sessions of Peace, or in a Lect, or otherwise before the Justice of Peace) is disabled for three Years to keep an Alehouse.

4 Jac. 5.
7 Jac. 10.
21 Jac. 7.

4. An Alehouse-keeper convicted and suppressed for any of the former Offences, if he shall be licensed or allowed again by two or more Justices of Peace within three Years, such Licence is void, and he is to be punished as one Victualling without Licence. And so it was delivered by Sir *Nic. Hide*, at *Cambridge Assises*, *An. 3 Caroli Regis*. And so it seemeth, if he were convicted, though he were not suppressed, if he be after licensed again within three Years after such Conviction, such Licence is void, &c.

5. The Alehouse-keeper that is discharged or put down by any two Justices of Peace, the one being of the *Quorum*, &c. is also disabled, so as he cannot be allowed again, except in open Sessions. See *hic antea*.

Also in Towns which are no Thorough-fare, the Justices shall do well to be sparing in allowing any Alehouse, except it be at the Suit of the chief Inhabitants there, and to supply the necessary Wants of their Poor.

11 & 12 W. 3.
c. 15.

* Or in the
City of Lon-
don.
Pots not mark-
ed.

By the Statute 11 & 12 *Will. 3.* 'tis enacted, That Ale and Beer shall be sold by the Ale-quart or Pint, according to the Standard in the * *Exchequer*, and in a Vessel stamped or marked with *W. R.* and a Crown; and if sold in a Vessel not stamped as aforesaid, or if an Inn-keeper or Alehouse-keeper refuses in bringing in the Reckoning to give the particular Number of Quarts and Pints, he shall not detain any Goods of the Guests if they refuse to pay the Reckoning, but may bring his Action at Law.

Besides, selling Beer or Ale in *Pots* not marked, according to the said Standard, forfeits not above 40 s. nor under 10 s. to be levied by Distress and Sale of the Goods of the Offender; one Moiety to the Use of the Poor where the Offence was committed, and the other to the Prosecutor; the Conviction is to be by the Oath of one Witness, before one or more Justices; and the Prosecution must be within thirty Days after the Offence.

And if any Action should be brought for putting the aforesaid Statute in Execution, it shall be laid in the proper County where the Fact was done, and *not elsewhere*; and if the Plaintiff shall be cast, the Defendant shall have *treble Costs*.

The *Collectors of the Excise* must provide a *full Ale-Quart and Pint* in every Market-Town within their respective Divisions, or they forfeit 5 l.

The Chief Officer of every Town shall cause the *Pots* to be marked as aforesaid, for which he may take one Farthing for every Vessel; and if he neglect or refuse to mark the Vessel, he forfeits 5 l. and treble Damages shall be had by the Party grieved and full Costs.

Before this Statute was made a Man was indicted for Selling Ale in black *Pots unsealed*, and the Indictment concluded *contra pacem*, without saying *contra formam Statuti*, for there was a former Statute which directed the Sealing of Measures; and upon a Motion to quash the Indictment, because it did not conclude *contra formam Statuti*, it was adjudged that this Indictment was good at *Common Law*, because Measures were by that Law, and the Statutes only direct the Manner of ascertaining them. *Sid. 409. The King versus Burgoine.*

1 Vent. 13.
S. C.

Brandy.
12 & 13 W. 3.

By the Statute 12 & 13 *Will. 3.* 'tis prohibited to sell *Brandy* or other distilled Liquors by Retail, to be drunk in Houses without a *Licence* in the same Manner as common Alehouse-keepers are licensed, and the Offender is made subject to the same Penalties and Forfeitures as those are who sell Ale or Beer without Licence.

Licences.
6 G. 1. c. 22.
sect. 54.

And by the Statute 6 *Geo. 1.* 'tis enacted, that all Mayors, Town-Clerks, and other Persons whom it may concern, shall make or cause to be made out *Ale Licences* duly stamped

stamped before new *Recognizances* are taken, and this under the Penalty of 10 *l.* for every Offence.

Now as to Selling Ale without a *License*, it hath been a Question, Whether an Indictment will lie for that Offence? Those who argue for the Affirmative tell us, That where a Thing is prohibited by any Statute which is of a general Concern; and the Method of Recovering the Penalty is in *affirmative Words*, in such Case the general Method of Proceeding by Indictment is not taken away, for that must be by *negative Words*.

That in 1 *Saund. Rep.* 248. there is a Precedent of an Indictment for selling Ale without a *License*, which is very true, but it was never objected in that Case, that the Indictment would not lie for that Offence, for it was quashed, because it concluded *in contemptum Domini Regis nunc legumq; suarum ac contra pacem, &c.* whereas it was no Offence at Common Law to keep an Alehouse without a License, for it was made so by a * particular Statute, and therefore it should have concluded *contra formam Statuti, &c.* Sid. 409. S. C.

This Question was some Years afterwards formally debated in the Case of the *King and Queen* against *Mariott*, where it was held, that selling Ale without a *License* is an Offence created by a *Statute*; and since a particular Method of Prosecution is appointed by the Statute itself, (*by which the Justices of Peace have Power in their Sessions to inquire thereof, either by Presentment or Information, &c.*) that Method must be followed and no other; but an Indictment is another Method of Prosecuting, not so much as mentioned in the Statute, and therefore it would not lie; and two Judges declared, that they never yet heard of an *Indictment* against any Person for Keeping an Alehouse without *License*, which seems very strange, for certainly they must have heard of *Falkner's Case*, reported by the Chief Justice *Saunders*, as aforesaid; however they were of Opinion, that the Indictment would not lie, and the rather because by the Statute the Offender might be convicted by the View of the Chief Officer within his Limits, or by his own Confession, or by the Oath of two Witnesses; and then the Penalty is to be levied by Distress. * 5 & 6 Ed. 6.

However in the principal Case, the Chief Justice *Holt* being of Opinion, that the * Indictment being a summary Way of Proceeding, was more beneficial for the Subject, and therefore that Method ought to be pursued: Nothing was done upon this first Motion, but only to stay the Proceedings on the Indictment; but it being afterwards moved again, the Indictment was quashed for the Reason beforementioned. 4 Mod. 144. Show. Rep. 393. S. C.

The Defendant was convicted upon the Statute 3 *Car.* for selling Ale, *sine aliqua licentia & contra formam Statuti*; and upon a Motion to quash this Conviction it was objected, that the Selling without License is punishable by former Statutes, particularly by the Statue 5 & 6 *Ed. 6.* by which 'tis enacted, That none should keep Alehouses without License granted either in Sessions, or by two Justices; and it doth not appear but that the Defendant might be licensed by two Justices according to that Statute. *Sed per Curiam*, it being alledged, That he sold *sine aliqua licentia quacunq;* that is sufficient. *Trin. 9 Geo. 1.*

The Defendant was found Guilty upon an Indictment for selling Ale without paying the Excise, but upon a Motion in Arrest of Judgment it was quashed, because it did not set forth to whom, or at what Time it was to be paid, nor what Quantity of Ale he sold, so that a Conviction upon such an incertain Indictment cannot be pleaded to any other for the same Offence; besides in Criminal Cases the utmost Certainty is required, therefore the Quantity of the Offence ought to be set forth in this Indictment. *Mich. 1722. B. R. The King versus Gibbs.*

By the Statute 12 *Geo. 1. sect. 1.* as to selling Ale and Beer within the Bills of Mortality only, 'tis enacted, That after 24 *June* 1726. not less than one Pound, nor more than six Pounds, shall be paid yearly by every Victualler and Retailer of Beer and Ale, within the Bills of Mortality.

That Commissioners shall be appointed by the King or the Treasury, to manage the said Duty, who may substitute such Officers as they shall think necessary, which Commissioners, or the major Part of them, shall grant Permissions for retailing Beer and Ale.

That no Victualler, &c. within the Bills of Mortality shall sell Beer or Ale without a Permission first obtained, under the Hands and Seals of such Commissioners, or the major Part of them; and in order to obtain such Permission, the Victuallers, &c. shall every Year, within twenty Days after the 24th of *June*, or some Person for them, make Application to the Commissioners, &c. and then compound with them for a Sum of Money, to be paid for one Year; one Moiety of which Composition-Money shall be paid down at the Signing of the Permission, and the other Moiety at the End of six Months next ensuing

ensuing, which Permissions at the Expiration of one Year, shall be sent to the Commissioners to be cancell'd, and new Compositions made, and the like Permissions granted for the next Year.

Proviso, That an Inn-keeper, Victualler, &c. leaving off retailing Ale and Beer, and discharging all Composition-Money, and giving Notice thereof at the Office, &c. such Permission and Composition shall cease.

The Commissioners, &c. shall make Compositions, according to the best Intelligence they can get of the Trade of the Compounder, and shall demand no more than two Shillings and six Pence for each Permission, which shall be yearly accounted for and paid with the other Money, to be rais'd by Compositions.

That no Victualler, &c. shall send Beer or Ale out of their Houses to drink, in any Pot, Cup or Vessel, less than a Gallon, in Ale Measure; but Beer or Ale may be drunk at the Door of the House, or in any Out-house, Shed or Arbour, Garden or Yard, belonging to the House, in less Measures.

Victualler, &c. neglecting or refusing to take out a Permission, or to pay the Composition-Money as it shall become due, shall for every Neglect, &c. forfeit 20*l.* to be levied by the Laws of Excise.

That the Commissioners shall have the same Power as the Commissioners of Excise.

Proviso, this Statute shall not alter or diminish any Power of the Justices of the Peace, in licensing and regulating Victuallers.

Any Person sued for putting this Act in Execution may plead the General Issue, and give the Statute and the Special Matter in Evidence; and if the Plaintiff be Nonsuit, or the Defendant obtain Judgment on a Demurrer, or a Verdict, he shall have treble Costs.

2 Geo. 2. c. 28.
§. 11.

By Stat. 2 Geo. 2. c. 28. sect. 11. No Licence shall be granted to keep a common Inn or Alehouse, or to retail Brandy, but at a general Meeting of the Justices acting in the Division where the Person dwells; and all Licenses granted to the contrary shall be void.

Ib. §. 10.

And by the same Statute, Sect. 10. Retailers of Brandy, &c. shall be licensed in the same Manner as Alehouse-keepers, and Justices of Peace shall have the same Jurisdiction

Ib. §. 12.

over such Retailers as over Alehouse-keepers. But by the same Statute, Sect. 12. Nothing herein shall alter the Method of granting Licenses of keeping common Inns, Alehouses, or Brandy-shops, in any City or Town Corporate.

C H A P. VIII.

Affray.

What and
whence.

AFFRAY is in our Law a Skirmish or Fighting between two or more; and is derived of the French Word *Effrayer*, which signifieth to terrify, and which the Law understandeth to be a common Wrong. And therefore I will shew you what every Man may do in such Cases.

Every private
Man.

Every *private Man* being present *before, or in and during the Time of any Affray*, ought to stay the Affrayors, and to part them, but may not hurt them if they resist him; neither may he imprison them, because he is but a private Man.

An Affray being in the Street, if any other shall come with Arms or Weapon to join with either Party, every Person present, or that seeth it, may stay them till the Affray be over.

Also *every private Man* (being present) may stay the Affrayors until their Heat be over, and then may deliver them to the Constables to imprison them till they find Surety for the Peace: But yet the Constable may not imprison the Parties, except the Affray was in his Presence. *Hic, cap. 1.*

Lamb. 134.

If any Person be dangerously hurt in an Affray, every Person may arrest the Offender, and carry him to the Gaol or to a Justice of Peace, (who is either to bail him until the next Gaol-Delivery, or to commit him until it be known whether the Party hurt will live or die.) *Br. Faux Imprif. 35, 44.*

The Constable.

3 H. 7. c. 1.

Br. Coron.

225.

10 H. 7. 20.

The Constable in such Cases is armed with a more large Authority within his Jurisdiction; for he may and ought in the King's Name to command the Affrayors, or such as are about to make an Affray, to depart (upon Pain of Imprisonment:) And if the Constable (being present at an Affray) doth not his best Endeavour to part them, it being presented

presented by Enquest at the Sessions of the Peace, such Constable shall be fined for it. *See more chap. 1.*

But where the Affray is made out of the *Presence or Sight* of the Constable, and one telleth him of it, and wisheth him to go and see the Peace kept, and the Constable doth nothing, but neglecteth his Duty therein, he shall be fined by the Justices at their Sessions, upon Presentment thereof by the great Enquest. *Cro. 146. Quære tamen & vide hic, cap. 1. & 5. the Commission, & 121 the Form of the Constables Oath.*

If the Affrayors will not depart, but shall draw Weapon, or give any Blow, the Constable may command Assistance of others for the pacifying the Affray, and may justify the Hurting of them, if they make Resistance.

The Constable may in the King's Name make Proclamation (if the Affray be great or dangerous) that the Affrayors shall keep the King's Peace and depart, *&c.*

Also if the Affray be great and dangerous, then the Constables may command the Affrayors to Prison for a small Time, till their Heat be over; yea, they may imprison the Affrayors till they find Sureties for the Peace. And if any of the Parties have received any dangerous Hurt in the Affray, the Constable ought to arrest and carry the Offenders to the Gaol, (or to a Justice of Peace) that they may find Sureties to appear at the next Gaol-Delivery; and the Constable may justify the Beating, *&c.* of such an Offender, if he will not obey the Arrest, but make Resistance, or flieth.

Note, that it is no Affray unless there be some Weapons drawn, or some Stroke given, or offered to be given, or other Attempt to such Purpose; for if Men shall contend only in *hot Words*, this is no Affray: Neither may the Constable for *Words only* lay Hands upon them, unless they shall threaten to kill, beat, or hurt one another, and then he may arrest such Person, to go before some Justice of Peace, to find Sureties for the Keeping the Peace; and yet such Threatning is no Affray. But yet a Challenge by Word or Message to fight was held an Affray, and *Anno 16 Car. 2.* one *Collins* was fined 100*l.* and committed for a Month without Bail, being convicted on an Indictment for carrying a Challenge, knowing the Contents thereof. *Sid. 186.*

If the Affray be in an House, and the Doors shut, the Constable may *break into the House*, to see the Peace kept, though none of the Parties have taken any Hurt.

If the Affrayors flie into *another Man's House*, the Constable (*in fresh Suit*) may break into the House, and apprehend the Affrayors. *7 E. 3. 19.*

If the Affrayors fly into another County, the Constable (or Justice of Peace) seeing this, may in *fresh Suit pursue*, or cause them to be pursued, and to be taken there; but they can meddle no farther but (as every *private Person* may do) to carry them before some Justice of Peace of the County where they are taken, to cause them to find Surety for the Peace.

But if the Affrayors fly into a *Franchife* within the same County, the Constable (or Justice of Peace) seeing this, may in *fresh Suit pursue* and take them out of such *Franchife*.

After the Affray the Constable, without a Warrant, cannot arrest the Affrayors, except some Person be in Peril of Death by some Hurt there received.

Every *Justice of Peace* may do that which every Constable or private Man may do by the Common Law herein.

Besides every Justice of Peace (within his Limits) may presently after the Affray commit the Offenders, until they have found Surety for the Peace, if the Affray were in his *Presence*. And if not in his Presence, yet upon Complaint, or upon his *own Discretion* he may after make his Warrant to take or commit such Offenders, until they have found Surety for the Peace. *Vide Tit. Peace and Surety for the Peace.*

If an Affray be made in the Presence of a Justice of Peace, he may lay Hands upon and arrest the Offenders to find Sureties for the Peace, and may take away their Weapons.

And yet by the same Opinions, the Justices of Peace in Cases of an Affray, hath no farther Authority than every private Man hath: For though the Justices of Peace (sitting in their Sessions, or out of their Sessions) may command a Man to be attached, who shall make an Affray in their Presence, and may make a Record, and certify the same, which shall be a Conviction of the Offender; and the Justice of Peace may presently upon the Fact command or send such Offenders to the Gaol; yet the Justices cannot themselves attach or arrest any Man for an Affray, or other Thing done in their Presence, (no more than a Stranger or private Person may do;) but after the Affray they may make or grant out their Warrant to attach or arrest the Offenders, and may then commit them to the Gaol, except they shall find Sureties for the Peace.

Every Justice of Peace (in his *own Discretion*, and *ex Officio*) may bind all such to the Peace as *in his Presence* shall strike another, or shall threaten to hurt another, or shall contend only in *hot Words*. *Vide Tit. Sureties for the Peace.*

*Dangerous
Hurt.*

P. Just. 173.
10 H. 7. 20.
Cromp. 154.

If any Person be dangerously hurt in any Affray (or otherwise,) every Justice of Peace, within *the Year and Day* after such Hurt, may commit to the Gaol such Offender, there to remain until the *Day and Year* be expired, or that the said Offenders shall find Sureties to appear at the next General Gaol-Delivery, to answer to the Felony, if the Party hurt happen to die within a Year after the Hurt. *Vide Stat. 3 H. 7. c. 1. And by God's Law, Exodus 21. 18, 19. If the Party happen to recover, the Offender shall pay to the Party hurt for losing his Time, and also for his healing.*

But where the Hurt shall be dangerous, or Wound *mortal*, although the Justice may bail the Offender, *living* the Party so hurt; yet it shall be better *Discretion* for him to commit the Offender to the Gaol, there to remain, until there shall appear some Hope of Recovery in the other: And so Sir *Nicholas Hyde* advised at *Cam. Lent Assizes, Ann. 5 Car. 1. Regis.*

And by the Stat. de officio Coronatoris, 3 or 4 E. 1. upon Appeal of Wounds, and such like, especially if the Wounds be mortal, the Parties appealed shall be taken immediately, and kept till it be known perfectly whether the Party hurt shall recover or not; and if he die, the Offender shall be kept; and if he recover, he shall be attached by four or six Pledges, as the Wound is great or small: And if it be for a Maim, the Offender shall find no less than four Pledges; if it be for a small Wound or Maim, two Pledges shall suffice.

5 H. 7. 6.
Br. Faux
Imp. 41.

If an Affray or Assault be made upon a *Justice of Peace* or a *Constable*, they may not only defend themselves, but may also apprehend and commit the Offenders, until they have found Sureties for the Peace: The Justice of Peace may presently cause them to be arrested, and carried before another Justice, who may send them to the Gaol: And the Constable must commit them to the *Stocks* for the present, and after carry them before a Justice of Peace, or to the Gaol. *Vide hic postea.*

Apprentice. See *Labourers*, cap. 58.

Arrest. See cap. 170.

C H A P. IX.

Armour.

2 E. 3. c. 3.
P. 1.
7 R. 2. 13.
20 R. 2. c. 1.

One Justice.

IF any Person shall ride or go armed offensively before the King's Justices, or any other the King's Officers or Ministers doing their Office, or in Fairs, Markets, or elsewhere, (by Night or by Day) in Affray of the King's People, (the Sheriff, and other the King's Officers) and every Justice of Peace (upon his own View, or upon Complaint thereof) may cause them to be arrested, and may bind all such to the Peace or Good Behaviour, (or, for Want of Sureties may commit them to the Gaol): And the said Justice of Peace (as also every Constable) may seize and take away their Armour and other Weapons, and shall cause them to be apprised, and answered to the King as forfeited. And this the Justice of Peace may do by the first *Assignavimus* in the Commission. See hereof *antea*.

Lam. Offic. of
a Const. 13.

So of such as shall carry any Guns, Daggs, or Pistols that be charged, or that shall go apparelled with privy Coats or Doublets, the Justice may cause them to find Sureties for the Peace, and may take away such Weapons, &c. *Vide Tit. Surety for the Peace.*

2 E. 3. c. 3.
Co. 5. 72.
20 R. 2. 1.

And yet the King's Servants in his Presence, and Sheriffs, and their Officers, and other the King's Ministers, and such as be in their Company assisting them in executing the King's Process, or otherwise in executing of their Office, and all others in pursuing *Hue and Cry*, where any Felony or other Offences against the Peace be done, may lawfully bear Armour or Weapons.

Any Person may arm himself to resist or suppress those who disturb the Peace; but 'tis most discreet to be assistant to some ministerial Officer in this Matter; so resolved by all the Judges. *Anno 39 Eliz. Poph. 121.*

Army Debentures. See *Felony*, by Stat. cap. 160.

Artificers.

Artificers.

By the Statute 5 Geo. 1. c. 27. one Justice may bind over to the Assizes or Sessions, any Artificer about to go beyond Sea; and those who endeavour to withdraw him thither.

And the Sessions may fine a Person contracting with, enticing or persuading any Artificer in Excise, Wool, Iron, or Steel, or any other Metal, Clock-maker, Watch-maker, or any other Artificer to go out of the Kingdom, 100 *l.* for the first Offence, and three Months Imprisonment, and until such Fine paid; and if any Person having been once convicted, shall offend again, he shall be fined at the Discretion of the Court, and imprisoned twelve Months, and till the Fine be paid: The Prosecution must be within twelve Months.

Artificer convicted by one Witness of any Promise or Contract, or Preparation to go beyond Sea, must find Sureties not to depart out of the King's Dominions as the Court shall think fit, and for want of Sureties, to be committed until he find them.

If an Artificer shall go out of the King's Dominions to exercise, or teach his Trade to Foreigners, and shall not return within six Months after Warning given by the Minister or Consul of *Great Britain*, such Artificer shall be incapable of any Legacy, or of taking by Descent or Purchase, &c. and shall be deemed an Alien.

Badger. See *cap.* 46.

Bakers. See *Weights.*

C H A P. X.

Barrator.

Barrator cometh from the French Barrat, id est, astutia, in English, a Deceiver. In our Law a Barrator is a common Wrangler that setteth Men at odds, and is himself never quiet, but at Brail with one or other. *Dr. Cow. & Minsh.*

Every Justice of Peace (upon his Discretion) may bind to the Peace or good Behaviour, such as are common Barrators. 9 E. 4. 53
Lamb. 79.
Co. 8. 36.
9 E. 4. 3. a.

Also a common Barrator is he who is either a common Mover and Stirrer up (or Maintainer) of Suits of Law in any Court, or else of Quarrels or Parties in the Country. *Co. Lit.* 368.

As if in any Court of Record, County-Court, Hundred, or other inferior Courts, any Person by Fraud or Malice under Colour of Law, shall themselves maintain (or stir up others unto) Multiplicity of unjust and feigned Suits or Informations (upon penal Laws,) or shall maliciously purchase a special *Supplicavit* of the Peace, to force the other Party to make Composition; all such are Barrators. In Courts!

In the Country; and these are of three Sorts.

1. *Disturbers of the Peace*, viz. such as are either common Quarrellers or Fighters in their own Cause; or common Movers or Maintainers of Quarrels and Affrays between others. In the Country.

2. *Common Takers or Detainers* (by Force or Subtilty) the Possessions of Houses, Lands or Goods, which have been in Question or Controversies.

3. *Inventors and Sowers of false Reports*, whereby Discord ariseth, or may arise between Neighbours. All these are Barrators. Co. 8. 36.

Yea, if one be Communis Seminator litium, he is a Barrator. *West. Indiēt.* 75, 76.

Or if any Man of himself be Communis oppressor vicinorum, either by unjust or wrangling Suits, or other Oppressions or Deceits, he is a Barrator.

Or if one be Communis Pacis Perturbator, Calumniator, & Malefactor, he is a Barrator. *Crom.* 257.

But all such Persons must be common Barrators, *sc.* not in one or two, but in many Causes. Co. 8. 37.

A Feme Covert cannot be indicted of common Barratry, and an Indictment against one for that Offence was quast. *T.* 16. *Jac. Roll's Rep.* Part 2. p. 39. *

* But this is questionable, according to 1 Hawk. P. C. 243.

Punishment.

1. A Man convicted of common Barratry shall be punished by Fine and Imprisonment, and may be bound to the good Behaviour. 34 E. 3. c. 1.

Indictment.

2. An Indictment was Communis Barrektor, where it should have been Barrektor, and quashed for that Fault, &c. 20 Jac. Alport's Case.

3. And although Barratry be an Offence made up of several Acts, yet a Place must be laid where the Offence was committed for the Necessity of Trial. Roll's Rep. 1 Part, p. 295. The King against Wells.

Certiorari.

4. Barratry is of a mixt Nature, and the Justices of Peace cannot take an Indictment and Fine, and punish the Offender barely by Virtue of the Commission of the Peace, but in respect of the Clause therein to hear and determine Felonies, &c. * And a Case

* But see
1 Hawk. P. C.
244. & 2
Hawk. 40.
sect. 39. con-
tra.

was H. 17. Jac. Where a Man being indicted of Barratry at the Sessions, brought a Certiorari, and an Indictment was certified *capta coram*, &c. Justic. Dom. Regis ad pacem, but *necnon ad diversa*, &c. was left out, and for that Cause the Certiorari was quashed. Roll's Rep. 2 Part, p. 151.

Suing in another's Name.

5. Suing one in another's Name is a Species of Barratry, and there by 8 El. c. 2. He that causeth or procureth another to be arrested or attached in any Action at the Suit, or in the Name of another, where there is no such Person known, or without his Consent, upon Conviction by two Witnesses, shall be imprisoned six Months without Bail, and before Delivery shall pay ten Pounds with treble Costs and Damages to the Party, to be recovered by Action of Debt, &c. in any Court of Record.

It was formerly held that the Words *Communis Barrektor* ought to be in every Indictment for a Barratry, and therefore to set forth that a Man is a Promoter of Suits, or *Communis vicinorum oppressor*, was not sufficient to support the Indictment. Vide 1 Hawk. P. C. 244. accord.

But now 'tis ruled otherwise, for where the Defendant was indicted that he was *quotidianus perturbator pacis*, the Indictment was held good. Hill. 8 Will. Rex versus Gregory.

But 'tis essential to conclude the Indictment *contra pacem*. 2 Cro. 527. 2 Roll. Abr. 82.

It was likewise formerly thought not necessary to set out in what Place the Defendant was a Barrator, because he who is a Common Barrator is so in every Place; but 'tis of late ruled otherwise, for if the Fact is traversed, and no Place alledged, there cannot be any *Venire facias* to try it where the Fact was alledged to be. Anno Regni Domini nostri, leaving out the Word *Regis*; the Indictment was quashed. 1 Sid. 214. Godb. 557.

Upon an Indictment of Barratry, the Evidence was that T. S. was arrested at the Suit of another in an Action of 4000 l. when in Truth he owed the Prosecutor nothing; and coming before the Chief Justice to give Bail, the Defendant appeared there and sollicitated against the Prosecutor; *sed per curiam*, this is not Barratry but Maintenance.

But where a Man is arrested by another only to oppress him, and not to recover any Right, this is Barratry; and so in lending Money to stir up or promote Suits; and in this Case the Defendant did entertain the Prosecutor in his House, and brought several Actions in his Name; and it was held to be Barratry, there being nothing due. 3 Mod. 97.

Where the Defendant is indicted for Barratry, he must have a Note of the particular Fact, that he may know for what he is charged, otherwise the Prosecutor shall not proceed. 5 Mod. 18.

C H A P. XI.

Bastardy.

BAstardus est qui nascitur ante matrimonium. Co. L. 243. It cometh of the French Word Bastard, i. e. Nothus; and yet Bastardus est triplex; Manser, incestuose natus. Co. L. 244. Nothus, natus ex patre nobili & matre ignobili, sc. Concubina; Spurius, natus ex matre nobili & patre ignobili. A Bastard is Terræ filius, tho' his Mother be known.

Cui pater est populus, pater est sibi nullus & Omnis.

Cui pater est populus, non habet ille patrem.

Much more of Foundlings, where neither Father nor Mother are known.

Every Justice of Peace (upon his Discretion) may bind to the Good Behaviour him that is charged or suspected to have begotten a Bastard-child, that he may be forth-coming when the Child shall be born; otherwise there will be no putative Father, when the two Justices (after the Birth of the Child) shall come to take Order according to the Statute of 18 El. c. 3. The like may be done after the Birth of the Child, and before such Order taken.

Lam. 122.
Crom. 196.

Also if the putative Father of any such Child, either before the Birth of the Child or after, shall, by any Persuasion, Procurement or other Practice, be conveyed or sent away, or shall run away, so as the Justice of Peace cannot come by him, or so as the Order of the Justices, by Means thereof, shall not be performed; every Justice of Peace, upon his Discretion, may bind to the Good Behaviour, and so over to the next General Gaol-delivery, (before the Judges of Assise) or to the next Quarter-Sessions, such as shall have any Hand in such Practice, &c. And such Offenders may by the Discretion of the Justices, (at their General Sessions) be ordered to contribute towards the Maintenance of the said Bastard-child. And so of Constables, which having received a Warrant from the Justice to apprehend the reputed Father, shall willingly or negligently suffer him to escape; or fine them. So such as by Practice, &c. shall cause the Mother of the Child to be conveyed or sent away, or to run away, whereby she leaveth her Child to the Charge of the Town, &c.

Two Justices of Peace (one being of the Quorum) in or next to the Limits where the Parish-Church is, in which Parish any Bastard-child (begotten and born out of lawful Matrimony) shall be born, upon Examination of the Cause and Circumstances, shall and may take Order by their Discretion, as well for the Relief of the Parish (in Part, or in all) and Keeping of the Child, (by charging the Mother or reputed Father with the Payment of Money weekly, or other Relief,) as also for the Punishment of the Mother and reputed Father.

Two Justices.
18 El. c. 3.
P. 2.
Order.

But such a Bastard-child must be one that is left to be kept at the Charge of the Parish, or one likely to be (or which may be) chargeable to the Parish. See the Stat. of 18 Eliz. and the Stat. 7 Jac. cap. 4.

The Justices of the Peace in Sessions could not before the Statute of 3 Car. 1. c. 4. meddle with the Settlement of, or Provision for a Bastard-child, according to 18 Eliz. c. 3. until the two next Justices had made some Order therein, and after such Order made by the two next Justices, the Sessions might proceed therein to make a new Order; but now by 3 Car. 1. cap. 4. the Justices in Sessions have Power originally to make an Order therein, but this is seldom or never done.

Where Sessions may make an Order.

Cro. 13. Ca. p. 337.
Slater's Case.
18 E. 3.

3 Car. 1. 4.
Cro. Car. p. 248. & 225.
Pridgion's Case.

And if the two next Justices of Peace make an Order according to 18 Eliz. c. 3. and the Party appeals from that Order to the next Sessions, and they alter, or discharge, or confirm that Order, any other Sessions cannot order any Thing contrary thereto; for the Order upon the Appeal is final, as in Appeal upon the Statute of Charitable Uses, and the Statute of 3 Car. 4. The giving Authority to Justices of Peace in Sessions, is to be understood where the next Justices have made no Order therein.

3 Car. 1. 4.

A Man is charged to be the reputed Father of a Bastard, by Order of two Justices, he appeals to the Sessions, and prays a Day to another Sessions to bring in his Proofs; besides giving Day, nothing is done; and if the Court might hear him, and give Relief at another Sessions, was the Doubt; and it was referred to the Justices of Assise. And Walter, Chief Baron, upon Consideration of the Statute of 18 Eliz. Resolved, That the next Sessions after, the two Justices Order must relieve him, or none else could. Gittens and Edwards's Case. Summer Assise in Sar. 5 Car. And so it was resolved B. R. Mich. 6 Car. 1. in Smith's Case against the Parish of Blackthorne in Com. Oxon.

Appeal next Sessions

The reputed Father, by the Law of God, was to give unto the Maid's Father fifty Shekels of Silver, and he also was to take her to Wife. Exod. 22. 16. and Deut. 22. 28, 29. wherewith agreeth the Canon 67. Apostol. Quam quis violaverit virginem, ducat in uxorem.

If the two Justices cannot agree upon their Order, what is then to be done, see *Hic antea*, c. 6. But by some Opinions the Words of this Statute being (in the Disjunctive) if the two Justices of the Peace in that Division or Limits cannot agree, then the two Justices of Peace next to that Division or Limits, (being in the same County, and one of them of the Quorum) have Power to take Order therein.

Also the Mother may be examined upon Oath concerning the reputed Father, and of the Time and other Circumstances; for that in this Case, the Matter and Trial thereof

dependeth

dependeth chiefly upon the Examination and Testimony of the Mother. *Vide hic cap. 66. and Lamb. 512.*

By the Statute 7 *Jac.* it appeareth that the Justice of Peace shall commit such lewd Woman to the House of Correction, there to be punished, &c. And therefore *quære* if the Justices of Peace may punish the Mother by corporal Punishment by force of this Statute of 18 *Eliz. c. 3.* and then send them to the House of Correction: For the Rule of Law is, *Nemo debet bis puniri pro uno delicto*; and the Divine faith, *Deus non agit bis in id ipsum.* Co. 4. 43, & 8. 118.

Corporal Punishment.

But such corporal Punishment or Commitment to the House of Correction, is not to be until after the Woman is delivered of her Child, neither are the Justices of Peace to meddle with the Woman until the Child be born (and she strong again) lest the Woman being weak, the Child wherewith she goes happen to miscarry; for you shall find that about 31 *Eliz.* a Woman great with Child, and suspected for Incontinency, was commanded (by the Masters of *Bridewell* in *London*) to be whipped there, by Reason wherof she travelled, and was delivered of her Child before her Time, &c. And for this the said Masters of *Bridewell* were in the Star-Chamber fined to the Queen at a great Sum, and were farther ordered to pay a Sum of Money to the said Woman.

Ch. 174.

And as for the reputed Father, the two Justices shall do well, (as I conceive) if he be of Ability, to charge him more deeply; which if he refuse, then with Punishment according to the Statute of 18 *Eliz.* See for this Purpose an Order in such Case here. Chap. 174. And if the reputed Father be of small Ability, and shall not find Friends to yield some reasonable Allowance, then to undergo the more Punishment.

Not performing the Order.

18 *Eliz.* 3. P. 1.

After such Order by two such Justices subscribed under their Hands, if the said Mother or reputed Father, upon Notice thereof, shall not perform the said Order, then such Person so making Default shall be committed to the Gaol, there to remain without Bail or Mainprise; except such Parties shall put in sufficient Sureties to perform the same Order, or else personally to appear at the next General Sessions of the Peace in that County, and to abide such Order as the Justices of Peace, or more Part of them, then and there shall take in that Behalf, (if they shall take any) or in Default thereof, then to abide and perform the Order before made.

* A Child born nine Months and twenty

Days after the Death of the Father has been allowed legitimate; but if the Child is born eleven Months after the Death of the Husband, and it is proved he could not enjoy his Wife within a Month before his Death, it was adjudged a Bastard. *Vide New Abridg. V. 1. p. 312.*

7 *Jac.* 4.

Every lewd Woman who shall have a Bastard which may be chargeable to the Parish, the Justices of Peace shall commit her unto the House of Correction, there to be punished daily, and set on Work for one Year, and to live of her own Labour; and if she shall offend again, then to be committed to the House of Correction, as aforesaid, and there to remain until she can put in good Sureties for her Good Behaviour not to offend so again. See c. 118.

Now such Commitment to the House of Correction ought to be by two Justices at the least, (by the Words of this Statute;) and by comparing these two Statutes (of 18 *Eliz.* and 7 *Jac.*) it seemeth fittest for the two next Justices authorized by 18 *Eliz.*

Also (by the Words of this Statute 7 *Jac.*) such a Woman shall not be sent to the House of Correction till after the Child be born, and that it be living; for it must be such a Child as may be chargeable to the Parish.

18 *El.* 3.

Also a Bastard Child is not to be sent with the Mother to the House of Correction, but rather that the Child should remain in the Town where it was born, (or settled with the Mother) and there to be relieved by the Work of the Mother, or by Relief from the reputed Father. See to this Purpose the Resolution of the Judges, *Resol. 6.* in the Title *Rogues.* And yet the common Opinion and Practice is otherwise, *sc.* to send the Child with the Mother to the House of Correction; and this may also seem reasonable where the Child sucketh the Mother. *Vide plus cap. 6. fine, & cap. 40. Resol. 7. & Quære.*

A Maid-servant gotten with Child, where she shall be settled. See *Chap. 40. & Resol. 12, & 21.*

14 *Car.* 2. cap 12.

Putative Fathers and lewd Mothers of Bastard-Children leaving their Children upon the Parish, the Church-wardens and Overseers for the Poor of the Parish where the Child was born,

born, may seize and take so much of the Goods and Chattels, and of the Rents and Profits of the Lands of such reputed Fathers or Mothers, as shall be ordered by two Justices of the Peace, for and towards discharge of the Parish, for providing for such Bastard; and by Order of the Sessions may sell the said Goods, or so much thereof as the Court shall think fit, and to receive so much also of the Rents and Profits of the Lands, for the said Purposes, as shall be ordered by the Sessions. The Punishment of such as shall kill their Bastard-Children, see postea Tit. Felony by Statute.

And first concerning the Order of the two Justices.

1. It must directly adjudge who is the putative Father.
2. It must be made by two Justices *Quorum unus*.
3. They must reside next the Place where the Parish Church is, and which Parish is to be relieved.
4. It must be made concerning a Bastard-Child, and so expressed, and the Child must be adjudged to be chargeable to the Parish, (*vide infra*) and it must appear how long the Father is to maintain it.
5. The Place of Birth must be set forth in the Order, because it may be born in a Parish where the two Justices who made the Order had no Jurisdiction, and that it was born in that Parish to which Relief is ordered.
6. It must be made pursuant to the Act for the Relief of the Parish, in Part or in all, and for Relief of the Child by a weekly Maintenance.

Rules concern-
ing the Order.

As to the second Rule abovementioned, the Order is ill, if it doth not appear that one of the Justices is of the * *Quorum*; and so 'tis if the Money is ordered to be paid till the Child is fourteen Years old, for it ought to be so long as 'tis chargeable to the Parish; and so 'tis if the reputed Father should be ordered to give such Security to indemnify the Parish as the Overseers or Church-wardens shall think fit, because by such an Order the Justices delegate their Authority to another.

Sid. 222.
* 1 Salk. 477.

So it is if the Order is, that T. S. shall contribute half the Charge, for that he suffered a Soldier to get his Servant with Child.

It hath been a Question, whether the Justices could order the Payment of a Sum in Gross by the putative Father. 1 Vent. 336. But as to that Matter 'tis now ruled, that they may.

Two Justices made an Order, that the putative Father should pay 9 *l.* for the Maintenance of a Bastard, and adjudged good, for it may be to indemnify the Parish from the Charges sustained before the Father was taken; and by the Statute the Justices have Power to take order for Payment of Money weekly, for the Relief of the Parish, or other *Sustentation of the Child*.

Orders good.
1 Salk. 124.

Upon a *Certiorari* to remove an Order made by two Justices for Keeping a Bastard-Child, it was moved to quash it, for that it was *ad Sessionem facis in Com. pried.* and did not say *pro Com'*, but this was over-ruled; 'tis true, the Objection had been proper to an Indictment, but in Orders there is not so much Strictness required; then it was objected, that it doth not appear that the Child was likely to *become chargeable to the Parish*.

1 Vent. 37.

But that was sufficiently set out in the Order, for it was for the Father to pay such Charges which the Parish had sustained, which shews that the Child was chargeable.

The like Objection was made to another Order, but adjudged, that it was self-evident that a Bastard Child is likely to be chargeable to the Parish.

2 Salk. 475.

An Order to keep a Bastard-Child was quashed, for that it was that T. S. should keep his reputed Bastard-Child, because he had kept it before; but it did not set forth, that this Child was his Bastard. See *postea hic*.

Orders quash-
ed.
Style 154.

An Order to pay Money *Weekly* to a Parish towards Keeping a Bastard-Child quashed, because it did not appear that the Child was *born in that Parish* to which the Money was to be paid.

Style 363.

Upon a *Certiorari* to remove an Order, &c. there were two Objections made to it; first, because it was, that the putative Father should allow 4 *s.* to the *Midwife*, when it did not appear that she was procured by the Parish, or that they paid her: Secondly, For that by the Orders 7 *s.* per Week was allowed for the Nursing and Clothes, and until it should be able to get its Living by Working, which was both excessive in the Sum and uncertain in the Time; it should have been for so long Time as the Child is chargeable to the Parish, and for these Reasons the Order was quashed.

1 Vent. 210.

Another

- 2 Sid. 365. Another Order was quashed, because there was no *Adjudication*, that the Person against whom the Complaint was made was the reputed Father of the Bastard.
- 1 Salk. 121, 468. 1 Mod. 20. S. P. Another Order quashed, for that it was to pay so much Money by the Week till the Child was fourteen Years old, because the Power of the Justices extends no farther than to indemnify the Parish, and that is only to compel the putative Father to pay so much as long as the Child shall be chargeable.
- 2 Sid. 363. Another Order quashed, for that it was the reputed Father should pay 2 *d. per* Week for the Maintenance of the Child, because it was too little; 'tis true, the Justices of Peace have Power to adjudge who is the Father, yet if they are unreasonable in ordering what Sum he is to pay for the Maintenance of his Child, the Court may judge of that Matter.
- Cases adjudged on Appeals.* 1 Bull. 341. The Sessions must either affirm the Order of the two Justices, or disallow it; and if they disallow it, they may refer it back to the same Justices (if in the same County) to consider farther of the Proof, for the Matter is then before them as *Res integra*.
- 1 Sid. 149. Resolved, That the Words of the Statute 18 *Eliz. cap. 3. (next Quarter-Sessions)* must be intended, that the Order made by the two Justices must be confirmed or discharged at the next Quarter-Sessions of that *Part* of the County where it was made, and not at the next Sessions in the County, for that would be mischievous in many Counties where there are several Sessions in distinct Parts of the County. See also *Skaw's Case in Carth. 455.*
- 2 Sid. 325. An Order was made by two Justices, that *T. S.* should pay 8*l.* for Relief of a Bastard-child of which he was the reputed Father, and afterwards so much every Week; but it appearing that he had no *Notice of this Order*, till the Time of Appeal limited by the Statute was past, (which is the next Sessions after the Order made) the Court made a Rule, that the next Sessions in *Middlesex* (where the Matter was) should hear it, and make an Order to discharge or charge the said *T. S.* and that such Order should be final.
- 1 Vent. 48. Two Justices made an Order for *T. S.* to keep a Bastard-child, and upon an Appeal that Order was vacated, and it was referred back to the two Justices, who would make no other Order; but afterwards at the next Sessions, *B. B.* was adjudged the putative Father, and ordered to pay so much *per* Week to the Parish-Officers till the Child shall be twelve Years old, which Order being removed by *Certiorari*, the Sessions Order was quashed, for that they had no Authority to refer the Matter back to the two Justices. *Note*, This is contrary to the Case before-mentioned.
- 1 Salk. 121. S. P. A Woman big with Child was removed from *Westbury* in *Glocestershire* to *Corsham* in *Wiltshire*, where she was delivered of a Bastard-child, *Corsham* appealed to the next Sessions, and there that Order was reversed, but then the Child was sent by an Order of two Justices to the Parish of *Corsham*, because there it was born, when it should be sent to *Westbury*; but on an Appeal by *Corsham*, that Order was reversed, because the Birth of a Child under an illegal Order shall make no Settlement. *Trin. 3 Ann. in B. R.*
- Carth. 397. Cro. Car. 248. By the Order of two Justices, *Pridgeon* was adjudged the putative Father of a Bastard-child, which Order was discharged upon an Appeal to the next Sessions; afterwards, at another Quarter-Sessions the Matter was re-examined, and then he was adjudged the putative Father according to the original Order of the two Justices; and for not giving Security to obey this last Sessions Order, he was committed; and being brought into Court by *Habeas Corpus*, it was adjudged, that he being discharged upon the *Appeal*, according to the Statute 18 *Eliz.* the second Sessions had no Power to alter what was done by the first and next Sessions after the Order made.
- It hath been a Question, whether the Sessions can make an original Order in Cases of Bastardy; 'tis plain by the Statute * 18 *Eliz.* they could not; but by the Statute * 3 *Car. 1.* Power is given to the Justices of Peace *within their several Limits and Precincts, and in their several Sessions, to do and execute all Things concerning that Part of the Statute touching Bastards, that by Justices of Peace in the several Counties were by the said Statute limited to be done.*
- But this was but a temporary Law, for it was to continue till the next Sessions of Parliament, which happened *Anno 16 Car. 1.* and not before; and that Parliament being dissolved without any Notice taken of the aforefaid Statute 3 *Car. 1.* by Consequence that Statute must be expired.
- 16 Car. 1. 2^d P. 4. Afterwards by another Statute made the very next Year, (*viz.*) *Anno 16 Car. 1.* and by another Parliament, it was enacted, that all Statutes which were continued by the Statute 3 *Car. 1.* or were to continue to the End of the first Sessions of the next Parliament, should ever since that Session have the same Force and Effect as on the *last Day of that Session, and from thence till some farther Act of Parliament* be made about the Continuance or Discontinuance of the said Statutes.

Now the Statute 3 Car. 1. was to continue *till the End of the first Session of the next Parliament*, and that Session being ended without any Notice taken of that Statute, it must therefore be expired; but by Virtue of the Statute 16 Car. 1. 'tis to have such Force and Effect as it had on the last Day of that Session, and *from thence till some farther Act of Parliament shall continue or discontinue the same*, which was never yet done by any subsequent Act, and by Consequence that Clause in the Statute 3 Car. 1. by which the Justices in their Sessions have Power to execute all Matters concerning Bastard-children, as the two Justices might do by the Statute 18 Eliz. must now be in Force.

But there is no Case where it hath been adjudged to be in Force; and as often as this hath been made a Question, the Judges have been doubtful of it; so was the Chief Justice *Holt*, Anno 4 Anne, in the Case of *The Queen versus Weston*; and the Practise all over *England* is for the two Justices to make the Order, and not the Quarter-Sessions, for otherwise the Sessions Order would be final, and the Party deprived of the Benefit of an Appeal. *

* The Stat. 3 Car. 1. is certainly in Force by 16 Car. 1. c. 4. but for the Reason here given the original Order is commonly made by two Justices.

'Tis true, in *Slater's Case* it was adjudged, that the Quarter-Sessions have Power to make original Orders in Cases of Bastardy, but that is no Authority that they may do so now, because that Case was adjudged when the Stat. 3 Car. 1. was in Force and not expired; for it was adjudged in *Easter Term*, * Anno 13 Car. 1. The Case was thus: The two next Justices making no Order where *A. B.* was charged with a Bastard, the Sessions, upon Proof that *T. S.* was the putative Father, made an Order to discharge *A. B.* and that *T. S.* should pay for the Keeping the Child; afterwards, at the Assizes, the Judges ordered that the two next Justices where the Child was born should consider the Matter, who thereupon made an Order that *A. B.* was the putative Father, and that he should pay 18 *l.* to the Overseers, &c. and 14 *s.* weekly, which he refused; and thereupon the two Justices committed him; and this being removed into *B. R.* by *Certiorari*, it was resolved, that before the Statute 3 Car. 1. the Justices in Sessions had no Authority to meddle in Cases of Bastardy, till the two next Justices had made an Order according to the Statute 18 Eliz. but that by the Statute 3 Car. the Justices in Sessions had Power to make original Orders in Cases of Bastardy, and therefore the Order made in this Case by the Sessions was good, and the Order made by the two Justices void, and could not alter the Sessions Order.

* Cro. Car. 470.

But before the Resolution in the last Case, and likewise before the Statute 3 Car. 1. was expired, there was a contrary Resolution in *Easter-Term*, Anno 8 Car. 1. in the Case of * *Bowler versus Painter*, (*viz.*) that Justices of Peace, nor yet Justices of Assize have Power to meddle in Cases of Bastard-Children, upon the Statute 18 Eliz. but upon Appeal.

* 2 Bull. 345.

The same Point was adjudged in *Watkins and Edwards's Case*; 'tis true, it was not the Point in Question; however, the Judges declared, that the Sessions could not make an original Order for Keeping a Bastard-child, but upon an Appeal, and certainly they could never be of that Opinion if it had been clear that the Statute 3 Car. was then in Force.

1 Vent. 175.

Appeal to the Sessions from an Order of two Justices, by which *T. S.* was adjudged to be the putative Father of a Bastard, and ordered to pay so much Weekly to the Overseers of the Poor, &c. and the Sessions confirmed the Order, and committed *T. S.* for Non-payment of the Money; it was objected, that the Sessions had no Power to commit, but the Recognizance ought to be put in Suit; but it was held, that they might commit by Virtue of the Statute 3 Car. 1. but not by the Statute 18 Eliz. if so, then that Statute 3 Car. is still in Force.

Of the Justices Power to commit in Cases of Bastardy.

Salk. 122.

But there hath been a contrary Resolution in this very Point; it was an Order made by two Justices for the putative Father to pay so much *per Week* for ten Years, &c. which Order was confirmed upon an Appeal to the Sessions, and they committed him for not giving Security; it was objected, that the Sessions had not Power to commit, but that the two Justices before they allowed the Appeal, should have taken a Recognizance (as is usual) to appear at the next Sessions, and to abide such Order as the Justices should make, and for disobeying such Order, then the Parish must proceed upon the Recognizance, but the Sessions cannot commit. 2 Ann. *The Queen v. Chaffry*. 12 Will. 3. *The King v. James*. See 2 Bull. 341.

The Husband, who was settled in the Parish of *St. Margaret Westminster*, was divorced *a Mensa & thoro causa adulterii*, and afterwards she and the Adulterer went into the Parish of *St. George, Southwark*, where she had three Children by him, all christened there, and registred by his Name; but an Order was made by two Justices to remove them to

Who shall be Bastards by our Law.

Salk. 122.

the Parish of *St. Margaret*, where the Husband was settled, for that the Justices were of Opinion the Children were born in lawful Wedlock notwithstanding the Divorce, which Order was confirmed upon an Appeal, the whole Matter being specially set forth therein; and both Orders being removed by *Certiorari*; it was insisted for the Parish of *St. Margaret*, that these were Bastards, and ought to be settled where born; but on the other Side it was said, that these Children were legitimate, for tho' there was a Divorce *a mensa & thoro*, the Marriage still continues, and the Orders do not set forth, that the Husband had no Access to the Wife after the Divorce, and therefore where he is *infra quatuor maria*, an Access shall be presumed; but the Court held that these Children were Bastards, and that * Access shall not be presumed; but it must be proved on the other Side to make them legitimate; but one begotten and born after a voluntary Separation shall not be a Bastard.

* Because the Court will intend a due Obedience to the Sentence of Divorce, unless the contrary appear.

5 Mod. 419.
Carth. 470.

Upon a Special Order of Sessions, the Question was, if the Husband was beyond Sea during the whole Time the Wife went with Child, whether this Child will be a Bastard by the Statute 18 *Eliz. cap. 3.* and adjudged that it will; but the Order was quashed, because it did not appear that the Husband was absent all that Time, it being in the Disjunctive, that he was not here *at the Begetting or Birth of the Child*, for if he was here at either of those Times, 'tis sufficient.

Seizure of the putative Father's Goods.

By the Statute 13 & 14 *Car. 2. c. 12. sect. 19.* the Parish-Officers where a Bastard is born, may seize so much of the Goods, and receive so much of the Rents of the Lands of the putative Father and Mother as shall be ordered by two Justices, which Order must be confirmed at the Sessions, and this is to discharge the Parish. And it shall be lawful for the Sessions to make an Order for the Church-wardens or Overseers to dispose of the Goods, as the Court shall think fit.

Where the Child is to be settled.

2 Bullt. 350.

A Bastard was born in the Parish of *C.* ten Years past, and *T. S.* the putative Father took the Child from the Mother, and placed it out at Nurse, and then married and cohabited with his Wife in the Parish of *B.* and thither he brought the Child, where he maintained it for several Years, and died, leaving several Children by his said Wife; adjudged, that this Bastard-child is to be sent to his Mother, if she be of Ability, but if not, then 'tis to be sent to the Parish of *B.* because there it was settled with the putative Father.

5 Mod. 204.
1 Salk. 121,
532. S. P.

An Order to remove *A. B.* late of the Parish of *C.* single Woman, and *W. B.* her Son, from the Parish of *L.* to the Parish of *M.* for that by Fraud of the Parish of *L.* she was delivered of the said *W. B.* her Bastard-Son in the said Parish of *M.* and it was insisted, that where a Bastard is born, there 'tis settled, unless some other Settlement appears; now this Bastard was born in the Parish of *M.* therefore it ought to be settled there; and it did not appear by the Order, that the Mother was settled in *L.* 'tis true, 'tis said *that A. B. late of L. single Woman*, but that is only a Description of her Person and an Allegation of the Place, and it doth not prove that she was legally settled there.

An Order was made by two Justices many Years since, that the Parish of *B.* where a Bastard-child was born, should maintain the said Child, which Order being removed by *Certiorari*; it was adjudged, that an Order made upon the Overseers of the Poor of a Parish for raising Money towards the Maintenance of a Bastard or poor Person, doth not determine the Settlement to be in that Parish, because the Right of Settlement is not contested, but presumed.

By an Order of two Justices, *Glegg* was adjudged the putative Father of three Bastard-Children, and he was ordered to pay 10 *l.* to the Overseers of the Poor, &c. for the Charges that the Parish had sustained by Reason of the said Children, and 2 *s. 6 d.* per Week for so long Time as they or either of them should be chargeable to the Parish, which Order was confirmed on an Appeal; and both the Orders being removed into *B. R.* by *Certiorari*, it was objected against the original Order.

(1.) That it did not appear that *Glegg* was duly summoned to appear before the Justices; 'tis true, the Order set forth that he had Notice to appear, but not for what Cause.

(2.) By the Order the Father was charged to pay 10 *l.* whereas the Justices have not Power to charge him with a Sum in Grofs.

(3.) He was charged by one Order to be the Father of three Bastard-Child, when there should be as many Orders as there were Bastards.

The Court was of Opinion, that if the Defendant was not duly summoned to appear, and for what Cause, the Order ought to be quashed; but as to the second Objection, a putative Father may be charged with a Sum in Grofs, tho' this is seemingly against the Statute 18 *Eliz. cap. 3.* by which the two Justices have Power to charge the Mother or reputed

puted Father with the Payment of *Money Weekly*; but by the same Statute they have likewise Power to take Order for the Relief of the Parish, which must be intended Relief against that Charge which it hath sustained, as well as against the Charge which it may sustain.

As to the third Objection, the Court gave no Judgment, but that the Parish should have Time to shew Cause whether the Defendant was duly summoned. *Mich. 1721. Cases in Law, &c. 4.*
B. R. The King versus Glegg.

By the Stat. 6 Geo. 2. cap. 31. if a single Woman be delivered of a Bastard, likely to become chargeable to any Parish, or shall declare herself with Child, and that such Child is likely to be born a Bastard, and to be chargeable to any Parish, and shall in an Examination to be taken in Writing upon Oath before one Justice of Peace, charge any Person with having got her with Child; it shall be lawful for such Justice, upon Application by the Overseers of the Poor of such Parish, or by any substantial Householder of an extra-parochial Place, to issue his Warrant for apprehending such Person so charged, and for bringing him before any of his Majesty's Justices of Peace of such County; and the Justice before whom such Person shall be brought, is required to commit him to the common Gaol or House of Correction, unless he give Security to indemnify such Parish, or shall enter into a Recognizance with sufficient Surety, to appear at the next Quarter-Sessions, and to perform such Order as shall be made in Pursuance of 18 Eliz. cap. 3. *6 G. 2. c. 33. sect. 1.*

If the Woman die or be married before she be delivered, or miscarries, such Person shall be discharged. *Ib. §. 2.*

Upon Application of the Person committed to any Justice, such Justice is to summon the Overseers to shew Cause why such Person should not be discharged; and if no Order be made within six Weeks after the Woman's Delivery, such Justice shall discharge him. *Ib. §. 3.*

It shall not be lawful for any Justice to send for any Woman till one Month after her Delivery, in order to her being examined concerning her Pregnancy. *Ib. §. 4.*

C H A P. XII.

Bailment.

BY the Common Law, the Sheriff and every Constable (being Conservators of the Peace) might have bailed one suspected of Felony: But this Authority is taken from them, and given to the Justices of Peace, by the Statutes following. *Lamb. 15.*

First, By the Statute 1 R. 3. cap. 3. every Justice of Peace had Authority (*by Discretion*) to let to Bail Persons imprisoned for Suspicion of Felony, &c.

But because after the Making that Statute, divers not beingailable were notwithstanding let to Bail, and so many Felons escaped; therefore this Statute was repealed by the Statute of 3 H. 7. and thereby any two Justices of Peace (the one being of the *Quorum*) were enabled to let any Prisoners (mainpernable by the Law) to Bail, to the next General Sessions of the Peace or Gaol-delivery, as the Case should require. After, for that one Justice of Peace, in the Name of himself and of one other of his Fellow-Justices, (not making the other Justice privy unto the Cause, whereof the Prisoner should be bailed) did oftentimes by sinister Means set at large great Offenders, such as were notailable, and yet, to hide their Affection therein, did signify the Cause of their Apprehension to be but only for Suspicion of Felony, whereby the said Offenders have escaped unpunished; for Reformation thereof, by the Statute 1 & 2 P. & M. it was enacted, That if it be for Manslaughter or Felony, or Suspicion of Manslaughter or Felony, (*beingailable by Law*), then the same Justices must be present together at the Time of the said Bailment; and that they must certify (in Writing subscribed with their own Hands) the said Bailment at the next General Gaol-delivery, to be holden within the County where the Person shall be arrested or suspected, upon Pain to be fined by the Justices of Gaol-delivery. *3 H. 7. c. 3. Fitz. N. B. 251. F. Two Justices. 1 & 2 P. & M. c. 3. P. Just. 107.*

Now by the Preamble of both the last recited Statutes, the Mischief seemeth to be the Escape of Felons; and therefore if it be not in Case of Felony, any one Justice of Peace alone may bail a Prisoner, (see the Titles *Affray*, *Dying*, and *Surety for the Peace*) except where some particular Statute shall otherwise prescribe, as in *titulo Counterfeiters*. See more of *Bailment hic postea*, cap. 166. *One Justice.*

Sheriffs, Under-Sheriffs, Coroners, Stewards, Bailiffs, Keepers of Prisons, and other Officers, shall let out of Prisons all Persons by them arrested, or being in their Custody by Force *One Justice.* *23 H. 6. 10.*

Force of any Writ, Bill or Warrant in any Action personal, or by Cause of any Indictment of Treasons, upon reasonable Sureties of sufficient Persons within that County to keep their Day, as such Writs, Bills or Warrants require; except Persons arrested by Cap. Utlagat. or Excommunication or Surety of the Peace, or committed to Ward by special Command of any Justices, or Vagabonds, or shall pay the Party treble Damages and forfeit forty Pounds, a Moiety to the King, the other to the Prosecutor, and the Justices of the Peace have Power to hear and determine.

Resolved by all the Judges, and agreed to be put in Execution in all Circuits, that where a Felon is examined by a Justice, and it appears he is notailable by Law, and that the Justice commits him on Suspicion of Felony, not mentioning any other Cause, and afterwards he is bailed by two Justices, for that no Cause was set forth in the Warrant of Commitment, why he should not be bailed; those Justices ought to be fined by the Statute 1 & 2 Ph. & Mar. cap. 13. because they offend if they bail him who by the Statute of Westm. 1. cap. 15. is notailable by Law. Poph. 96.

A Man was committed for Forging an Endorsement on a Bank-Bill, and he was bailed, for this is only a Misdemeanor, but Forging the Bill itself is Felony. 1 Salk. 104.

See more on this Head, Chap. 166. Part 2.

C H A P. XIII.

Bankrupt.

5 Geo. 2. c. 30.

BY Stat. 5 Geo. 2. c. 30. sect. 1. If any Bankrupt shall not within forty-two Days after Notice in writing left at the usual Place of Abode of such Person, or personal Notice in case he be in Prison, and Notice in the *London Gazette*, surrender himself to the Commissioners, and subscribe such Surrender, and submit to be examined, and discover all his Effects, and how he hath disposed of them, and all Books and Writings relating thereto; and also deliver to the Commissioners all such Effects in his Power, with his Books, &c. (necessary wearing Apparel of himself, Wife and Children, excepted): Then the Bankrupt in case of not surrendering, &c. as aforesaid, or in case of Concealment or Imbezilment to the Value of 20*l.* or any Books of Account, &c. with Intent to defraud his Creditors, and being convicted, shall be deemed guilty of Felony without Benefit of Clergy; and such Felon's Goods and Estate shall go among the Creditors seeking Relief under the Commission.

sect. 3.

Every such Bankrupt, after Assignees shall be appointed, is to deliver upon Oath or Affirmation before one of the Masters in Chancery, or Justice of Peace, unto such Assignees all his Books of Accounts and Writings, not seized by the Messenger of the Commission, or not before delivered up to the Commissioners, then in his Power, and discover such as are in the Power of any other Person that may concern his Estate; and every such Bankrupt not in Prison shall after such Surrender be at Liberty, and is required to attend such Assignees upon Notice in Writing, in order to assist the making out the Accounts of the Estate.

sect. 14.

Upon Certificate under the Hands and Seals of the Commissioners that such Commission is issued, and such Person proved a Bankrupt, it shall be lawful for any of the Justices of his Majesty's Courts, &c. and the Justices of Peace, and they are required, upon Application made, to grant their Warrants for apprehending such Person, and commit him to the common Gaol of the County where apprehended, to remain till removed by Order of the Commissioners.

C H A P. XIV.

Blasphemy.

BY Stat. 9 & 10 W. 3. c. 32. sect. 1. If any Person having been educated in, or having made Profession of the Christian Religion within this Realm, shall by Writing, Printing, Teaching, or advised Speaking, deny any One of the Persons of the

Holy Trinity to be God, or assert that there are more Gods than One, or shall deny the Christian Religion to be true, or the Holy Scriptures to be of divine Authority, and shall be convicted by Indictment, &c. upon the Oath of two Witnesses, such Person shall be incapable to enjoy any Office, and being a second Time convicted shall be disabled to sue in Law or Equity, or be Guardian, Executor, &c. and shall suffer three Years Imprisonment, without Bail.

No Person shall be prosecuted by Virtue of this Act for Words spoken, unless the Sect. 2. Information be given upon Oath before some Justice of Peace within four Days, and the Prosecution be within three Months after such Information.

Persons convicted of any of the said Crimes shall for the first Offence, upon renoun- Sect. 3. cing such erroneous Opinions in the Court where convicted, within four Months after Con- viction, be discharged from all Penalties and Disabilities.

C H A P. XV.

*Brewers and Bakers. See also Chap. XXXVIII.
Excise.*

A Baker that observeth not the Assise of Bread, shall be put into the Pillory, and shall not be redeemed thence for Silver or Gold. 31 H. 1. cap. 7.

A Brewer that breaks the Assise of Ale or Beer, shall for the first and second Offence be amerced, and for the third Offence put in the Pillory without Redemption. 31 H. 1. cap. 7.

There is a good Law made 23 H. 3. c. 4. that no Brewer shall be a Cooper, and for setting the Prices: But the Justices of Peace have nothing to do therein, as is resolved Cro. 4 Car. 1. p. 112. as to suing for the Penalties; but Justices of Peace out of Corporations, and in them the Mayor and second Officers may assess the Price of Ale and Beer.

See the Penalty of a Brewer selling Beer to an unlicensed Alehouse, *Tit. Alehouse, & 1 Jac. 18.*

A Brewer that brews Beer with corrupt Hops, or mix'd with Powder, Dust, or other Soil, forfeits the Value of the Hops. 1 Jac. 18.

By the Stat. 8 Annæ, c. 18. one Justice of Peace may issue out his Warrant to levy * * This Clause is repealed by Stat. 1 G. 1. c. 26. sect. 5. See hic postea. 40 s. by Distress and Sale of the Goods of any Baker or other who bakes or exposeth to Sale any Bread, not observing the Assise, or which is under Weight, or not duly marked, or who breaks such Regulations and Orders as from Time to Time shall be made by the Justices.

The Prosecution must be within three Days after the Offence committed, and the Conviction may be by Confession of the Party, or the Oath of one Witness, and must be certified to the Quarter-Sessions, to which there lies an *Appeal* from such Conviction, and what the Sessions order shall be *final*.

He who bakes or sells any Bread, and puts any Mixture into it of any Grain than what shall be appointed by the Assise, shall forfeit 20 s. to be recovered as aforesaid; and any Magistrate neglecting his Duty in the Execution of this Act, forfeits 10 s. to be recovered in the Courts at *Westminster*.

Any Justice of the Peace may in the Day-time enter the House, Shop or Stall, or Out-house of any Baker, and weigh and try the Bread there; and if 'tis defective either in Goodness, Weight, or Baking, or not duly marked, he may seize it and give it to the Poor; and every Baker or other resisting or opposing such Search, forfeits 40 s. to be recovered by Distress and Sale of Goods, &c. to the Informer.

Persons prosecuted for acting in Pursuance of this Statute, may plead the General Issue, and give the special Matter in Evidence; and if the Plaintiff is nonsuit or cast in the Action, he shall pay double Costs.

By the Statute 1 Geo. 1. c. 26. sect. 5. 'tis enacted, that the Clause in the Statute 1 Geo. 1. c. 26. §. 5. 8 Annæ, which gave the Penalty of 40 s. for Bread not being Weight or not marked (and for no other Thing) shall be repealed; and that if any Baker make Bread wanting an Ounce Weight, or more, he forfeits 5 s. for every Ounce, and if less than Ounce is wanting, then he forfeits 2 s. 6 d. being weighed before a Magistrate, or any Person appointed by him, within twenty-four Hours, if within the Bills of Mortality, and

within three Days in any other Part of *England*; the said Forfeitures to the Informer, and to be recovered by Distress and Sale, &c.

Every Baker may make Peck, Half-peck, Quartern and Half-quartern Loaves, so as the same be made and sold both as to Weight and Measure in Proportion to the Assise-Table in the Act 8 *Annæ*.

And when the Bread shall be altered according to the Powers in that Act, the Price of Grain, Meal and Flower in the next Markets adjacent, where such Assise shall be set, shall be certified upon Oath before the chief Magistrate or Justices respectively, by the Clerks of the Markets, or such other Persons as the Magistrate shall appoint; and the Assise within the Bills of Mortality (*Westminster, Southwark*, and within the Weekly Bills in *Surrey* excepted) shall be set by the Lord Mayor and Aldermen of *London*, &c.

The Statute 8 *Annæ*, with what Alterations are made by this Act, are, by the Statute 12 *Geo. 2. c. 13.* continued to the 24th *June* 1748. and to the End of the then next Session of Parliament.

12 *Geo. 2.*
c. 13.

3 *Geo. 2. c. 29.*

By Statute 3 *Geo. 2. c. 29. sect. 2.* Any Person selling Bread at an higher Price than shall be set by the Court of the Lord Mayor and Aldermen of *London*, or the Mayor, &c. of any other City or Burrough, or by two Justices of Peace where there shall be no such Mayor, shall forfeit 10 s. to the Informer, to be levied by Distress and Sale of Goods.

C H A P. XVI.

Bridges.

Four Justices.
22 *H. 8. 5.*
P. 2, 3, 4.

WHERE a decayed Bridge is, and that it cannot be proved who nor what Lands be chargeable to the Repairing thereof, four Justices of Peace (whereof one to be of the *Quorum*) within the Shire or Riding wherein such decayed Bridge is, (out of Cities and Towns Corporate; and if it be within a City or Town Corporate, then four such Justices of Peace there) may within the Limits of their several Commissions call before them the Constables, or two of the most honest Inhabitants of every Town and Parish within the Shire, Riding, City or Town Corporate, wherein such Bridge or any Person thereof shall happen to be; and the said Justices (upon the Appearance of such Constables or other Inhabitants, and with their Assent) may tax every Inhabitant in any such City, Town, or Parish (within their Limits) to such reasonable Sum of Money as by their Discretions they shall think convenient, as well for the Repairing of such Bridge, as also for the Making and Repairing of any Highways lying next adjoining to the End of any such Bridge within this Realm, distant from either of the Ends of the Bridge by the Space of three Hundred Foot.

Taxes.
P. 2.

Collectors.
P. 3.

After such Taxation made, the said Justices of Peace shall cause the Names and Surnames of every particular Person, so by them taxed, to be written in a Roll indented. Also the said Justices shall make two Collectors of every Hundred, for the Collecting of all such Sums of Money, by the said Justices set and taxed; which Collectors receiving the one Part of the said Roll indented under the Seals of the said Justices, shall have Power thereby to collect all the particular Sums of Money therein contained, and to distress such as shall refuse to pay the same, and to sell such Distress, delivering to the Owner the *Overplus* of the Money, if there be any.

P. 4.

Also the said Justices shall appoint two Surveyors, which shall see such decayed Bridges and Ways repaired and amended from Time to Time, as often as need shall require; to whose Hand the said Collectors shall pay the said Sums of Money by them received.

Ibid.

The said Collectors and Surveyors, and their Executors and Administrators, and every of them, shall from Time to Time make a true Account to the said Justices of Peace of the Receipts, Payments and Expences of the said Sums of Money; and if any of them refuse so to do, then the said Justices of Peace from Time to Time (by their Discretions) may make out Process against the said Collectors and Surveyors, their Executors and Administrators, by Attachments, Precept, or Warrant, under their Seals, returnable at their General Sessions of the Peace.

Ibid.

Also the said four Justices of Peace may allow such reasonable Costs and Charges to the said Surveyors and Collectors, as by their Discretions they shall think convenient.

If any such Bridge shall lie wholly in a City or other Corporate Town, the Inhabitants of the Shire or Riding shall not be charged therewith, but such Bridge shall be made and repaired by the Inhabitants of such City or Town Corporate. P. 1. Who shall be charged.

If any such Bridge be without a City or Town Corporate, the same shall be made and repaired by the Inhabitants of the Shire or Riding within which the same Bridge shall be. Ibid.

If Part of any such Bridge be in one Shire, Riding, City or Corporate Town, and Part in another, then every of them shall be charged to make and repair such Parts as shall lie and be within their Limits, &c. Ibid.

But otherwise no Village or Freemen shall be compelled to make any Bridge, but such as of old Time, and by Right, they had wont to make, and that they and their Ancestors have used Time out of Mind to make the same, or that they hold certain Lands to make the same: For though a Man of his own accord hath made or amended a Bridge, yet shall he not be thereto constrained at another Time; and yet if a Man and his Ancestors, or a Corporation, &c. have Time out of Mind used to do such Things, although they did it of their own free Mind and Accord, and not of Right, nor have any Land by Reason whereof they may be tied, yet such Continuance shall conclude them and their Heirs or Successors. And so of Highways, 21 Ed. 4. 46. Magna Charta. 15. P. Tit. Wears 1. F. Grants 94. 41 E. 3. 31. 21 E. 4. 46.

Also there is a Writ in the Register directed to the Sheriff, willing him to cause such to whom it belongeth, to repair a Bridge, or repair Highways, &c. Reg. Orig. fol. 153, 154.

Where a Man and his Ancestors or Predecessors have used Time out of Mind to repair a Bridge, the King cannot acquit or discharge them thereof. Fitz. Grants 94.

Where it is presented that J. S. *ratione tenuræ suæ* hath used to repair such a Bridge, this implieth a Prescription. 21 E. 4. 38. Crom. 176.

But a Presentment that J. S. and his Ancestors have used to repair such a Bridge, this is no good Prescription to charge the Heir (by the Act of his Ancestor) without any Profit to be taken therefore. 27 Aff. 8. Cromp. 187. See the next Case but one. Prescription.

Otherwise it is of a Corporation Spiritual or Temporal: They by Reason of Usage Time out of Mind, &c. may be charged at this Day to repair a Bridge, although they have no Land by Reason whereof to be charged, for that such a Body never dies. *Ibidem.*

Also where a Man hath once repaired a Bridge, and that afterwards the same was not repaired within the Memory of Man, by some Opinions, he or they which have his Estate in Land, shall be bound to repair the Bridge; for that it shall be supposed to have been done at the first, by Reason or Cause of his Tenancy, except some other particular Cause of the Doing thereof shall be proved: But where the Cause shall appear, there *cessante causa, cessabit effectus.*

He that hath his Land adjoining to such a Bridge, is not chargeable to make or repair the Bridge, except where they have made it by Prescription. 8 H. 7. fol. 5. b. B. Bridges 1.

By common Right, Bridges shall be amended by the whole County, for 'tis for their common Good and Ease; and yet if any have Fishings or other Profit in that River, they in Reason and * Law are chargeable; and therefore the Justices of Peace may tax such proportionably to their Profit. Cro. 186. b. & 137. b. * 37. Aff. pl. 10. per Green

Where Men are charged by their Tenure or Lands, every Owner or Occupier of such Lands are to be charged proportionably to their said Lands. *Vide Tit. Sewers, and Fitz. N. Br. 235. B.*

Such as are chargeable to Repair a Bridge, may enter upon any other Man's Lands or Soil adjoining, and may lay their Stone, Lime, Timber, or other Things necessary for the Repairing and Amending thereof, and the Owner of the Lands shall have no Action therefore; for it is for the common Profit, &c. 43 Aff. 37. Fitz. Affixe 353. Co. 11. 32.

Where one is chargeable to Repair a Bridge, he must also maintain the Way at each End thereof, (though the Soil be to another;) and if the Ends be broken by the Water-Course, he must follow the Water-Course, and repair the Way, &c. *Crompt. 186. b.*

If a Man maketh a Bridge for Easement to his Mill, and that decayeth, the Party nor any other shall be charged to repair this; for it is no common Passage. *Fitz. Bar. 276.* Co. 187.

Defects of Repair of Bridges shall be presented in the County only where they lie, and no Presentment nor Information shall be removed before Traverse and Judgment thereupon. 22 Car. 2. sect. 4.

Where Lands are given to the Maintenance of Bridges, the Feoffees and Trustees shall let the same at the most improved Rent without Fine; if such Trustees make Default, the

the Justices of Peace in their open Sessions may inquire of the Value thereof, and may order the Improvement and Employment thereof, except Lands given to any College or Hall in the Universities, which have Visitors. 22 Car. 2. *sect.* 2.

By the Statute 1 Ann. Stat. 1. *cap.* 18. *sect.* 1. all Clauses in the Act 22 H. 8. are confirmed, which are not altered by that Act.

And for the more easy Taxing, and better applying the Money to be raised for Repairing decayed Bridges, it is enacted, *sect.* 2. That the Quarter-Sessions upon Presentment that any Bridge is out of Repair, shall make an Assessment upon every Parish or Place within their Limits, in such Proportions as they have been formerly assessed; and the Money shall be levied by the respective Constables of each Parish, or by other Persons as the Justices shall direct; and shall be paid by the Constables, &c. to the High Constable within six Days after 'tis received, and the High Constable within ten Days after shall pay the same to the Treasurer appointed by the Sessions to receive it; which Money shall be applied and accounted for as the Sessions shall direct, which Assessment shall be levied by Distress and Sale of Goods, if not paid within ten Days after Demand.

Every High Constable, Church-warden, Overseer, Petty Constable, or other Person, neglecting to assess, collect, or to pay the Money as before directed, shall forfeit 40 s. and the Treasurer paying Money without Order of the Sessions forfeits 5 l. for every Offence.

All Fines and Penalties incurred for not Repairing Bridges, shall be paid to the Treasurer, and applied towards the Repairs of the Bridges, and shall not be returned into the Exchequer.

Matter concerning Repairs of Bridges, shall be determined only in those Counties where they lie, and no Presentment or Indictment shall be removed by *Certiorari* out of the County into any other Court.

The Sessions may allow any Person concerned in the Execution of this Act, any Sum not exceeding 3 d. *per* Pound.

Those who are sued for acting in Pursuance of this Statute, or of that of 22 H. 8. c. 5. may plead the General Issue, and give the said Acts in Evidence, and if the Plaintiff is Nonfuit, &c. he shall pay double Costs; and this Act shall not discharge particular Persons Estates and Places from Repairing such Bridges as heretofore they did repair.

And where an Indictment or Information is brought against any particular Person, Body Corporate or Politick, for not Repairing, &c. the Inhabitants of the Town, Corporation, County, Riding, or Division, where the Bridges lie, shall be admitted to give Evidence at the Trial, &c.

And lastly, by this new Act the Statute 23 Eliz. for Rebuilding *Cardiff* Bridge is repealed, and that for ever hereafter that Bridge shall be reputed a common Bridge; and repaired by the County of *Glamorgan*.

And that the Wardens and Assistants of *Rochester* Bridge, shall be chosen every Year on the *Friday* in the Week next after *Easter Week*.

Before the Making this Statute, the Course was to charge every Hundred with a Summons in Gross, and to send it to the High Constable of each Hundred, who send their Warrants to the Petty Constables to collect the Money, by Virtue of which Warrant they assess the Inhabitants in particular Sums, and then they collect it and pay it to the High Constables, who bring it to the Sessions.

But because this Way of Taxing was illegal, and because in many Places more Money was levied than was really necessary for Repairing, and also because the Money when levied was misemployed, therefore by this Statute 1 Annæ these Matters were remedied, and the Manner of levying it is thus:

The Headborough must demand it of the Party, and if not paid within ten Days after Demand, he may levy it by Distress and Sale of Goods, rendering the Overplus, the necessary Charges of distraining being deducted.

And if any Officer neglect to assess, collect, or pay the Money, he forfeits 40 s. for every Offence.

See the Statute 11 Geo. 1. *cap.* 10. For the Power is given to Justices of the Peace within the East Riding of *York*, in relation to the Rebuilding of *Stamford* Bridge over the *Darwent* in the Road from *York* to *Burlington*. As to the Statute 12 Geo. 1. c. 36. and 1 Geo. 2. Stat. 2. c. 18. in relation to *Fulham* Bridge; and Statute 9 Geo. 2. c. 29. 10 Geo. 2. c. 16. 11 Geo. 2. c. 25. about *Westminster* Bridge. See Chap. 160. Of Felony by Statute.

The Justices of Peace in any County, City, &c. at their general Sessions, or general Quarter-Sessions, or the major Part, may purchase or agree with any Persons or Bodies Politick, for any Piece of Land joining, or near any County Bridge within their several Limits, for enlarging, or more convenient Rebuilding the same; which Pieces of Land shall not exceed one Acre in the Whole for any such Bridge, and shall be paid for out of the Money raised by Virtue of an Act made 12 Geo. 2. c. 29. intituled, *An Act for the more easy Assessing, Collecting, and Levying of County Rates**; the Treasurers being authorized by Orders under the Hands and Seals of Justices at their General or Quarter-Sessions; which Lands shall be conveyed to such Persons as the said Justices shall appoint in Trust, for Enlarging or Rebuilding such Bridges. 14 Geo. 2. c. 33. * See Chap. 196. infra.

C H A P. XVII.

Buggery.

THIS is an Offence committed by one Man with another against the Order of Nature, or by a Man with a Beast; 'tis made Felony without Benefit of Clergy; by the Statute 25 H. 8. cap. 6. See the Form of the Indictment in *Nelson's Justice*. Tit. *Buggery*.

See this Article treated of in 1 *Hawk. P. C. ch. 4.* 3 *Inst. fol. 58.* and 12 *Co. fol. 36.*

Burglary. See cap. 151. and *Felony*, cap. 40.

C H A P. XVIII.

Burials.

NO Person shall be buried in any Shirt, Shift, or Sheet, made of, or mingled with Flax, Hemp, Silk, Hair, Gold or Silver, or any other, but such as shall be made of Wool only, or be put into any Coffin lined or faced with Flax, Hemp, Silk or Hair, upon Pain to forfeit 5 *l.* to the Poor, for raising a Stock to set them on Work, to be levied by the Church-wardens and Overseers, or any of them, by Warrant from any Justice of Peace, Mayor, Alderman, or Head Officer, by Distress and Sale of the Goods of the Party interred, or in Default thereof, of the Goods of any having a Hand in putting the Party thereinto. 18 *Car. 2. cap. 4.*

But the said Statute of 18 *Car. 2.* proving ineffectual, the same was repealed by the Statute of 30 *Car. 2. cap. 3. sect. 3.* whereby it is enacted, That no Corps shall be buried in any Shirt, Shift, Sheet or Shroud, or any Thing whatsoever made or mingled with Flax, Hemp, Silk, Hair, Gold or Silver, or in any Stuff or Thing, other than what is made of Sheep's Wool only, or be put into any Coffin lined or faced with any sort of Cloth, Stuff, or other Thing that is made of any Material but Sheep's Wool only, upon Pain to forfeit five Pounds. 18 Car. 2. c. 4. 30 Car. 2. c. 3.

Sect. 4 & 5. An *Affidavit* under the Hands and Seals of two Witnesses (and under the Hand of the Magistrate or Officer before whom it was sworn, for which nothing shall be paid) must be brought to the Minister within eight Days after the Party is interred, that he was not buried contrary to the said Act of 30 *Car. 2.* which shall be taken before some Justice of Peace, Master of Chancery, Ordinary or Extraordinary, Mayor, Bailiff, or other chief Officer of the City, County, Borough, &c. where the Party was buried: And if no such *Affidavit* be brought, the Minister shall give Notice thereof under his Hand to the Church-wardens or Overseers of the Poor, who within eight Days after shall repair to the chief Magistrate in any Town, &c. if buried there, else to a Justice of Peace, who upon Certificate thereof from the Minister, &c. shall grant a Warrant for levying the Forfeiture by Distress and Sale of the Goods of the Party deceased; or in Default thereof, of the Person's Goods in whose House the Party died, or the Goods of any that had a Hand in putting such Party into any Shroud, Coffin, &c. contrary to the said Act, or that ordered the same: And if such Person was a Servant and died in his Master's Family, the Master's Goods to be liable; and if such Person died in his Parents

Forfeiture
levied.

Parents Family, the Parents Goods to be liable; one Moiety of which Forfeiture shall be to the Poor of the Parish where the Party is buried, the other to him that will sue for the same.

Forfeiture by
Justices of
Peace, &c.

Seçt. 6. Ministers, Church-wardens, and Overseers, Justices of Peace or chief Magistrates neglecting their Duty aforesaid, shall forfeit five Pounds for every Offence, to be recovered by Action of Debt, Bill, Plaint, &c. wherein the Prosecutor shall recover his full Costs, so as the Suit be commenced within six Months after the Offence committed; one fourth Part of the Forfeitures to the King; two fourth Parts to the Poor of the Parish where the Offender dwells, and one fourth Part to the Informer.

Register.

Seçt. 7. Every Minister shall keep a Register of all Burials and Affidavits, and where no Affidavit is brought as aforesaid, shall enter a Memorial thereof against the Name of the Party interred, and of the Time when he notified the same to the Church-wardens or Overseers of the Poor.

Overseers
Accounts.

Seçt. 8. And the Overseers, when they give up their Accounts at the Sessions, or to any two Justices at their Monthly Meetings, shall give an Account of the Name and Quality of every Person interred since their former Account; and of such Certificates, and of their levying the Penalties, and of their Disposal thereof, on Pain of 5*l.* to be levied by Distress and Sale of Goods, by Warrant from the said Justices or two of them: And their Accounts shall not be allowed till they have accounted for the Burials.

Plague.

Seçt. 9. No Penalty shall be incurred where the Party died of the Plague.

Seçt. 10. Judges at their Assises, and Justices of Peace at their Quarter-Sessions, shall give this Act in Charge.

Seçt. 11. Persons prosecuted for what they shall do in pursuance of this Act may plead the General Issue, Not Guilty; and if the Prosecutor be Nonsuit, &c. the Defendant shall have treble Costs.

Affidavit.

32 Car. 2.
c. 1.

And now by the Statute of 32 *Car.* 2. *cap.* 1. *seçt.* 3. where no Justice of Peace shall reside, or be to be found in any Parish where any Party shall be interred, such Oaths or Affidavits may be administer'd by any Parson, Vicar or Curate in the same County, other than of the Parish or Chapel of Ease where the Party is interred, and they are to attest the same under their Hands *Gratis*.

Bullion.

6 & 7 Wil. 3.
c. 17.

BY the Statute 6 & 7 *Will.* 3. *cap.* 17. *seçt.* 8. It shall be lawful for the Warden of *Goldsmiths*, with two of the Court of Assistants, within the Bills of Mortality, and for any two Justices without the Bills, to enter the House, Room, &c. of any Person suspected of Buying and Selling unlawful Bullion, to search; and in Case the Occupier shall refuse to permit such Search, such Justices, &c. with a Constable, may break open any Door, Box, &c. in order to search for such Bullion: And in case they find any, they are to seize as well the Bullion as the Persons in whose Possession the same is found, who shall be brought before a Justice within the Bills of Mortality, and before two Justices without, to be examined upon Oath, Whether the Bullion was lawful, and not the current Coin of this Realm; and in case the Person shall not prove by his Oath, or by the Oath of one Witness, that the Bullion is lawful, the said Justice or Justices shall commit such Person to Prison, and shall secure the Bullion, and shall oblige the Persons that can give Evidence concerning the Sums, to enter into a Recognizance to prosecute the said Offender; and in case he shall not upon his Trial, on an Indictment, prove by the Oath of one Witness, the Bullion so found to be lawful, such Offender shall be found guilty, and suffer Imprisonment for six Months.

C H A P. XIX.

Butchers.

Ordinance for
Butchers, in-
certi temporis,
c. 7.

A Butcher that sells Swines Flesh measles, or any Flesh that dies of the Murrain, shall be fined the first Time; and for the second Offence put into the Pillory; and the third Time be imprisoned and make Fine; and the fourth Time forswear the Town.

Butchers forfeit 12 *d.* for every Ox, and 8 *d.* for every Cow or other Beast, by them slain in any wall'd Town, except *Berwick* and *Carlisle*. 4 H. 7. c. 3.

A Butcher that slits or cuts an Ox-hide, or any Hide, forfeits 20 *d.* He that sells a putrified Hide, or shall water any Hide, except in *June*, *July* and *August*, forfeits 3 *s.* 4 *d.* by 1 Jac. 1. cap. 22. sect. 2.

The Penalty for killing or selling Victuals on the Sabbath-day, *vide* Tit. *Sabbath*.

He that buys fat Oxen, &c. and sells them again alive, forfeits every Ox, &c. so bought. 3 & 4 Ed. 6. cap. 19. sect. 3. 3 & 4 Ed. 6. c. 19.

No Person using the Trade of a Butcher, shall sell any fat Oxen, Steers, Runts, Kine, Heifers, Calves, Sheep, or Lambs alive, on Pain to forfeit double the Value of the Cattle, one Moiety to the King, the other to him that will sue. 15 Car. 2. c. 8. sect. 2.

By the Statute 5 *Annæ*, cap. 34. sect. 2. no Butcher in *London* or *Westminster*, or within ten Miles thereof, shall sell or expose to Sale any fat Cattle or Sheep, alive or dead, to any other Butcher, on Pain of forfeiting the Value; one Moiety to the Crown, and the other to the Informer with full Costs, 5 Ann. c. 34. sect. 2.

But by the Statute 7 & 8 *Annæ*, 'tis declared that the said Clause shall not extend to the Selling of Calves, Sheep, or Lambs dead, by one Butcher to another. 7 & 8 Ann. c. 6.

By the Statute 9 *Annæ*, 'tis enacted that if the raw Hide of any Ox, Bull, Steer, or Cow, or the Skin of any Calf, shall wilfully or negligently be gashed, or cut in Fleaing, or being gashed or cut shall be exposed to Sale by any Person; he who cut or gashed it, or offered such Hide to Sale, shall forfeit 2 *s.* 6 *d.* for every Hide, and one Shilling for every gashed Calf's Skin; one Moiety to the Poor of the Parish where the same shall be found, and the other to the Informer. Such Offences to be heard and determined by two neighbouring Justices, residing near the Place where the Forfeitures shall be incurred, which Justices may upon Complaint made within three Months after the Seizure or Offence done, summon the Party accused and the Witnesses, and, upon his Appearing or Contempt to appear (upon Proof of Notice given) may examine the Witnesses on Oath, and give Sentence accordingly; and upon Conviction, may issue a Warrant to levy the Penalty on the Goods of the Offender by Distress and Sale thereof; if not redeemed within six Days, the Party grieved may appeal to the Sessions, who may summon and examine the Witnesses on Oath, and finally determine, and in Case of Conviction may issue Warrants to levy the Penalty. 9 Ann. c. 11. sect. 11. Sect. 37.

C H A P. XX.

Butter and Cheese.

BY Stat. 9 *Hen.* 6. cap. 8. A Weigh of Cheese shall contain thirty-two Cloves, and each Clove seven Pounds. 9 H. 6. c. 8.

By Stat. 3 & 4 *Edw.* 6. cap. 21. sect. 1. None except Innholders or Victuallers are to buy Butter or Cheese to sell again, except by Retail in open Shop, Fair or Market, and not above a Weigh of Cheese or Barrel of Butter at one Time, on Pain to forfeit double the Value, one Moiety to the King, and the other to him that will sue. 3 & 4 Ed. 6. c. 21.

By Stat. 21 *Jac.* 1. cap. 22. sect. 6. the Act of 3 & 4 *Edw.* 6. cap. 21. nor any other Law concerning the Sale of Butter and Cheese in open Shop, Fair and Market, shall extend to Cheesemongers or Tallowchangers free of the City of *London*, and having been brought up as Apprentices seven Years, trading in Butter and Cheese, for such Butter and Cheese as they shall sell in *London*, *Southwark* or *Westminster*, for the victualling of Ships of his Majesty or his Subjects, or to Butter or Cheese which they shall sell at one Time to one Person, not exceeding four Weigh of Cheese, or four Barrels of Butter, so as they sell the same in open Shop, &c. 21 Jac. 1. c. 22.

Provided that if the Justices of Peace of any County shall declare in open Sessions, that the Traders in Butter and Cheese shall forbear to buy Butter or Cheese for any Time within the same County, that then during the said Restraint the said Traders shall not be freed from the Penalties of the said Acts. Sect. 7.

The Kilderkin must contain 112 *l.* neat, of sixteen Ounces to the Pound, besides the Cask; every Firkin fifty-six Pounds, besides the Cask; every Pot of Butter fourteen Pounds neat, besides the Pot. 14 Car. 2. c. 26. sect. 2.

Mixtures.

No old or corrupt Butter shall be mixed with new or found Butter, nor Whey-Butter mixed with Cream-Butter, but each Sort by it self; and every Cask or Pot shall be of the same, good throughout. No Butter shall be salted with great, but with small Salt; nor more Salt mixed than is necessary, upon Pain for every Offence in Quantity or Quality, the Value of the Butter so false packed; and where the Kilderkin, Firkin, or Pot, is not of Measure, six Times the Value of every Pound wanting.

Señ. 3. Every Person selling Vessels of Butter, shall deliver the Quantities aforesaid, or else make Satisfaction to the Buyer according to the Price it was sold for.

Packing.

Every Person repacking any Butter to sell the same again, shall for every Cask or Pot so repacked, forfeit the double Value thereof.

Señ. 4.

Casks.

Every Person packing Butter in Casks, shall put it into good Casks, of dry, found and well seasoned Timber; and shall put upon the same a Mark of the just Weight thereof, and when filled, put thereon the first Letter of his Christian Name, and his Surname at Length, with an Iron-brand, upon Pain for not setting the Weight or Name 10 s. for each C. Weight, and so proportionably.

Señ. 5.

Marks.

Señ. 6.

Every Potter shall set the Weight of the Pot when burnt, and the first Letter of his Christian Name, and his Surname thereon, or forfeit twelve Pence for every Pot sold for packing of Butter. No Person shall pack any Butter in any Pot, but such as is so marked, upon Pain to forfeit 2 s. for every Pot. And the said Offences shall be determined at the Sessions of the Peace or Court of Record of the City, &c. where committed, by Action of Debt or Presentment, one Moiety of the Forfeitures to the Poor, the other to the Informer, besides his double Costs.

Señ. 7.

Every Suit or Information shall be within four Months after Sale of such Butter.

4 & 5 W. & M. c. 7. sect. 2.

By the Statute 4 & 5 W. & M. c. 7. sect. 2. after the Factor or Buyer of Butter hath bought and contracted for the same, and approved thereof at the Place of Sale, by searching and weighing the same, if he thinks fit, the Seller shall not afterwards be liable to any Penalties of the foresaid Act of 14 Car. 2. upon any Pretence of Want of Weight, or false packing, or mouldy Butter, or the Tare and Weight not being set on the Cask.

Señ. 3.

After the Factor or Buyer hath approved the Butter, he shall set his Seal or Mark upon the said Butter. And if the same shall afterwards be exchanged or opened, and the Cask wherein the same is put be changed, or bad Butter packt up and mixed with good, or any Fraud be committed by the Seller, the Offender being convicted upon Oath, before one or more Justices of the Peace, or upon his own Confession, shall forfeit 20 s. to be levied by Distress, &c. restoring the Overplus. And Constables of Parishes, &c. are hereby authorized to levy the same accordingly by Warrant under Hand and Seal of the said Justice or Justices.

Penalty on exchanging Butter, &c.

Señ. 4.

Warehouse-keepers, Weighers, Searchers, or Shippers of Butter and Cheese in any Port, refusing to receive the same, or to take Care thereof, or to ship the same successively, as it shall come to their Hands, without undue preferring one Man's Goods before another's, being convicted thereof as before mentioned, shall forfeit 10 s. for every Firkin of Butter, and 5 s. for every Weigh of Cheese, to be levied by Distress and Sale, &c.

Señ. 5.

Warehouse-keeper, not keeping Books, and making Entries of Butter and Cheese, or making undue Entries, (by undue preferring one Man's Goods before another's) or refusing in the Day-time to produce the Books to be inspected, shall forfeit 2 s. 6 d. for every Firkin of Butter, and every Weigh of Cheese, and the like for every other Offence, to be levied by Distress and Sale as aforesaid, and for Want of Distress, to be committed till paid.

Señ. 6.

Masters of Vessels, coming to lade Butter or Cheese, or their Servants refusing to take on board any Butter or Cheese as shall be tendred to be shipped by any Warehouse-Man before their Vessels are loaded, shall forfeit 5 s. for every Firkin of Butter, and 2 s. 6 d. for every Weigh of Cheese, to be levied as before, &c.

Señ. 7.

Half of all the Penalties within this Act shall be to the Use of the Poor of the Parish where such Offence shall be committed, the other Half to the Informer.

Señ. 9.

This Act doth not extend to the Counties of *Chester* and *Lancaster*, nor to the County of the City of *Chester*.

Señ. 10.

Persons aggrieved may appeal to the next Quarter-Sessions; the Appellant entering into a Bond of 20 l. with one or more Sureties, to the Liking of the Justice of Peace, to pay such Costs as the Court shall award, within one Month after the Appeal is heard, and he not relieved: The Determination of the Sessions shall be final.

See the 8 Geo. 1. c. 27. for the better preventing Abuses committed in weighing and packing of Butter in the City of *York*.

Chap. 20. *Buttons and Button-holes.*

By Stat. 32 Car. 2. cap. 2. *sect.* 9. No Butter or Cheefe shall be imported for Sale from *Ireland*, under the like Penalties as Importation of Bacon, Beef or Pork.

Buttons and Button-holes.

BY the Statute 14 Car. 2. the Importing and Exporting of Buttons made of Hair, ^{13 & 14 C. 2.} Silk, or Thread, is prohibited, and they who sell or expose such imported Buttons ^{c. 13.} to Sale, forfeit 50 *l.* for every Offence.

The Importer forfeits 100 *l.* besides the Buttons; one Moiety of these Forfeitures to the Crown, the other to the Informer.

Justices may issue out Warrants to seize foreign Buttons.

By 4 & 5 W. 3. cap. 10. *sect.* 2. The Importation of all foreign Buttons is prohibited ^{4 & 5 W. 3.} under the like Penalties. ^{c. 10.}

Selling or setting on Clothes any Buttons made of *Cloth, Serge, Drugget, Frize, Cam-* ^{10 W. 3. c. 2.} *let*, or other Stuffs of which wearing Garments are usually made; the Forfeiture is 40 *s.* for every Dozen of Buttons or Button-holes, to be divided as aforesaid, and to be recovered by Action of Debt, or upon a Complaint to two Justices, who are to summon and examine the Witnesses on Oath, and levy the Penalty, returning the Overplus.

By 8 Ann. cap. 6. The Penalty is 5 *l.* for every Dozen of Buttons or Button-holes; ^{8 Ann. c. 6.} and two Justices by Warrant may levy the Penalty, upon Conviction of the Offenders by one Witness; but the Party aggrieved may appeal to the next Quarter-Sessions, and shall have Costs.

And in order to make this Act more effectual, 'tis enacted by a subsequent Statute ^{4 Geo. 1. c. 7.} 4 Geo. 1. cap. 7. that no Buttons or Button-holes made of Cloth, &c. shall be made or set on wearing Apparel, the Forfeiture is 40 *s.* for every Dozen, and so in Proportion for a less Number; one Moiety to the Informer, the other to the Poor of the Place, after the Charges of the Conviction are deducted; and if not paid within fourteen Days after Demand, then the Justice may issue his Warrant to distrain, and if no Distress can be found, then to commit the Offender for three Months to Labour. But nothing in this Act shall extend to Clothes made of Velvet.

The Prosecution must be within three Months after the Offence committed or discovered.

Conviction must be by one Justice not concerned in the Matter, and on the Oath of one Witness; but the Party may appeal to the next Quarter-Sessions, and shall have Costs, &c.

But if the Prosecution is at Law, the Defendant may plead the General Issue, and give the Act in Evidence, and if he recover, shall have treble Costs.

All wearing Apparel with Buttons or Button-holes made of the same Cloth, Serge, &c. and exposed to Sale, shall be forfeited, and applied to the Uses aforesaid.

Any Taylor or other Person causing his Servant to make Clothes contrary to this Act shall be subject to the like Forfeitures and Penalties.

This shall be taken for a publick Act.

Every Person who shall wear or use Clothes with Buttons or Button-holes made of, ^{7 Geo. 1. c. 12.} or bound with Cloth, Serge, &c. shall forfeit 40 *s.* for every Dozen, and so in Proportion for a less Quantity.

One Justice of Peace upon the Oath of one Witness may convict the Offender, and grant his Warrant to levy the Penalty by Distress, &c. one Moiety to the Informer, the other to the Poor.

Persons aggrieved may appeal to the next Quarter-Sessions, giving eight Days Notice, and their Judgment shall be final.

Offences against this Act must be prosecuted within one Month. And Persons sued may plead the General Issue, and on a Verdict, &c. shall recover treble Costs.

This Act shall not extend to Clothes made of Velvet.

Cards and Dice.

BY the Statute 3 Ed. 4. playing Cards and Dice are prohibited to be imported from ^{3 Ed. 4. c. 4.} beyond Sea, on Pain of Forfeiture of one Moiety to the Crown, and the other to the Person seizing.

The aforesaid Act, so far as it relates to the prohibiting the Importation of Cards and ^{10 Ann. c. 19.} Dice, is revived, and declared to stand in Force in every Part of *Great Britain*, ^{§. 167.}

9 Ann. c. 23. §. 41. All Makers of Cards and Dice, before they begin to make them, shall send Notice in Writing of the Place where they intend to make the same, to the Commissioners of the Stamp-Duties, or their Officers next adjoining, and the like Notice shall be given as often as they change the Places of making them; and as often as any Person shall set up the Trade of making Cards or Dice, he shall give the like Notice, on Pain of 50*l.*

6 G. 1. c. 21. §. 59. One Justice of Peace may take the Affidavit of any Person, declaring his Knowledge or Suspicion, that playing Cards or Dice are caused to be made in any Place, without Notice thereof in Writing given to the Commissioners of the Stamp-Duties at their head Office.

And after such Affidavit made he may issue out his Warrant directed to an Officer of the Duties on Cards or Dice, giving him Power in the Day-time, and in the Presence of a Constable, to break open any Door where the Cards or Dice are suspected to be made or making, and to seize all such Cards, Dice, Tools and Materials for making the same, and to detain and keep the same in such House or Place as the Commissioners shall think fit; all which are forfeited, unless claimed and replevied by the Owner within five Days after the Seizure, and to be sold by the Direction of the Commissioners, one Moiety of the Money arising by such Sale to the King, and the other to the Infomer.

C H A P. XXI.

Carriages, Coaches, Chairs and Carts.

3 & 4 W. 3. c. 12. **B**Y the Stat. 3 & 4 *W.* 3. cap. 12. sect. 24. The Justices of Peace of every County, &c. are required, at their Quarter-Sessions after *Easter* yearly, to assess the Prices of Land-Carriage of Goods to be brought into any Place within their Jurisdictions, by any common Carrier; and the Rates to certify to the Mayors and other chief Officers of the Market-Towns, to be hung up in some publick Place. And no common Carrier shall take above the Rates, upon Pain of 5*l.* to be levied by Distress, &c. by Warrant of any two Justices where such Carrier shall reside, to the Use of the Party grieved.

The Act of 13 Car. 2. c. 8. for providing Carriages for his Majesty, and the Act of 13 & 14 Car. 2. c. 20. for providing Carriages by Land and Water for the Use of his Majesty's Navy and Ordnance, revised 1 Jac. 2. and continued by 11 & 12 W. 3. from 29 Sept. 1700 for seven Years; as also the Act of 1 Jac. 2. c. 10. inserted in the last Edition of this Book in 1727 are expired.

6 & 7 W. 3. c. 16. §. 3. By the Stat. 6 & 7 *Will.* 3. cap. 16. sect. 3. The Justices of Peace of *Wilts, Gloucester, Oxford, Berks* and *Bucks*, or any five of them, in their Quarter-Sessions next after *Easter* yearly, are required to assess the Prices of Carriage of Goods from any Place in their Counties, to any other Place upon the *Thames* and *Ijjs* in Boats, and shall give Notice thereof in Writing to the Mayor or head Officer in every Market-Town within their Counties: And if any Owner of any Barge shall take above the Prices set, he shall forfeit 5*l.* to the Party grieved, with double Costs.

This Act is continued by the 13 Geo. 2. cap. 18. till the 1 June 1747.

6 Ann. c. 29. §. 3. By the Statute of 6 *Ann.* cap. 29. sect. 3. No travelling Waggon or Carriage wherein any Goods shall be carried (except about Husbandry, Manuring of Land, carrying Hay, Straw, or Corn, Coal, Chalk, Timber, Materials for Building, Stones or Artillery) shall go in the Highways, or be drawn with more than six Horses, Oxen, or Beasts, upon Pain that the Owner of such Waggon shall forfeit for every Offence 5*l.* one Moiety to the Surveyor of the Highways of the Place where the Offence was done, to be employed in Repairing the same, the other Moiety to the Discoverer or Prosecutor, so as he be an Inhabitant of the Town, Village, or Place.

This Penalty is to be levied by Distress of the Horses or Oxen of the Owner of the Waggon, by a Warrant under the Hand and Seal of one Justice; and if not paid within five Days after the Distraining, then to sell the Distress, rendering the Overplus, after Charges deducted.

9 Ann. c. 18. By the Statute 9 *Annæ*, any Person may discover and prosecute another drawing with more than six Horses, contrary to the Statute 6 *Annæ*, and may seize or distrain all or any of the Horses, and deliver the same to the Surveyors of the Highways, or other Officer of the Place where the Offence was done; and if the 5*l.* is not paid within three Days, then the Distress is to be sold, and the Money delivered to the Justice to be distributed as by the said Statute 6 *Annæ* is directed.

The Person *seizing*, &c. and neglecting to deliver the Cattle to the Surveyor, &c. or 9 Ann. c. 18. to other Parish-Officers, forfeits 20 *l.* to be levied by Distress and Sale, &c. by a Warrant of one Justice; and if no Distress can be had, then to be committed to the common Gaol till paid: One Moiety to the Informer, the other to be laid out for Repairing the Highway.

Any Person employed by a Carrier, or another, and subject to the Penalties of that Act, and driving or assisting to drive any travelling Waggon or Cart, with more than six Horses, forfeits 5 *l.* to be levied and disposed as before, &c.

When the Horses allowed shall not be sufficient to draw the Waggon, &c. up any steep Hill, or out of any foul Place, Horses from another Waggon travelling that Road may be added, with the Consent of the Driver, to help up such steep Hill, &c. Ib. §. 4.

By the Statute 1 Geo. 1. cap. 11. *sect.* 2. The Exception in the 6 Ann. cap. 29. or in any other Acts, shall not extend to the Carriage of threshed Corn or Coal. 1 G. 1. c. 11. §. 2.

By the Statute 5 Geo. 1. cap. 12. 'tis enacted, that no travelling Waggon for Hire shall be drawn with more than six Horses at length, in Pairs or sideways, nor a Cart with more than three Horses, on Forfeiture of all the Horses above Six in a Waggon, and all above Three in a Cart, with all Geers, Bridles, Halters and Accoutrements, to the sole Use and Benefit of any Person who shall seize the same. 5 G. 1. c. 12. §. 1.

The Person seizing, &c. must deliver the Horses, &c. to some Constable or Parish-Officer next the Place where the Seizure was made, who is to receive and keep them till the *Seisor* shall prove the Offence on Oath before a Justice, &c. and then the Justice is to make a Precept directed to such Parish-Officer, to deliver the Horses to the *Seisor*, paying reasonable Charges, such as the Justice shall appoint for Keeping the same. Ib. §. 2.

He who with Force, or otherwise, attempts to hinder the Seizing and Carrying away, &c. or shall rescue the same, or use any Violence to the *Seisor*, shall be committed by one Justice to the common Gaol for three Months without Bail, and shall likewise forfeit 10 *l.* to be levied by Distress and Sale, &c. by a Warrant of one Justice; and if not paid within three Days after the Distress taken, then the Person seizing may sell the Distress, rendering the Overplus, the Charge of Distraining and Selling being deducted. Ib. §. 4.

No travelling Waggon for Hire, having the Wheels bound with Streaks of a less Breadth than two Inches and an half when worn, or being set on with rose-headed Nails, shall be drawn with more than three Horses. Ib. §. 3.

This Act doth not extend to Waggons, Wains, Carts or Carriages employed in Husbandry, nor to carrying of Cheese, Butter, Hay, Straw, Corn unthreshed, Coals, Chalk, or any one Tree or Piece of Timber, or any one Stone or Block of Marble, nor to Caravans, and the covered Carriages of Noblemen and Gentlemen for their private Use, or such Timber, Ammunition or Artillery, as shall be for his Majesty's Service. 5 G. 1. c. 12. §. 5.

By the Statute 6 Geo. 1. cap. 6. he who carries at one Load in the Cities of *London* or *Westminster*, or within ten Miles thereof, in Waggons or Carts having their Wheels bound round with Tire of Iron, more than twelve Sacks of Meal, each Sack containing five Bushels and no more, or any more than twelve Quarters of Malt, or more than 700 and an half of Bricks, or more than one Chalder of Coals, forfeits one of the Horses, together with the Geers, Bridles, &c. to any Person who shall seize the same in such Manner, and to such Uses, as in the Stat. 5 Geo. 1. cap. 12. the Penalties and Forfeitures are to be levied and applied. 6 G. 1. c. 6.

See also Tit. *Highways*, chap. 50.

The Crown may nominate Commissioners under the Great Seal for licensing Hackney Coaches and Chairs. 9 Ann. c. 23. Made perpetual by 3 G. 1. c. 7. §. 1.

The Commissioners may make By-Laws to bind the Persons who have Licences, and annex Penalties for the better putting in Execution of this Act, and for the good Government of the Persons licensed. These By-Laws shall be approved of by the Lord Chancellor, the two Chief Justices and Chief Baron, or any three of them, and then printed; and the Breach of such By-Laws shall be punishable by any Justice of Peace, Mayor or head Officer, where the Offence shall be committed. Ib. §. 16, 17.

One Moiety of the Penalties belong to the Crown, the other to the Informer. Ib. §. 13.

That Part of the Penalties which belongs to the Crown, shall be transmitted to the Receiver General of the Revenues of Hackney Coaches, and certified to the Commissioners within ten Days after levied, upon Forfeiture of double the Sum, two Thirds to the Crown, and one Third to the Informer. Ib. §. 18.

- §. 13. If any one refuse to pay a Coachman or Chairman his just Hire, or shall cut or break any Coach or Chair wilfully, a Justice of Peace may grant a Warrant against the Offender, and upon Proof on Oath award Satisfaction; and upon Refusal to make Satisfaction may bind him over to the next Sessions, which shall finally determine; and for Non-payment levy by Distress.
- Ib. §. 49. A Coachman or Chairman demanding more than his Fare, or giving abusive Language, being convicted by the Oath of one Witness before the Commissioners, or one Justice for *London, Westminster, Middlesex, or Surrey*, shall forfeit not exceeding 20s. to the Poor; and if not able to pay shall be sent to the House of Correction for seven Days.
- Ib. §. 8. Hackney Coachmen or Chairmen exacting more than their Fare (for which see the *1 Geo. 1. c. 57. Act*) or refusing to go at that Rate forfeit 40s. but by *1 Geo. 1. cap. 57. sect. 2.* he shall forfeit a Sum not exceeding 3*l.* nor less than 10s.
- Ib. §. 3, 4. See also this Statute of *1 Geo. 1. cap. 57. sect. 3 & 4.* about Coaches and Horses attending Funerals without License, which is a Forfeiture of 5*l.*
- Ib. §. 7. Every Justice of Peace of the said Cities and Counties, may inflict and levy the like Penalties for any Offences contrary to this Act, as the Commissioners may; provided no Person be punished Twice for the same Offence.
- Ib. §. 8. By this Act also, If any Person driving any Cart, Dray or Waggon, in the Streets of *London and Westminster, Southwark*, and other Streets and Lanes within the Bills of Mortality, shall ride upon such Cart, &c. not having some other Person on foot to guide the same, such Offender being convicted before the Alderman of the Ward, or a Justice of Peace, by Oath of one Witness, shall forfeit 10s. to be levied by Distress, &c. one Moiety to the Informer, the other to the Poor; and in Default of Payment to be sent to the House of Correction for three Days.

C H A P. XXII.

Cattle.

Selling live Cattle.

5 E. 6. c. 4. §. 9.

NO Person shall buy any Oxen, Ronts, Steers, Kine, Heifers, Calves, Sheep, Lambs, Goats, or Kids alive, and sell the same again, unless he keep the same five Weeks in his own Grounds; or where he hath Herbage by Grant or Prescription, upon Pain to lose double the Value of the Cattle; one Moiety to the King, the other to the Informer.

Drovers.

5 E. 6. 14. §. 15.

Ib. §. 17.

Drovers licensed in Writing by three Justices of Peace (*Quorum unus*) may buy Cattle and sell them again in Fairs and Markets, at reasonable Prices, distant from the Place where bought, forty Miles at least. So that such Cattle be not bought by Forestalling; And provided, That such License of Justices of Peace shall not endure above one Year.

See the Statute *2 & 3 Ph. & M. cap. 3. & 7 Jac. 1. cap. 8.* in *Chap. 69.* of Pasture Land. As to the Statute *18 Car. 2. cap. 2. 20 Car. 2. cap. 7. 32 Car. 2. cap. 2.* See *Chap. 100. Transportation, &c.*

Certiorari. See *cap. 195.*

Challenge to Jurors. See *cap. 186.*

C H A P. XXIII.

Churches and Church-yards.

Uniting.

17 C. 2. c. 3.

THE Bishop of the Diocese, where two Parishes lie in a Corporation, with the Consent of the Mayor, Aldermen, and Justices of Peace, Bailiff or Bailiffs, or other chief Officers, or the major Part of them and the Patrons, may by due Order of Law, unite the two Churches or Chapels, and may appoint where God's Worship shall be performed; and to that the Parishioners shall resort, and pay their Tithes.

If any shall strike another in a Church or Church-yard, or draw a Weapon in a Church or Church-yard, with an Intent to strike; and being thereof convicted by Verdict, or Confession, or Oath of two Witnesses, before (amongst others) the Justices of Peace in their Sessions, shall be adjudged to have one of his Ears cut off; and having no Ears, then shall be burned in the Cheek with an hot Iron, having the Letter *F*.

Striking.
5, 6, E. 6. c. 4.

But an Indictment alone with an Outlawry upon it, is not such a Conviction as to inflict the corporal Punishment required by this Act.

Conviction.
Crom. 15. b.
Dy. 275. q.

A Man takes up a Stone in a Church-yard, and offers to throw at another; or having a Hatchet or Ax in his Hand, offers to strike another; this is not within 5 E. 6. By two Justices; for these are not such Weapons as are drawn, as a Sword and Dagger.

An Indictment at the Sessions for Striking with a Weapon in the Church-yard was removed into *B. R.* and moved, that the Defendant might be admitted to a Fine, but it was denied, because the Statute appoints Loss of an Ear as well as a Fine. *Palm.* 344.

By the Statute 1 *Eliz.* all Persons above the Age of sixteen Years must repair to their Parish-Church, Chapel, or to some Place where the Common Prayer is used, and abide there soberly during the Time of Service; the Forfeiture is 12*d.* for every Offence, to be levied by the Church-wardens, for the Use of the Poor of the Parish; and the Party may likewise be punished by Ecclesiastical Censures, having no reasonable Excuse to be absent.

1 *Eliz.* c. 2.

By the Statute 23 *Eliz.* Persons not coming to Church, according as appointed by the Statute 1 *Eliz.* shall forfeit 20*l.* per Month, and if he forbear for twelve Months, after a Certificate thereof made by the Ordinary into *B. R.* then one Justice of the County where the Party dwells, may bind him with two Sureties in 200*l.* to be of the Good Behaviour till he come to Church; the * Informer is to have the third Part of the Forfeiture.

23 *Eliz.* c. 1.
By Stat. 1 W. 3. c. 18.
This Act is not to extend to Protestant Dissenters.

* *The other two*

Thirds to the Crown, one to its own Use, the other to the Poor; Conviction must be at Quarter-Sessions.

By the Statute of 3 *Jac.* 1. a Person not coming to some Church or Chapel, forfeits 12*d.* to the Poor, to be levied by Distress and Sale of Goods, and in Default of Distress to be committed; the Prosecution must be within a Month, and the Conviction may be made by Confession, or Oath of one Witness.

3 *Jac.* 1. c. 4.
§. 27.

By Stat. 1 W. 3. c. 18.

This Act is not to extend to Protestant Dissenters.

He who keeps any Servant in his House, or other Person not coming to Church for one Month together, forfeits 10*l.* per Month.

No Woman shall be charged with any Penalty by this Act, for such Offence which shall happen during her Marriage.

Ib. §. 40.

See 1 *Hawk. P. C. cap.* 10, and 11. *Of Offences of not coming to Church, and of suffering others to be absent from Church.*

The Defendant was indicted on the Statute 5 *Ed.* 6. for Striking in *St. Paul's Church-yard*; it was objected, that it being the Church-yard of a Cathedral, it was not within the Statute; but adjudged to the contrary. *Cro. Eliz.* 234. *Detbick's Case.*

Striking.

Indictment for Drawing his Dagger in a Church against *T. S.* not setting forth, that it was with an Intent to strike him, for which Cause it was adjudged void. 2 *Leon.* 188. *Perchall's Case.* *Cro. Car.* 464. *Cholmley's Case.* *S. P.*

Any Buildings erected on any Part of *St. Paul's Church-yard, London*, except a Place for the Meeting of the Chapter, and for keeping Stores for Repairs of the Church, shall be deemed common Nufances.

1 *Ann. Stat.* 2 c. 12. §. 4.

Clauses are commonly inserted in the several Acts of Parliament for making Provisions for the Rectors of New Churches, which Clauses give certain Powers to Justices of Peace in relation to the Assessments to be made for that Purpose, for which see the several Acts in the *Statutes at large.*

Clerk of the Peace.

THE *Custos Rotulorum* is to nominate the Clerk of the Peace, who for his Mismanagement may be suspended or discharged by the Justices of Peace; and if the *Custos Rotulorum* refuse or neglect to put in another, the Justices may nominate one at their general Quarter-Sessions.

Clerks of the Peace.
1 *W. & M.* c. 21.

The *Custos Rotulorum* is to be appointed as directed by a Statute made in the 37th of *H. 8. cap.* 1. And the *Custos Rotulorum*, or other Person to whom of Right it doth belong, shall from Time to Time nominate the Clerk of the Peace.

Clerk of the Peace misdemeaning himself in his Office, the Justices of Peace in their general Quarter-Sessions, or the major Part of them, upon Complaint in Writing, may

Ibid.

suspend or discharge him. And in such Case the *Custos Rotulorum*, or other Person to whom of Right it doth belong, shall appoint another Person residing within such County, &c. in his Room; and in case of Neglect or Refusal to make such Appointment before the next general Quarter-Sessions after such Refusal, the Justices of Peace at their general Quarter-Sessions may appoint one, who shall be liable to all the Penalties, Conditions, &c. hereby mentioned, and may be discharged by the said Justices as aforesaid.

By the Statute 1 *Will. & Mar.* it was enacted, That the *Custos Rotulorum* shall appoint the Clerk of the Peace for so long Time as he behaveth himself well in the Office, so that now he hath an Estate for Life, determinable only upon his Misbehaviour. But before this Statute his Estate was very uncertain, for he was removeable with the *Custos*, whose Power is not so large since this Statute was made as it was before; for now he cannot be removed by the *Custos*, but by the Justices in Sessions, upon Complaint exhibited in Writing of his Misbehaviour, and due Proof thereof made; and in such Case if the *Custos* doth not appoint another before the next Sessions, the Justices themselves may appoint one; but in both Cases the Person thus appointed must be resident in the County.

His Business is to draw up the Procefs of the Sessions, to draw and read Indictments, and to record the Proceedings of the Sessions; and if he draws an insufficient Indictment, he must make another without Fee, or forfeits 5*l.* to be recovered by him who will sue for it in any Court of Record.

10 & 11 W. 3. c. 23. §. 7. He must not take any Thing of a Witness who shall give Evidence against a Felon, nor more than 2*s.* for Drawing an Indictment, upon Pain of 5*l.* Forfeiture, with full Costs.

§. 8. And if any Clerk of the Peace, or of the Excise, or his Clerk or Deputy, draw a defective Bill of Indictment, they shall draw a new one *gratis*, or forfeit 5*l.* with full Costs; and all the said Forfeitures shall be recovered by him or them who shall sue for the same by Action of Debt, &c.

6 G. 1. c. 23. §. 1. All Securities for Transportation shall be by Bond in the Name of the Clerks of the Peace; which Clerks and their Successors shall prosecute such Bonds in their own Names, to which Purpose they shall be deemed a Body Corporate; and shall be paid all such Costs as they shall sustain in any such Suit, as the Justices at their Quarter-Sessions shall direct, out of the publick Stock, by the Treasurers: And all Monies recovered on such Bonds shall be for the Use of the County, &c. and paid to such Treasurer, to be Part of the Publick Stock.

C H A P. XXIV.

Cloth, Clothiers and Drapery.

One Justice.
Searching.

39 Eliz. c. 20.
43 El. 10.
P. Drap. 118,
127.

Penalty.

EVERY Justice of Peace may enter in and upon any Houses, Land, or Grounds, and search for any Tenters, Wrinches, or other Engines whatsoever, whereby any Deceit may be used in or about the Stretching of woollen Cloth; and may deface the same Tenters, &c. and for the second Offence may sell them to the best Value thereof. *But the Disposing of such Money shall be by two Justices. See hic post.*

And if upon Information made to any Justice of Peace, of any such Tenters, &c. he shall not make Search and execute this Law within seven Days, he shall forfeit for every such Default five Pounds.

P. Drap. 115,
127.

3 E. 6. 2.

33 El. 20.

43 El. 20.

P. Drap. 45,
115, 118.

Two Justices.

Overseers.

Also one or two of the Justices of Peace of the Shire next adjoining to any City, Borough, or Town Corporate within *England*, may join with them of such City, Borough, or Town Corporate, in appointing the yearly Overseers for such Cloths, &c. *Ibid.*

Any two Justices of Peace within their Limits may once every Year appoint Overseers or Searchers for that whole Year following, or for a shorter Time (at their Discretions) of any woollen Cloth, to be made or sold in any Town not being Corporate, and may charge them upon their Oaths, and bind them in Recognizance of forty Pounds a-piece, to do their best Endeavours by all lawful Ways and Means, for their Time, to see the Statutes of 3 *Ed. 6. cap. 2.* and of 39 *Eliz. cap. 20.* in all Points truly observed and kept within their Limits, (*sc.* within the Town or Parish where the said Overseers shall be dwelling.) The Particulars seem to be these.

Duty of Overseers.

P. Drap. 114.

1. That the Weights, Lengths and Breadths, of all woollen Cloths, be according to the Statute 39 *El.* See the Statutes 4 *Jac. 1. cap. 2.* 21 *Jac. 1. cap. 18.*

2. That

2. That every such Cloth have a Seal of Lead, containing the just Length and Weight. 39 *Eliz.*
3. That such be not stretched or strained. *Ibid.*
4. Where there be any Tenters, Wrinches, or such other Engine for the Stretching of Cloth. *Ibid.* 21 *Jac.* 18.
5. That no Iron Cards or Pickards, be occupied in any woollen Cloths. 3 *Ed.* 6. c. 2.
6. That Cloths or Wools be not falsly died or coloured. *Ibid.*
7. That no Hair, Flocks, Thrums, Yarn made of Lambs Wool, Chalk, Flower, or Starch, or other deceivable Thing, be put in or upon any woollen Cloth, upon Pain to forfeit for every Offence five Pounds, to the Use of the Poor of the Parish where such Cloth is made. See 3 *Ed.* 6. and 43 *Eliz.* cap. 10. and 4 *Jac.* 1. cap. 2. and 21 *Jac.* 1. cap. 18.
8. That no Cloths be in any deceivable Manner pressed, to be put to Sale, 3 *Ed.* 6. See also of the Statutes of 5 *Ed.* 6. cap. 6. and 21 *Jac.* 1. cap. 18.

The Statute of 5 Edw. 6. speaks of Hot-presses, which is a deceitful Way of pressing Cloths, and is much to its Damage, and makes them seem fair to the Eye, when they are full of Faults, and are dangerous also for Fire. As was attested by Cloth-workers in the King's Bench. 13 Jac. Roll's Rep. 2 Part. p. 312.

Any two (or more) Justices of Peace within the County, City, Borough, or Town Corporate, where deceivable Cloth shall be made, or suspected to be made, (upon Complaint or Information of any Overseer, Searcher, or any other, of any such Offence) may grant their Warrant to call before them any Person or Persons that in their Discretion shall be thought fit to discover any such Offence, and may examine upon Oath any such Persons for the Trial and better finding out of the said Offence. And if upon such Examination it shall be found by Testimony of two Witnesses (or more) or by the Confession of the Offender, that any such Offence hath been committed, the same shall be a sufficient Conviction of the Offence; and then the said Justices shall or may certify such Offence unto the Church-wardens and Overseers (for the Time being) of the Poor of the Parish where such deceivable Cloth shall be made, under the Hands and Seals of the said Justices; and upon such Certificate, and a Warrant made by the said Justices to the said Overseers and Church-wardens for the levying of the Forfeiture, the said Overseers and Church-wardens, or any of them, or their, or any of their Successors, immediately from and after such Certificate and Warrant delivered to them, or any of them, may levy the Sum or Sums of Money, which by the said Certificate and Warrant shall appear to be forfeited, by Way of Distress and Sale of the Offender's Goods, rendering to the Offender the Overplus, &c. and in Defect of such Distress, the said two Justices may commit the Offender to the common Gaol, there to remain without Bail, until Payment shall be made of the Sums so forfeited, to the said Overseers and Church-wardens, or some, or one of them, &c. 21 *Jac.* 1. cap. 18.

These Overseers, or two of them, shall (or may) from Time to Time, or once every Month, at least, go into all or any Houses, Shops, or other Rooms of any Clothier, Draper, Cloth-worker, or other Person where such Cloth shall be, or shall be suspected to be, and there make due Search and Trial, &c. 39 *Eliz.* cap. 20. and 21 *Jac.* 1. cap. 18. *The Overseers Duty.*

Also the same Overseer shall fix on every Cloth (by them viewed) a Seal of Lead, containing the Length and the Weight of every such Cloth, together with this Word Searched, or Faulty, if there be Cause, and shall be viewed, searched, or weighed by none other, upon Pain to forfeit to the Party grieved five Pounds, to be recovered in the Quarter-Sessions. 39 *Eliz.* 21 *Jac.* 18.

Also every Overseer of Cloth, appointed by any former Law (now in Force), to fix upon any Kind of Cloth a Seal of Lead, shall engrave or set upon every their Seals of Lead (which they shall fix upon any Cloth by them to be sealed) his Christian and Surname: And no Cloth to be sealed with any Seal of Lead which shall want such Ingraving or Print, shall be allowed to be sufficiently sealed. 21 *Jac.* 1. cap. 18. P. 15.

Also the said Overseers shall seize and carry away as forfeit all such Cloth as upon their Search they shall find not to be sealed with a Seal, containing the just Length and Weight, and shall present the same Cloth to the Justices of Peace at the next Quarter-Session of the Peace. 39 *Eliz.* 20.

And if the said Overseers shall find any false Seal set upon any Cloth, or any Cloth to be stretched or strained, they shall present such Defaults at the said next Sessions, together with the Names of the Owners of such Cloths. *Ibid.*

But Cloth once lawfully searched, viewed, weighed, and sealed by the Overseers and Searchers of the Parish, Town, or Place, where the said Cloths be made, shall not afterwards

wards be viewed, searched, or weighed by any other Person or Officer whatsoever. 4 *Jac.* 1. *cap.* 2. and 21 *Jac.* 1. *cap.* 18.

39 *Eliz.*

And if the said Overseers shall find any such Tenters, Wrinches, or Engines (for the stretching of Cloth) they shall deface the same; and for the second Offence therein, they shall take away the said Tenters, &c. and shall sell the same to the best Value thereof, and by the Consent of two Justices of Peace shall dispose the Money thereof to the Poor of that Parish. *Vide* 21 *Jac.* 1. *cap.* 18.

21 *Jac.* 1.
c. 18. sect. 10.

If any Person whose Tenters shall be once defaced, shall *estfoons* offend, he shall forfeit forty Shillings, to the Use of the Poor.

P. *Drap.* 118.

If any Person, commanded by two Justices of Peace to appear to be made an Overseer according to this Statute, do (without reasonable Excuse) refuse to come and take upon him that Office, he shall forfeit for every such Refusal five Pounds, the one Half to the King, and the other Half to those two Justices: And shall remain in Ward to the Sheriff, until he hath paid the same Forfeiture, or put in Sureties for the same. 39 *Eliz.* *cap.* 20.

7 *Jac.* 1. c. 16.

The Money that shall be made upon the Sale of any Tenters, Wrinches, and other such Engines, shall be disposed of to the Poor of the Parish where the said Tenters, &c. shall be found, by the Consent of any two Justices of Peace within the same County.

1 *Jac.* 1. c. 25.

But by Statute 7 *Jac.* 1. *cap.* 16. certain Cloths made within the County of *Cumberland*, *Westmorland* and *Lancaster*, shall not be subject to Search, &c. Also by the Statute of 1 *Jac.* 1. *cap.* 25. sect. 28. no Person shall incur any Penalty for Want of Length, Breadth or Weight of *Welsh* Cottons, under the Price of 15 *d.* the Yard, or 2 *s.* the Yard, so as they be not mixed with Hair or other deceitful Stuff; nor for any others above that Price, except they be mixed as aforesaid, or shall shrink above Half a Yard in twelve Yards, or weigh less than 14 Ounces the Yard, or hold not full three Quarters of a Yard broad.

*The Forfeitures.*21 *Jac.* 1.
c. 18.

All Penalties and Forfeitures for Want of Length, Breadth, and Weight of Cloth, limited by any Statute now in Force, shall be distributed into three Parts equally; whereof one third Part shall be unto the Searchers, finding and certifying the same, &c. To be recovered by them, at, or in the Quarter-Sessions of the County, City, or Town Corporate, where the Offence is committed, by Action of Debt, Bill, Complaint, or Information. And the other two Parts shall be to the Poor of the Parish where the said Cloth shall be made: The said two Parts to be levied by Way of Distress, and Sale of the Offender's Goods, &c. upon a Warrant from two Justices of Peace, &c.

And because by the Statute of 21 *Jac.* all Penalties and Forfeitures, for Want of Length, Breadth, and Weight of Cloths, are under the Power of Justices of Peace, for their Direction therein, I shall set down the same as they are mentioned in the Statutes of 5 & 6 *Ed.* 6. *cap.* 6. 4 & 5 *Ph. & Mar.* *cap.* 5. 27 *Eliz.* *cap.* 17. and 4 *Jac.* 1. *cap.* 2.

4 *Jac.* 1. 2.
5, 6 *Ed.* 6.
c. 6.

1. Broad Cloths, and Cloth of died Wool and mingled Colours, shall contain between 30 and 40 Yards, every Yard and Inch of the Standard, and no more; and in Breadth, 6 Quarters and a Half of a Yard within the List, and shall be in Weight 86 Pounds.

4, 5 *Ph. & Ma.* c. 5.
Ibid.

2. Long Worcestersters, and Cloth of like Making between 30 and 33 Yards; and in Breadth 7 Quarters; and shall weigh 78 Pounds.

Ibid.

3. Long coloured Cloths called Plunkets, Azures, and Blues, and long white Cloths, and Cloths of like Make, shall be in Length between 29 and 32 Yards; and in Breadth, 6 Quarters and an Half, and weigh 86 Pounds.

4, 5 *Ph. & Ma.* c. 5.

4. Short Cloths coloured, and short white Cloths called Sorting-Cloths, in Length between 23 and 26 Yards; and in Breadth, 6 Quarters within the List, and weigh 64 Pounds.

Ibid.

5. White short *Suffolk*, or Cloth of the like Make, shall contain in Length between 23 and 26 Yards; and in Breadth 6 Quarters and a Half, and weigh 64 Pounds.

Ibid.

6. Every white Cloth of like making, called Handy-warps, shall contain between 29 and 32 such Yards in Length; and in Breadth 6 Quarters, and weigh 76 Pounds.

*Ibid.*6 *E.* 6.
35 *El.* c. 9.

7. Broad Plunkets, Azures, Blue, and other Cloth of like Make, shall contain in Length between 26 and 28 Yards, and in Breadth 7 Quarters and an Half, and weigh 68 Pounds.

Ibid.

8. Short Cloths made of died or mingled Colours in *Yorkshire*, or of like Make, between 23 and 25 Yards in Length; and in Breadth 6 Quarters and a Half, and weigh 66 Pounds.

*Ibid.*27 *Eliz.* c. 17.
5, 6 *Ed.* 6.
c. 1.

9. Broad-listed Whites and Reds, called Sorting-Pack broad-listed Cloths, in Length between 26 and 28 Yards, in Breadth 6 Quarters and a Half, and weigh 64 Pounds.

10. Narrow-listed Whites and Reds, called Sorting-Pack Cloths, Length between 26 ⁴/₁₂ Jac. 1. c. 2. and 28 Yards, Breadth 6 Quarters and an Half, and weigh, being white, 61 Pounds, and ⁵/₁₂ being red, 60 Pounds.

11. Fine Cloth with plain Lifts, between 29 and 32 Yards, Breadth 6 Quarters and a ¹/₂ lb. ⁵/₆ Half, and weigh 72 Pounds.

12. Cloths having stop Lifts, and not plain Lifts, Length between 30 and 33 Yards, lb. ⁵/₇ Breadth 7 Quarters, and weigh 78 Pounds.

13. Broad-Cloth called *Tauntons*, *Bridgewaters*, and *Dunflers*, between 12 and 13 Ibid. Yards, Breadth 7 Quarters, and weigh 30 Pounds.

14. Narrow Cloth of that Sort, Length between 24 and 25 Yards, Breadth one Yard, Ibid. weigh 30 Pounds, the Half-cloth to be proportionable.

15. All such Broad Cloths and Narrow Cloths, made into White and Red in *Yorkshire*; Ibid. the Broad to hold the like Weight, Length, and Measure; but the Narrow to contain between 17 and 18 Yards of like Measure, Breadth and Weight proportionable.

16. All *Devonshire* Kerfies called *Dozens*, Length between 12 and 13 Yards, Weight lb. ⁵/₈ 13 Pounds.

17. *Check* Kerfies, strait and plain Grays, between 12 and 18 Yards, Breadth one Ibid. Yard, Weight 24 Pounds.

18. Ordinary Pennistones or Forest Whites, Length between 12 and 13 Yards, Breadth Ibid. five Quarters and an Half, Weight 28 Pound.

19. Sorting Pennistones, Length between 13 and 14 Yards, Breadth 6 Quarters and an Ibid. Half, Weight 35 Pounds.

20. Kerfies called *Waskers* or *Washwhites*, Length between 17 and 18 Yards half- lb. ⁵/₁₀ thicked, and between 18 and 19 Yards quarter-thicked, Weight 17 Pounds.

21. If longer than as before directed, the Seller to forfeit for every Yard and Inch, ten lb. ⁵/_{17, 18} Shillings. If of less Weight, shall forfeit 10 s. for every Pound above two Pounds so want- & 19. ing; and if failing in Breadth, to forfeit for every Cloth falling narrow throughout 20 s. half Way 10 s. a Quarter of it 5 s.

22. A Cloth found in the Party's Presence, or upon Notice in his Absence to be of less lb. ⁵/₂₀ Length than the Seal fixed imports, the Seller shall forfeit to the Buyer 6 s. 8 d. for every Yard wanting, and the Value of so much as is wanting.

23. Every raw *Devonshire* Kersey, or Dozen, being a Rudgewash Kersey, shall in the Mar- ³⁵ El. 10. ket weigh 17 Pounds raw, as it comes off the Weaver's Loom, and without Racking, shall ⁵/_{3 & 4} contain between 15 and 16 Yards; and if of less Weight or Measure, the Weaver shall forfeit for every Quarter of a Pound twelve Pence; and for every Quarter of a Yard twelve Pence.

24. Several Forfeitures by the Statute of 35 *Eliz.* 10. may be sued for in any Court of Record, (as the Sessions, &c.)

25. Every Cotton shall weigh 11 Pounds at least, and in Length 20 Goads at least, ⁸ El. 12. and in Breadth three Quarters of a Yard, or within ⁵/_{6 & 7} one half Nail thereof. Every Frize and Rugg shall weigh 43 Pounds, and in Length between 35 and 37 Yards, and in Breadth at most 3 Quarters, and at least within a Nail thereof; and if longer, it shall weigh as it ought to weigh, proportionably, upon Pain, for every Yard not so weighing, twelve Pence; and if of less Weight, the Seller to forfeit for every Pound under three Pounds, twelve Pence; and for every Pound lacking above three Pounds 5 s. one Half to the King, the other Half to the Informer. But nothing in this Act shall be prejudicial unto any Li- lb. ⁵/₉ berty, Borough or Town Corporate within the County of *Lancaster*.

If any Person (which shall retail any of the Cloths, Kerfies, Frizes, Rugs or Cottons, of ^{5 & 6} Ed. 6. the several Makings specified in the Statute 5 *Ed.* 6. *cap.* 6.) do present any such woollen c. 6. sect. 31. Cloth which is defective or faulty unto the two Justices of Peace next adjoining, (out of a City, Borough, or Town Corporate) where such Cloth shall be found faulty; the same Justices shall cause the same Cloth to be cut into three equal Pieces, whereof the King shall have one, the Presenter another, and the Third the said Justices shall retain to themselves.

And two Justices of Peace may take Order between the Clothier and his Spinsters, ^{Spinsters, &c.} Carders, Kembers, Sorters and Weavers, which shall unjustly or deceitfully convey away, ^{imbezilling.} imbezil, sell or detain any Part of the Wool or Yarn delivered to them: And as well every ⁷ Jac. 1. 7. such Spinster, &c. so offending, as also the Buyers and Receivers, (knowing the same to be imbezilled) being thereof convicted by the Confession of the Party, or by one sufficient Witness upon Oath, before two such Justices, shall give such Recompence to the Party grieved, for such their Loss and Damage, as by the said Justices shall be ordered; and if such Offender shall not be thought (in the Discretion of the said Justices) able, or do not make Recompence according to such Order, then such Offender is to be whipped, or set

in the Stocks (in or near the Place where the Offence was committed) at the Discretion of the said Justices. For the second Offence he is to undergo the like, or such other Punishment of Whipping, or being put in the Stocks, as shall be thought fit. And such two Justices have full Power to minister the Oath to such Witnesses, and finally to hear, end, and determine the said Offences.

Wages.

1 Jac. 6.
P. Just. 66.

Clothiers and other Masters that shall refuse to pay such Wages (to their Spinsters, Weavers, or other Workmen whatsoever) as shall be assessed at the Sessions by the Justices of Peace, and shall be thereof convicted before any two Justices of Peace, (one being of the *Quorum*) upon their own Confession, or upon Proof by two sufficient Witnesses, shall forfeit for every such Offence ten Shillings to the Party grieved, the same to be levied by Distress and Sale of the Offender's Goods, by Warrant from the same Justices.

Linen Cloth.

1 Eliz. 12.
Rall. 249.

Two Justices of the Peace (one being of the *Quorum*) may take the Information of Stretching, or other deceitful using of Linen-Cloth, (by him that seized it) and of his Seizure thereof; and may bind the said Seisor to give in Evidence, and to pursue the same Matter with Effect (at the next Session, &c.) And also to pay the Moiety of all that he shall recover, to the Use of the King's Majesty, &c.

The Justices of Peace of the West-Riding of *York*, and others, are to be a Corporation, and to have a common Seal, and have Power to appoint Searchers of Cloth, and to make By-Laws, 14 *Car. 2. cap. 32*. Such By-Laws, Rules and Ordinances, as shall be made by the Warden and Assistants of Weavers in *Norwich*, touching the well making of *Norwich* Stuffs, shall be ratified and confirmed by the Mayor, and two Justices of the City, and County of *Norfolk*, and three Justices of the County of *Norfolk* (*Quorum unus*.)

The Power of the Justices of Peace of the Town of *Kiderminster*, in Execution of the Statute made 22 & 23 *Car. cap. 8*. Touching *Kiderminster*-Stuffs. See that Statute.

Importing
Wool-Cards.

14 *Car. 2.*
c. 19.
39 *Eliz. c. 14.*

No Foreign Wool-Cards, or Foreign Card-wire, or Iron-wire, for making of Wool-Cards, shall be imported into *England*, nor used there; nor any Card-wire taken out of old Cards, be put into new Leather, or new Card-boards, nor such Wool-cards made thereof, be put to Sale, upon Pain, That every Person importing, or making, or putting to Sale, shall forfeit the same, or the Value thereof, if the same be not seized. A Moiety to the King, the other Moiety to him that shall first seize or sue by Action of Debt, Bill, Plaint, Information, or Indictment, in any of the King's Courts at *Westminster*, or in the County, City, Borough, or Town Corporate, 14 *Car. 2. cap. 19*. It seemeth by this Statute, that it may be prosecuted by Information or Indictment in the Sessions.

10 *Ann. c. 6.*

By the Statute 10 *Annæ*, mix'd or medley Broad-cloth must be measured at the Fulling-Mill, after 'tis mill'd by the Master or Occupier of the Mill, who is first to make Oath before some neighbouring Justice, that he will truly perform such Measuring; the Justice is to give him a Certificate thereof, and then the Measurer is to set a Seal to each Cloth, with his Name stamped in Lead, mentioning in Letters the Length and Breadth, for which the Owner is to pay him one Penny; and the Number so stamp'd shall be a Rule of Payment to the Buyer.

1 *Geo. 1.*
c. 15.

If the Master of the Mill refuse or neglect to fix such Seal, or any Person shall afterwards take it off, or deface or alter the Figures before the Cloth is sold; and if the Buyer refuse to accept the same, according to such Measure, the Offender being convicted on Oath, forfeits 20 *s.* but by the Statute 1 *Geo. 1. cap. 15*. he forfeits 20 *l.*

And by the same Statute the Master of the Fulling-mill refusing to make such Oath, forfeits 20 *l.*

10 *Ann. 16.*
sect. 3.

Clothier or Fuller, after such Cloth is fully wetted and stamped, shall not stretch a Cloth above one Yard in 20 Yards Length, or above one Nail in a Yard in Breadth, on Forfeiture of 20 *s.*

Sect. 4.

Every Mill-man shall keep in his Mill a Table or Board, in Length 12 Foot, and in Breadth 3 Foot, on which the Cloth shall be creased and laid plain, and one Inch more instead of a Thumb's Breadth, (*viz.*) 37 Inches, to prevent any Dispute in respect of Measuring by the Yard.

Sect. 5.

Clothiers, or others concerned in the woollen Manufactures, shall pay in Money all Persons concerned in the said Work, and not impose or deliver any Goods or Ware for such Work, on Forfeiture of 20 *s.* for every Offence.

Offences against this Act, as also against the 1 *Geo. 1. c. 15*. are to be heard and determined by one Justice not concerned in the Matter of Complaint, and upon the Oath of one Witness.

1 *Geo. 1.*
c. 15. §. 7.

The Penalties of 1 *Geo. 1. cap. 15*. are to be distributed, one Moiety to the Informer, and the other, if in *London*, to the Use of *Christ's-Hospital*; if in any other Place, to the

Poor of the Parish, &c. and the Offender refusing Payment for thirty Days after Con- 1 Geo. 1.
viction, the Justice may grant his Warrant to levy it by Distress and Sale, &c. rendring ^{c. 15.}
the Overplus, &c. and if no Distress can be had, then to commit the Offender to the
Gaol, or House of Correction, for three Kalendar Months.

The Prosecution must be within forty Days after the Offence discovered.

Sect. 8.

The Defendant may plead the General Issue, and if the Plaintiff be nonsuit, &c. the Defendant shall have treble Costs. ^{Ib. §. 9.}

See the same Act of 1 Geo. 1. cap. 15. sect. 14, 15, & 16. relating to *Yorkshire* Cloths; as also the 11 Geo. 1. cap. 24. for the better regulating the Manufacture of Cloth in the West-Riding of the County of *York*, which Act is explained and amended by 7 Geo. 2. cap. 25. See also the farther Regulations by 11 Geo. 2. cap. 28. and 14 Geo. 2. cap. 35.

An Appeal lies to the Quarter-Sessions, which shall be final, and the Justices there shall allow Costs. ^{Ib. §. 10.}

Coals.

ALL Sea-Coals brought into the *Thames* and sold shall be sold by the Chalder, containing thirty-six Bushels heaped, according to the Bushel at *Guildhall*. Coals sold by Weight shall be sold after the Proportion of 112 Pounds to the Hundred *Avoirdupois*, upon Pain of Forfeiture of Coals otherwise sold, and double the Value thereof, to be recovered in any Court of Record, or by Complaint to the Lord Mayor and Justices of Peace of *London*, or any two of them, or to the Justices of Peace of the Places where such Coals shall be exposed to Sale, who upon due Proof are to convict the Offenders, and give Warrant for levying the Forfeitures; Half to the Prosecutor, and Half to the Poor, or Repairing the Highways within the same, or any adjoining Parish. And the Lord Mayor and Court of Aldermen, and the Justices of Peace of the several Counties, or three of them, one of the *Quorum*, are to set the Prices of Coals sold by Retail from Time to Time. ^{16 & 17 C. 2. c. 2. §. 1.}

If any Retailer shall refuse to sell accordingly, the Lord Mayor, &c. taking a Constable may force Entrance into any Place where such Coals are stored, and sell them at such Rates, rendring to such Retailer the Money, Charges deducted. This Act is made perpetual by 7 & 8 Will. 3. cap. 36. sect. 2. ^{Ib. §. 2.}

The Bowl Tub of *Newcastle* upon *Tine* for measuring of Coals, is to contain twenty-two Gallons and a Pottle, *Winchester* Measure, and one and twenty such Bowls heap Measure, are allowed to a Chalder: The Contents of each Wain for Carriage of Coals there, shall be seven Bowls; and of each Cart, three Bowls and one Bushel heap Measure; and three such Wains, or six such Carts, shall be allowed for a Chalder. ^{30 C. 2. c. 8.}

All Keels and other Boats, Carts and Wains for Carriage of Coals there, are to be measured and marked by Commissioners to be appointed by the King for that Purpose; and if they carry any Coals before they be measured and marked, they are forfeited together with the Coals laden upon them. ^{Ibid.}

Every Person having a Hand in removing or altering such Mark, according to 6 & 7 Will. 3. cap. 10. upon Proof thereof by one Witness before a Justice of Peace, shall forfeit ten Pounds, to be levied by Distress and Sale of Goods, by Warrant of such Justice; and for want of such Distress, to be committed to Gaol for three Months without Bail. ^{Forfeiture. 6 & 7 W. 3. c. 10. §. 7.}

By the Act of 3 Geo. 2. cap. 26. for the better Regulation of the Coal Trade, all the Penalties thereof under 5 *l.* shall be recovered by Complaint made to the Lord Mayor of *London*, or one Justice of Peace within *London*, or one Justice of the several Places where the Offenders live; upon Proof made, the Lord Mayor or Justice may grant Warrant to levy the Forfeiture, &c. one Moiety to the Informer, the other to the Poor of the Parish. For want of sufficient Distress the Offender shall be committed to the House of Correction for any Time not exceeding thirty, and not less than fourteen Days, to be kept to hard Labour. The Penalties above 5 *l.* are to be recovered with double Costs within six Kalendar Months after the Offence committed, by Action of Debt, &c. in any of his Majesty's Courts of Record; one Moiety to the Crown, the other to the Informer. As to the various Cases in which the several Penalties are incurred, see the Statute at large, or Mr. *Cay's Abridg. Tit. Coals and Coal Trade.* ^{3 G. 2. c. 26. §. 16.}

Coin. See *High Treason*, Chap. 140.

C H A P. XXV.

Common Prayer.

^{13 & 14 C. 2.}
^{c. 4. §. 7.} **E**VERY Incumbent of a Benefice with Cure residing on his Benefice, and having a Curate, shall in Person (not having a lawful Impediment to be allowed of by the Ordinary) once in every Month openly read the Common Prayers and Service, and (if there be Occasion) administer the Sacraments and other Rites in the Parish-Church, or else forfeit 5 *l.* to the Use of the Parish, upon Conviction by Confession or Proof of two Witnesses, before two Justices of Peace of the County; and if not paid within ten Days, to be levied by the Church-wardens or Overseers, by Warrant of the said two Justices by Distress and Sale, rendering the Overplus.

^{Ib. §. 21.} If any Person disabled by 14 *Car. 2. cap. 14.* To preach a Sermon or Lecture, shall, during that Disability, preach a Sermon or Lecture, he shall suffer three Months Imprisonment without Bail; and two Justices of the Peace of the County, or Mayor, or Chief Magistrate of any City or Town Corporate, upon Certificate from the Ordinary shall commit him to the Gaol.

A Curate was indicted and convicted for refusing to Use the Common Prayer, and for depraving it; and Judgment given, that he should be deprived; but it was set aside, because a Temporal Judge cannot give Sentence of Deprivation; for 'tis a Spiritual Act. *Gouldsb. 162.*

C H A P. XXVI.

Coffee, Tea and Chocolate.

^{15 Car. 2.}
^{c. 11.} **N**ONE shall sell or retail Coffee, Chocolate, Sherbet, or Tea, without Licence obtained at the General Sessions of the County, or from the chief Magistrate of the Place; first shewing a Certificate that he hath given good Security for Payment of his Duties of Excise to the King by Recognizance; for which Licence, Security and Recognizance, he shall pay 12 *d.* and no more, upon Pain to forfeit 5 *l.* for every Month he shall retail without Licence. *

* This is not in Force as to Coffee, Chocolate or Tea.

Chocolate.

^{10 Geo. 1.}

^{c. 10. §. 2.}

^{Ib. §. 4, 5, & 6.}

† But if the

Coffee be of the

Growth of the

No Chocolate ready made, or ready made Cocoa-Past, shall be imported, on Pain of forfeiting the same, together with double the Value, and the Package.

The new Duties are 2 *s. per* Pound on Coffee †, 4 *s. per* Pound on Tea, and 1 *s. 6 d. per* Pound on Chocolate, to be paid by the Makers or Sellers.

English Plantations in America, the Duty is but 1 s. 6 d. per Pound, by 5 Geo. 2. cap. 24. sect. 1.

^{Ib. §. 7.}

The King or the Treasury may appoint Commissioners for the Receipt and Management of those Duties, the major Part of which Commissioners may substitute proper Officers requisite for such Purposes, which Commissioners and Officers shall have such Salaries as the Treasury shall appoint; and shall pay the Money arising out of such Duties distinctly into the Exchequer, from all other Branches of the Revenue.

^{Ib. §. 8.}

All the Powers by any Law now in Force, relating to the Revenue of Excise on Beer, &c. shall be put in Execution for managing these Duties.

^{Ib. §. 10.}

Every Person who shall be a Seller or Dealer in Coffee, Tea, or Cocoa-Nutts, or Maker, or Seller of Chocolate, shall make a true Entry in Writing of the Places used for keeping or making the same, on Forfeiture of 200 *l.* and the Coffee, &c. found therein.

^{Ib. §. 13.}

Upon Suspicion of Concealments in any Place, and Oath made thereof, two Commissioners within the Bills of Mortality, or a Justice of Peace in any other Part of *Great Britain*, may by Warrant authorize an Officer by Day or Night; but if by Night, then in Presence of a Peace Officer, to enter such Place, and to seize and carry away the Coffee, &c. fraudulently concealed, as forfeited for the King's Use. Persons hindring the Officers from entering, &c. forfeit 100 *l.*

Persons

Persons counterfeiting the Marks of Chocolate directed by this Act, or selling Chocolate with such counterfeit Mark knowingly, shall forfeit 500 *l.* and be committed to the next County Gaol for twelve Months. Sect. 22.

If any Person shall assault or hinder Officers in the seizing of Coffee, &c. or by force rescue any of the said Commodities after Seizure, or steal, break, destroy or damage any Vessel or Package wherein the same shall be contained, he shall forfeit 50 *l.* Sect. 40.

The Judgments given in Pursuance of this Act by the Commissioners and Justices of Peace shall be final, and not removed by *Certiorari*. Sect. 42.

By Stat. 11 *Geo. 1. cap. 30. sect. 12.* Justices of Peace may summon and examine Persons suspected of making untrue Entries upon Oath or Affirmation, touching the Entries; and any Dealer in Coffee, &c. who shall neglect to make such Oath or Affirmation, or to attend such Summons, shall forfeit 20 *l.* 11 Geo. 1. c. 30. §. 12.

If any Person shall, on Chocolate for which the Inland Duties have not been duly paid, fix any Paper having the Impression of the Stamps provided to inclose Chocolate, with Intent to defraud his Majesty, the Offender shall be liable to the Penalties in 10 *Geo. 1. cap. 10. sect. 22.* for counterfeiting the said Stamps. *Vide supra.* Sect. 13.

All Persons who shall work their Chocolate over again, if out of the Limits of the Bills of Mortality, shall make Proof before two Justices of Peace, that the Duty for the Cocoa-Nuts have been paid, and that all the Chocolate so to be re-worked has been duly entred. Sect. 15.

Conformity.

BY the Statute 10 *Annæ*, the Quarter-Sessions may take the Oath of Persons having Offices, and who have been convicted of Non-conformity, that they have conformed for a Year last past, and that they have received the Sacrament three Times in that Year. 10 Ann. c. 2.

Oath must be made of the Offence before one Justice, and within ten Days after 'tis committed, and the Prosecution must be within three Months afterwards, and the Conviction is to be by Oath of two credible Witnesses.

C H A P. XXVII.

Corn.

THE Certificate of one Justice of Peace (joined with the Customer of the Place) of the Unlading and Selling of Corn or Cattle, carried by Water from one Place to another of this Realm, unto the Customer and Controller of the Place where the same was imbarked, is sufficient upon the Statute of *Forefalling*. See more of Corn, *Tit. Transportation*. 5 E. 6. 13 El. 25. P. Forestal. 6.

By the Statute of 1 & 2 *Ph. & Mar. Stat. 2. cap. 5.* Corn could not be transported without Licence, unless it were under these Prices by the Quarter, Wheat 6 *s.* 8 *d.* Barley 4 *s.* Rye 3 *s.* and every Justice of Peace might inquire of it by the Statute 13 *El. 13.* Certain Persons may determine when Corn shall be transported, when not, which they may afterwards alter, or the Justices of Peace in Sessions may alter till the Assises; and the Queen by Proclamation may controul all of them. See there the Poundage of Corn.

By 1 *Jac. 1. 25.* Corn may be transported, when of or under these Prices by the Quarter; Wheat twenty-six Shillings and eight Pence, Rye, Pease and Beans fifteen Shillings, Barley or Malt fourteen Shillings. See there the Poundage.

By 21 *Jac. 1. 28.* It may be transported, when not exceeding these Prices by the Quarter; Wheat thirty-two Shillings, Rye twenty Shillings, Beans and Pease sixteen Shillings, Barley or Malt sixteen Shillings. See there the Poundage.

By 3 *Car. 1. 4.* It may be transported, not exceeding these Prices by the Quarter, *viz.* Wheat thirty-two Shillings, Rye twenty Shillings, Pease and Beans sixteen Shillings, Barley or Malt sixteen Shillings. See there the Poundage.

By 12 *Car. 2. cap. 4.* Corn may be transported, not exceeding these Prices, by the Quarter, *viz.* Wheat forty Shillings, Rye, Beans and Pease twenty-four Shillings, Barley and Malt twenty Shillings, Oats sixteen Shillings.

By 15 *Car. 2. cap. 7.* Corn not exceeding these Prices may be transported, *viz.* Wheat forty-eight Shillings, Barley or Malt twenty-eight Shillings, Buck-wheat twenty-eight Shillings, Oats thirteen Shillings and four Pence, Rye thirty-two Shillings, Pease and Beans thirty-two Shillings. See there the Poundage.

But by 22 *Car. 2. cap. 13.* Any Person, Native or Foreigner, may transport any Sort of Corn or Grain, although the same exceed the Prices mentioned 15 *Car. 2. cap. 7.* See the Statute at large.

This Statute of 22 *Car. 2. cap. 13.* is made perpetual by 3 *Geo. 1. cap. 7.*

5 & 6 E. 6. c. 14. §. 12. Any Person allowed by three Justices of Peace, may buy Corn or Cattle to carry by Water from one Place to another within this Realm, if he shall without Fraud, within forty Days after he shall have bought the same, as soon as the Weather will permit, carry the same to such Place as his Cockets shall declare, and there unlade and sell the same, and bring a Certificate from one Justice of Peace, Mayor, or Bailiff, and of the Customer of the Port, of the Day and Place of the Unlading thereof, to the Customer of the Port where the same was laden.

Foreign Corn. 1 Jac. 2. c. 19. §. 3. The Justices of Peace at their Quarter-Sessions next after *Michaelmas* and *Easter* yearly, by the Oaths of two substantial Persons of the respective Counties, being neither Merchants nor Factors for importing Corn, not interested in the Corn imported, and having a Freehold Estate of 20 *l. per Annum*, or a Lease of 50 *l. per Annum*, above all Charges, &c. (which Oaths the Justices are impowered to administer) and by such Ways as to them shall seem convenient, to examine the Prices of midling *English* Corn and Grain, as they shall be sold, and certify the same with two such Oaths made as aforesaid, in Writing annex'd, unto his Majesty's chief Officer or Collector of the Customs, residing in the respective Ports where such Corn shall be imported, to be hung up in the Custom-House for publick Information; and the Custom and Duty of all such Foreign Corn shall be collected according to the Price in such Certificate. Provided, that whatsoever is done by the Justices of Peace at their Quarter-Sessions in their several Counties, may be done in like Manner in *London*, in *October* and *April* yearly, by the Mayor, Aldermen and Justices of the Peace there; the Persons making such Oaths being no Corn-Chandlers, Mealmen, &c. but substantial House-keepers, qualified as before.

2 W. & M. Stat. 1. c. 12. §. 2. When Malt or Barley *Winchester* Measure is 24 *s. per Quarter*, or under, and Rye 32 *s. per Quarter*, and Wheat 48 *s. per Quarter*, any Person may ship on an *English* Vessel, whereof the Master and two Thirds of his Mariners are *Englishmen*, any Sort of Corn to transport, bringing a Certificate under his Hand to the Commissioners of the Customs of the Port, of the Quantity and Quality of such Corn, and upon Proof of such Certificate by the Oath of one Person, and a Bond of 200 *l.* given by the Transporter for every hundred Ton so shipped, and so in Proportion, that the said Corn shall be exported, and not relanded in *England*, &c. such Transporter shall receive from the said Commissioners for every Quarter of Barley or Malt 2 *s. 6 d.* Rye 3 *s. 6 d.* and Wheat 5 *s.* without paying any Custom, Fee, or Reward.

1 W. & M. Stat. 1. c. 24. sect. 18. The Benefit of this Act is extended to *Berwick* by 1 *W. & M. Stat. 1. cap. 24.*

2 Geo. 2. c. 18. §. 3. If the Justices of Peace shall neglect to determine the Prices of Corn at their Quarter-Sessions after *Michaelmas* and *Easter* yearly, and to certify the same to the chief Officer and Collector of the Customs, residing in the Parts where foreign Corn may be imported, to be hung up in the Custom-House as is directed by 1 *Jac. 2. cap. 19.* in such Case the Collector of the Customs at the Port of Importation is impowered to receive the Duties of the Corn imported, according to the lowest Price of the same Sort of Corn, mentioned in 22 *Car. 2. cap. 13.*

5 Geo. 2. c. 12. §. 1. Justices of Peace at their Quarter-Sessions may give in Charge to the Grand Jury, to make Presentment of the Market Prices of midling *English* Corn of the Sorts mentioned in 22 *Car. 2. cap. 13.*

§. 2. Such Presentment shall be certified by the Justices to his Majesty's chief Officers of the Customs in every Port where such Corn shall be imported, and be hung up in the Custom-House.

§. 4. Nothing in this Act shall prejudice the Authority given by the Act of 1 *Jac. 2. cap. 19.* to the Mayor, Aldermen, and Justices of Peace of the City of *London*.

§. 5. No Person shall transport any foreign Corn, or foreign Corn mixed with *English*, under Penalty that all such Corn shall be forfeited, and every Offender shall forfeit 20 *s.* for every Bushel of such Corn, and the Ship upon which such Corn shall be laden shall be forfeited; one Moiety to the King, the other to him that will sue, and the Master and Mariners

Mariners of such Ship, knowing such Offence, and assisting thereunto, shall be imprisoned three Months.

If any Persons shall beat, wound, or use other Violence to any Person, with Intent to hinder him from buying of Corn; or shall stop or seize upon any Carriage or Horse loaded with Wheat, Flour, Meal, Malt, or other Grain, in the Way to or from any City, Market-Town, or Sea-port, and break, cut, or destroy the same, or any Part thereof, or the Harness of the Horses; or shall take off, drive away, kill or wound such Horses, or beat or wound the Drivers, in order to stop the same, or shall scatter, spoil or damage such Wheat or other Grain; every such Person being convicted before any two Justices of Peace, shall be sent to the common Gaol or House of Correction, to be kept to hard Labour for any Time not exceeding three Months, nor less than one Month; and shall by the Justices be ordered to be once publicly whipped, on the first convenient Market-Day, at the Market-Place, between the Hours of eleven and two.

The second Offence is Felony. See *Chap. 160. Felony by Statute.*

Hundreds are to make Satisfaction to the Persons injured. See the *Statute.*

11 Geo. 2. c. 22. §. 1.

§. 2.

§. 5, &c.

Conies. See *Game*, Chap. 46. *Hunting*, Chap. 55.

C H A P. XXVIII.

Constables.

CONSTABLE, this Word is derived from two old *Saxon* Words, *Cunning*, or *Their Name*; *Kinning*, which signifieth *King*, and *Stable*, *Stability*; shewing, that these ancient Officers were reputed to be as the Stability or Stay of the King and Kingdom. *Lamb. 5. Dodd. 73.*

Every Justice of Peace may cause two Constables to be chosen in each Hundred, *Lamb. 190.* This seemeth to be meant of the High Constables of Hundreds, and to include the Swearing of them; and this by Virtue of the Statute of *Winchester*, made 13 *E. 1.* and of the Commission, the first *Assignavimus* or Clause.

High Constables, how to be chosen.

And by the Statute of 34 *H. 8. cap. 26.* two Justices of Peace, the one being of the *Quorum*, may appoint the High Constables in *Wales*.

And yet the usual Manner is, that these High Constables of Hundreds are chosen either at the Quarter-Sessions of the Peace; or if out of the Sessions, then by the greater Number of the Justices of Peace of that Division where they dwell; and likewise that they be sworn either at the Sessions, or by Warrant from the Sessions; which Course hath also been often allowed and commended unto us by the Judges of Assize.

Also in such Manner as they are to be chosen, in the same Manner, and by the like Authority, they are to be removed; for *eodem modo, quo quid constituitur, dissolvitur*: So if there shall be Cause to remove an High Constable, it hath not been thought fit that one or two Justices of Peace should do it upon their Discretion, but that it should be done by the greater Part of the Justices of that Division, and that for some just Cause; or else that it be done at and in the General Sessions of the Peace; and so was the Direction of Sir *John Doderidge* at Summer Assizes at *Cambridge*, *Anno Dom. 1620.*

How to be removed.

By the Opinion of Master *Lambard* and others, the Constables of Hundreds were first appointed to be chosen by the said Statute of *Winchester*, *tempore Ed. 1.* And they were appointed for the Keeping of the Peace, and to view Armour twice every Year, and to present before Justices Defaults of Armour, of Watches, of Highways, and of Hue and Cry; and also all such as lodged Strangers for whom they would not answer. See *Rassal 379. c. d. Lamb. Duty of Const. 5. Minsb. verbo Constable.*

When first made.

13 E. 1. c. 6.

Petty Constables (in Towns and Parishes) were after devised (for the Aid of the Constables of the Hundred,) viz. about the Beginning of the Reign of King *Ed. 3.* as it appeareth by Mr. *Lambard* in his Book of *The Duty of Constables*, pag. 9.

Petty Constables.

See Stat. 4 E. 3. cap. 3 & 10.

But it appeareth by *Fineux*, 12 *H. 7. fol. 18. a.* that whereas the Sheriffs at the first had the Government of their Counties committed to them, afterwards, by reason of the Multitude of the People, and for that it was too great a Thing for one Person (*ſc.* the Sheriff) to undertake, therefore *Hundreds* were divided and derived out of the Counties; and in every Hundred there was ordained a Conservator of the Peace, who was called the *High Constable*; and after, *Boroughs* or *Towns* were made, and within every of them

Hundreds when first made.

also

also was ordained a Conservator of the Peace, who is called the *Petty Constable*, (and in some Places the Borough-Head:) And this was long before the Times that Mr. *Lambard* speaketh of, *ſc.* long before King *Ed. 1.* or King *Ed. 3.* which also may appear by the Derivation of the Word *Constable* hic supra, and that they were in the Time of the Saxons: So that it may seem, that as well the High Constables as the Petty Constables, and their Authorities, were by the Common Law; and that the old Statutes concerning them are but a Recital of the ancient Common Law.

Deputy Constable.

The Authority which High Constables and Petty Constables have by the Common Law for keeping the Peace, see *Chap. 1.* And the Constables Power to make a Deputy. *Ibid.*

Constables may make their Deputies, and such Deputies are within the Statute of 7 *Jac.* as was resolved in *Felph's Case*, *M. 13 Jac. B. R.*

Co. 5. 59.
Foster's Case.

If a Justice of Peace make a general Warrant to bring a Man before him, or any other, *ſc.* It is not at the Choice of the Delinquent, but of the Constable, before what Justice to carry him; but a Justice of Peace may make a Warrant to bring an Offender before himself, and it is good.

I have seen a MS. said to be a Collection of Sir *Nicholas Hide's* of the Office of a Justice of Peace; wherein it is said, That it was resolved by all the Judges of *England*, *Trin. 5 Car. 1.* That Justices of Peace at Sessions may not compel the Constables of Hundreds to attend at the Quarter-Sessions, and to present Offenders upon Oath, otherwise it is at the Assizes, *ſc.*

Petty Constables, how chosen and removed.

The Chusing and Swearing of these *Petty Constables* properly belongs to the *Court-Leet*: Yet we find it usual and warranted by common Experience, that every Justice of Peace doth also swear them, and upon just Cause doth and may also remove them. See the Title *Warrants and Precedents*, *Chap. 174.*

Sheriff.

Ba. U. 5. 6.

But in ancient Time both the High Constable of Hundreds, as also the Petty Constable of every Town, were yearly appointed by the Sheriff in his Torn, and were there sworn, and they may still be chosen or appointed, and sworn in the Sheriff's Torn, as well as in the Leet.

Constables lawfully chosen, if they shall refuse to be sworn, the Justice of Peace may bind them over to the Assizes or Sessions of the Peace. And for such his Contempt, he is there to be indicted, and thereupon fined and imprisoned. *Dyer 29.*

But he cannot commit them, until they will take on them the Office: For such a Commitment was adjudged void, *M. 1652.* And it was there resolved, that they could not chuse Constables, but might swear them, or if unfit Persons were chosen, might remove them.

Constables, their Ability.

Co. 8. 41.

And here, for the better chusing them, the Law requireth that every Constable be *Idoneus homo*, that is, apt and fit for the Execution of the said Office; and he is said in Law to be *Idoneus*, who hath these three Things, Honesty, Knowledge and Ability.

Honesty, to execute his Office truly, without Malice, Affection or Partiality.

Knowledge to understand what he ought to do.

Ability, as well in Substance or Estate, as in Body, that so he may intend and execute his Office diligently, and not through Impotence of Body, or Want, to neglect the Place.

For Constables chosen out of the meaner Sort, they are either ignorant what to do, or dare not do what they should, or are not able to spare the Time to execute this Office: They are therefore to be able Men, and to be chosen of the abler Sort of Parishioners; and are not to be chosen either by the House, or other Custom: But the Usage is otherwise.

Sid. 355.

Co. 8. 42.

And if any shall be chosen Constable who is not thus inabled and qualified, he may by Law be discharged of his said Office, and another fit Man appointed in his Place.

Leets chusing unable, or unfit Petty Constables, is Cause of Forfeiture of the Leet, and such Choice is void. And two Justices of Peace may remove such a Constable; or rather the Lord of the Leet should be dealt withal to chuse fitter Constables; and upon his Default, Complaint is to be made at the Assizes or Sessions of the Peace, from thence a Warrant to be granted to the Justices of Peace to chuse and swear others more fit. And so was the Direction of the Judge of Assize at *Cambridge*, *Anno 8 Caroli Regis.*

December, 4 Car. *William Stockdale* elected Constable was discharged, for that his Dwelling was not convenient for the well Execution of the said Office. *Ex libr. Sess. Middlef.*

If a Constable die, or remove out of the Parish, his Place is to be supplied at the Leet, if that Time fall near; otherwise by the Sessions: But if that be too far off, then by the next Justices. *Dyer 30.*

If a poor weak Man be chosen a Constable, the Justices of the Peace must help this. *Dyer* 31.

A Man for his Quality otherwise fit to be a Constable, &c. procuring himself to be the King's Servant Extraordinary, may notwithstanding be chosen a Constable, and may well perform his ordinary Service in the Country. *Dyer* 38.

For the Duty of a Constable, see their Oath. *Chap.* 174.

Two Justices of the Peace may appoint and swear new Constables, Headboroughs, &c. in Case of Death or Removal of such Officers out of the Parish. They to continue till the Lord hold a Leet, or until the next Sessions, who shall approve of them, or appoint others as they shall think fit. And if, in Default of holding Court-Leets, they continue above the Year, they may be discharged at the Sessions, and others put in. *13 & 14 Car. 2. c. 12. §. 15. Made perpetual by 12 Ann. §. 1. c. 18.*

And by the same Statute, Constables, Headboroughs, and Tithing-men out of Purse, with the Church-wardens and Overseers of the Poor, and other Inhabitants of the Parish, may take Rates upon all Occupiers of Lands, and Inhabitants, and all others chargeable by the Statute 43 *El.* to the Poor; which being confirmed under the Hands and Seals of two Justices of the Peace, may be levied by their Warrants, by Distress and Sale of the Refuser's Goods; for the Re-imbursing themselves their Charges in relieving, conveying with Passes, and in carrying Rogues, Vagabonds, and sturdy Beggars to the House of Correction. *Poor Rates. Ib. §. 18. See in Carthew 293, an Indictment on this Clause.*

Attornies, Clergymen, Justices of Peace, Infants, Lawyers, Physicians, poor and old Persons were exempted from being Constables, but not Tenants in Antient Demesne. *Exempted.*

As to Persons privileged from being Constables, see 2 *Harok. P.C.* p. 63 & 64, as also p. 65, for the Power of Justices of Peace, in Relation to these Matters.

Constables neglecting their Duty, according to 12 *Ann. Stat. 2. cap. 23.* shall, being convicted upon View of a Justice of Peace, or Oath of one Witness, forfeit 20 s. to the Use of the Poor, to be levied by Distress, &c. by Warrant of one Justice. *12 Ann. Stat. 2. c. 23. §. 27.*

C H A P. XXIX.

Conspiracy.

IF any Butchers, Brewers, Bakers, Poulterers, Cooks, Costermongers, or Fruiterers shall conspire, covenant, make Promise or Oath, not to sell their Victuals but at certain Prices; or if Artificers, Workmen, or Labourers, conspire, covenant, or promise, or make Oaths that they will not do their Work but at certain Prices, or Rates, or shall not work but at certain Hours and Times, or shall not take on them to finish what another hath begun, or shall do but a certain Work in a Day; such Person convicted by Witness, Confession, or otherwise, shall forfeit ten Pounds to the King, and if he have not sufficient to pay, or do not pay it within six Days after Conviction, shall have twenty Days Imprisonment, and shall only have Bread and Water. And for the second Offence shall forfeit twenty Pounds, and shall pay it within sixty Days, or else have the Pillory. And for the third Offence forfeit forty Pounds, and if he pay it not within six Days shall be set in the Pillory, and have one of his Ears cut off and be infamous. *2 & 3 E. 6. c. 15. §. 1.*

And if such Conspiracy be made in a Society, Company of any Craft, Mystery or Occupation of the Victuallers above-mentioned by the more Part of them, then over and besides the particular Punishment above-mentioned, the Corporation shall be dissolved. Justices of Peace, Mayors, &c. at their Sessions and Courts shall hear and determine the Offences, and punish the Offenders. * *Ib. §. 2.*

tinued and confirmed by 22 & 23 Car. 2. c. 19. which is now expired; so quære, if this of the 2 & 3 Ed. 6. be in Force.

Several Journeymen Tailors in *Cambridge* were indicted for a Conspiracy to raise their Wages, and being found guilty, they moved in Arrest of Judgment,

That the Fact was laid in the Town of *Cambridge*, without setting forth in what County; and it shall never be intended, that the Town of *Cambridge* is within the County of *Cambridge*, because this is a criminal Case, wherein Intendments are never allowed.

Besides, this Indictment ought to conclude *contra formam Statuti*, because by the Statute 7 *Geo. 1. cap. 13.* Journeymen Tailors are prohibited to enter into any Agreement for the Advancement of their Wages.

But adjudged, that the Fact being laid within the Town of Cambridge, it shall be intended, that the Town is within the County, and this in order to support all inferior Jurisdiction; and this being an Indictment for a Conspiracy, 'tis not material to conclude it *contra formam Statuti*, because Conspiracy is an Offence at Common Law. *Mich. 1721. The King verſus Journey-men Tailors of Cambridge.*

C H A P. XXX.

Conventicles.

By Stat. 1 W. & M. 3. c. 18. §. 8.

The Preachers or Teachers of dissenting Protestants are exempted from the Penalties of this Act.

Preachers.

THE Stat. 17 Car. 2. cap. 2. apud Oxon. enacts, That all Parsons, Vicars, Curates, Lecturers, and other Persons in Holy Orders, or pretended Holy Orders, or pretending to Holy Orders, and all Stipendiaries, and other Persons who have been possessed of any Ecclesiastical or Spiritual Promotion, and who have not declared their Assent, and subscribed the Declaration mentioned in the Act of 14 Car. 2. for Uniformity of publick Prayers, &c. and shall not take and subscribe the Oath following:

I A. B. do swear, That it is not lawful upon any Pretence whatsoever, to take Arms against the King: And that I do abhor that traitorous Position of taking Arms by his Authority against his Person, or against those that are commissioned by him, in Pursuance of such Commissions; and that I will not at any Time endeavour any Alteration of Government, either in Church or State.

And all such Persons who shall take upon them to preach in any unlawful Assembly, Conventicle, or Meeting, under Colour or Pretence of any Exercise of Religion, contrary to the Laws and Statutes of this Kingdom, shall not at any Time after the 24th of March 1665, unless in passing upon the Road, come or be within five Miles of any City or Town Corporate, or Borough that sends Burgesses to the Parliament, within *England, Wales*, or Town of *Berwick upon Tweed*, or within five Miles of any Parish, Town or Place wherein he or they have, since the Act of Oblivion, been Parson, Vicar, Curate, Stipendary or Lecturer, or taken upon them to preach in any unlawful Assembly, Conventicle or Meeting, under Colour or Pretence of any Exercise of Religion, contrary to the Laws and Statutes of this Kingdom, before he or they have taken and subscribed the said Oath before the Justices of the Peace at their Quarter-Sessions, to be holden at the Division next to the Corporation, City or Borough, Parish, Place, or Town, in open Court (which the said Justices are impowered to administer) upon Forfeiture for every such Offence of the Sum of forty Pounds, one third Part thereof to his Majesty and his Successors, the other third Part to the Poor of the Parish where the Offence is committed, the other third Part to the Person that will sue for the same by Action of Debt, Plaint, Bill, or Information, in any Court of Record at *Westminster*, or before any Justices of Assize, Oyer and Terminer, or Gaol-delivery, Justices of the Counties Palatine of *Chester, Lancaster, or Durban*, great Sessions in *Wales*, or Justices of the Peace in their Quarter-Sessions; no Effoin, Protection, or Wager of Law herein to be allowed.

It shall not be lawful for any Person or Persons restrained from coming to any City or Town Corporate, Borough, Parish, Town or Place, as aforesaid, or for any other Person or Persons who shall not first take and subscribe the said Oath, and shall not frequent Divine Service established by the Law of this Kingdom, and carry him or herself reverently there, to teach any publick or private School, or take any Boarders or Tablers to be taught or instructed by him or herself, or any other, upon Pain of Forfeiture of forty Pounds for every Offence, to be recovered and distributed as aforesaid.

And any two Justices of the Peace in their respective County, upon Oath to them of any Offence against this Act, (which Oath they are impowered to administer) may commit the Offender for six Months without Bail; unless before such Commitment he shall before the said Justices of the Peace swear and subscribe the said Oath and Declaration.

Provided, That Appearance to any *Subpœna*, Warrant or Process, whereby personal Appearance is required, shall not be construed an Offence within this Act.

There was an Act made 16 Car. 2. cap. 6. Touching the suppressing Seditious Conventicles, but the same being Temporary is expired, as by the same Act appeareth.

If.

If any Subject of sixteen Years of Age shall be present at any Meeting under Pretence of Exercise of Religion in any Place, at which are present five Persons, besides those of the House, if it be in a House inhabited, or if in a House, Field, or Place where no Family is, then if above five Persons be present, any one or more Justices of that Liberty, or the Chief Magistrate upon Proof of the Offence by Confession, or two Witnesses, or notorious Evidence and Circumstance of the Fact, to make a Record, which shall be a Conviction, and to impose five Shillings Fine on every Offender, which shall be certified at the Quarter-Sessions; and for the second Offence ten Shillings, which Fines shall be levied by Distress and Sale, and if poor, on any Person present at such Conventicle, and convicted at Discretion, so as such Sum to be levied on any other, exceed not ten Pounds at one Meeting.

The Constable, Headborough, Tithingman, Church-warden, or Overseer to levy it by Warrant, under the Hand and Seal of such Justice, or Chief Magistrate, and to deliver it to the Justice, or Chief Magistrate, one Part to the King, so paid to the Sheriff, viz. to be delivered into Sessions, and they to deliver it to the Sheriff, and to make a Record of it, and to certify it into the Exchequer; another third Part to the Poor, and the other third Part to such Informer, or other Person as the Justices shall appoint, having respect to their Industry thereabouts.

Every Preacher in such Conventicle shall forfeit for the first Offence twenty Pounds, to be levied by Distress and Sale, and if he be a Stranger, or unknown, or is fled, or cannot be found, or the Justices shall judge him unable to pay, the Justice may levy the same on the Goods of any Persons then present, to be disposed of as aforesaid. And for the second Offence the Preacher to forfeit forty Pounds, to be levied and disposed of, as aforesaid.

The Person that suffers such Conventicle in his House, &c. shall forfeit twenty Pounds, to be levied and disposed of as aforesaid. No Person shall be liable to pay above ten Pounds at any one Meeting, in respect of the Poverty of other Persons.

Where any Sum charged on such Offender exceeds ten Shillings, he may within a Week after it is levied, appeal in Writing to the Sessions, and leave it with the Justice, whether the Party convicting shall return the Money, and the whole Record and Evidence under Hand and Seal, to which the Appellant may plead, and it shall be tried by a Jury; and if he do not prosecute, or shall not be acquitted, or Judgment shall not pass for him, the Justices shall give treble Costs, and no other Court shall meddle with Appeals, and the Appellant is to enter into a Recognizance before the Person convicting to prosecute his Appeal, which shall be also certified to the Sessions.

The Justices, or Constables, Tithingmen, and Headboroughs by Warrant from them, with what Aid they think fit, upon Refusal, may enter the House or Place, and may seize the Persons, and upon a Certificate under a Justice's Hand and Seal of his Information or Knowledge of a Conventicle, and that he cannot suppress it, any commissioned Officer of the Militia, or other the King's Forces, and other Ministers of Justice with Soldiers or other Aid may prevent or dissipate them. But no Lord's House shall be searched, but by Warrant under the King's Sign Manual, or in Presence of the Lord Lieutenant, or Deputy Lieutenant, or two Justices, *Quorum unus*.

Any Constable, &c. knowing of a Conventicle, and not giving Information, but they or any other being called, refusing to go in Aid of them, and thereof convicted in Form aforesaid, shall forfeit five Pounds to be levied by Distress and Sale, and a Justice of Peace, or chief Magistrate neglecting his Duty, forfeits one Hundred Pounds, one Moiety to the King, the other to the Informer by Action, &c.

The Act shall be taken beneficially for suppressing Conventicles, and no Proceeding shall be revers'd for Form. If any Person convicted live in another County or Corporation, upon Certificate under Hand and Seal of the Person convicting, to the Justices or Chief Magistrate, he or they shall levy the Penalty.

The Party convicted being a Feme Covert, living with her Husband, Penalties of 5 s. and 10 s. shall be levied on his Goods: Every Offender must be presented within three Months.

See the 1 *W. & M. stat. 1. cap. 18.* (confirmed by 10 *Ann. cap. 2. sect. 7.*) which explains that of the 22 *Car. 2.* and makes divers Exceptions with respect to Protestant Dissenters.

22 Car. 2. c. 1. §. 1.
Nota, That Protestant Dissenters are exempted from the Penalties in this Act by Stat. 1 W. 3. c. 18. §. 4.

Sect. 2.

Sect. 3.

This doth not extend to a Protestant Dissenter. 1 W. c. 18. §. 8.

The like.

Sect. 4.

Sect. 5.

Sect. 6.

Sect. 9.

This doth not extend to Protestant Dissenters. 1 W. c. 18.

Sect. 10.

Sect. 11.

Sect. 13.

C H A P. XXXI.

Cottages, and Inmates.

Erecting Cottages.

31 El. 7.

See for the Exposition of this Statute 2 Inst. 736.

Continuing Inmates.

** This must be presented by the Jury upon their own Knowledge, or they must find Indictment upon Evidence, and then and not before the Lord hath a Title to the Penalty.*

Jury upon their own Knowledge, or they must find Indictment upon Evidence, and then and not before the Lord hath a Title to the Penalty.

NO Person shall make, build or erect, or cause, &c. any Cottage for Habitation or Dwelling, nor convert any Building to be used as a Cottage, unless he assign and lay to it four Acres of Land, being his Freehold and Inheritance, lying near it, to be continually used with it, upon Pain to forfeit to the King 10 *l.* Every Person that shall uphold or continue any such Cottage to be erected or convicted, shall forfeit 40 *s.* for every Month. There shall be no Inmate, or more Families, or Household, than one dwelling in any Cottage, made or to be made, upon Pain that the Owner, or Occupier wilfully suffering it, shall forfeit to the Lord of the Leet * 10 *s. per mensē.*

Ibid.

This Statute shall not extend to Cottages in any City, Town Corporate, or ancient Borough, or Market-Town, nor to Cottages erected for Habitation of Workmen in Minerals, Cole-Mines, or Quarries of Stone, or about making of Brick, Lime, or Cole, so as the same be not above a Mile from the Work, nor to a Cottage within a Mile of the Sea, inhabited by a Sailor, nor to a Cottage for a Keeper or Warrener, nor to a Cottage heretofore erected and used for the Habitation of a Shepherd, or poor Person, so allowed to continue by the Sessions.

Ibid.

** Directed by his Steward to the Bailiff of the Manor.*

43 El. 2.

The Justices of Peace in their Sessions (*inter alia*) may hear and determine Offences against that Act by Indictment, or by Presentment or Information, and to award Execution by * *Fieri facias, Elegit, Capias*, or otherwise, as the Case shall require.

The Church-wardens and Overseers, by Leave of the Lord in Writing, under the Hand and Seal of the Lord, or by Order of the Sessions with the Lord's Leave, may erect Cottages for poor People.

See also *Highways*, Chap. 50.

C H A P. XXXII.

Counterfeiters.

Two Justices.

33 H. 8. 1.

P. Just. 54.

TWO Justices of Peace, the one being of the *Quorum*, may grant their Warrant to attach and bind over to the next General Sessions of the Peace or Assises, any Person that is suspected of any deceitful getting into his Hands any Money, Goods, or other Thing of any other Persons, by Means or Colour of any false Tokens or counterfeit Letter made in another Man's Name, there to be examined and ordered.

Henry Jones for a counterfeit Pass was adjudged to the Pillory, and fined. *Lib. Delib. Gaol. Newgate 5 Dec. 8 Car.* The like for counterfeiting a Butcher's Licence, 30 *March, 7 Car. eod. Lib.* Also the said Justices may call before themselves the Offenders, and after due Examination, &c. may imprison such Offenders, or bail them until the next General Session or Gaol-Delivery. And in this Case the said Justices of Peace shall do well to take Examination of the Offence, and to certify the same to the said Sessions or Gaol-Delivery; and withal to bind over the Informers and Witnesses to give Evidence therein.

Cheaters.

One Justice of the Peace may bind such Offenders, as Cheaters, to their Good Behaviour, and so to the next Assises or Sessions of the Peace, there to be examined and ordered; or else, by Force of the Statute 7 *Jac. 1. cap. 4.* may send such Offenders, as idle and disorderly Persons, to the House of Correction, there to be continued until the next Assises or Sessions, and then and there to be forth-coming, &c. yet *Quare* of sending them to the House of Correction: And it seemeth more warrantable, if they be sent to the House of Correction by Order of the Sessions. *Richard Freed* had Judgment to be set in the Pillory with a Paper written, *A common Cheater and Coufener*, and thence to be had to *Bridewel*, and kept at Work till he paid twenty Nobles for a Fine, and

put in Sureties for his Good Behaviour. *Lib. Delib. Gaol. Newgate, 10 July 7 Jac. 1. fol. 77.*

Persons personating Seamen, &c. in order to receive their Wages, forfeit 200 l. over and above the other Penalties inflicted by Law. 9 & 10 W. 3. c. 4. §. 3.

Persons counterfeiting the Hand of the Treasurer, Controller, Surveyor, Clerk of the Acts, Commissioners of the Navy, or of the vouching Officers of his Majesty's Navy, &c. to any Bill, Ticket or other Papers, by Virtue whereof his Majesty's Naval Treasure may be disposed of, or shall knowingly produce any such counterfeit Ticket, &c. shall be committed to Prison till he find Sureties for his Appearance at the next Assizes or Quarter-Sessions. * 1 Geo. 1. c. 25. §. 6. Made perpetual 9 Geo. 1. c. 8.

23 Car. c. 23. relating to this last mentioned Offence, inserted in the former Editions of this Book, is expired. See the Statute at large. * Note; the Stat. 22 &

'Tis Felony without Benefit of Clergy, for any Person knowingly to send any Letter to another with a fictitious Name, demanding any valuable Thing, per Stat. 9 Geo. 1. cap. 22. Or forcibly Rescuing one in Custody for this Offence.

See more in Tit. Felonies by Statute, Chap. 160.

C H A P. XXXIII.

Customs.

WHERE any Officers of the Customs are, by any Person armed with a Club or other Weapon, forcibly hindred, affronted, abused, beaten or wounded in the Execution of their Trusts and Services, either on Board a Vessel, or by Land or Water, the Person resisting, &c. such Officers, or their Deputies, shall by the next Justice of Peace, or other Magistrate, be committed to Prison until the next Quarter-Sessions. 13 & 14 Car. 2. c. 6. §. 6.

If any Carman, Porter, Waterman, or other Person, shall assist in the taking up, landing, shipping, or carrying away any Goods, Wares or Merchandizes, either from the Shore outwards bound, or out of any Ship or Vessel arriving from Parts beyond the Sea, without a Warrant and Presence of one or more Officers of the Customs, the Person so offending, being apprehended by a Warrant from a Justice of Peace, and the same proved by the Oaths of two Witnesses, for the first Offence the Justice may commit him to Gaol, until he shall find Sureties for the Good Behaviour, for so long Time, until he shall be thereof discharged by the Lord Chancellor, Under-Treasurer, or Barons of the Exchequer. And for the second Offence, being so convicted, the Justice may commit him to Gaol for two Months without Bail, or until he shall pay the Sheriff five Pounds, or until he shall be discharged by the Lord Treasurer, Chancellor, Under-Treasurer or Barons. Ib. §. 7.

All Justices of Peace, &c. shall be assisting to the Officers of the Customs and their Deputies in the due Execution of every Thing by this Act enjoined. Ib. §. 32.

If any Person shall cause any Goods, for which Custom, Subsidy, or other Duties are due by Virtue of one Act of 12 Car. 2. cap. 14. to be landed or conveyed away, without Entry first made, and the Customer, Collector or his Deputy first agreed with, upon Oath made before (amongst others) the chief Magistrate of the Port or Place where the Offence shall be committed, or the Place next adjoining, he may issue out a Warrant to any Person or Persons, enabling them, with the Assistance of a Sheriff, Justice of Peace, or Constable, to enter any House in the Day-time, where the Goods are suspected to be concealed, and in case of Resistance to break the House and seize the Goods; but no House shall be entred, but within a Month after the Offence committed; and if upon such Information a House be searched, and the Information prove false, the Party shall recover his full Damage and Costs against such Information. To enter a House for Goods concealed. 12 Car. 2. c. 19. §. 1.

All Officers of the Customs in the Out-Ports, or elsewhere, shall before the 25th of March next take an Oath before two Justices of the Peace, that they will not receive any Reward or Gratuity other than their respective Salaries, or the regular Fees established by Law: And for neglecting or refusing to take the said Oath, shall forfeit their Office or Employment. 6 W. 3. c. 2. §. 5.

The Persons administering the said Oath, shall certify the same to the next General Quarter-Sessions of the Peace of the proper County, there to be recorded

- 6 Geo. 1. c. 21. §. 34. By the Stat. 6 Geo. 1. Persons armed with Clubs, or any Manner of Weapon, and tumultuously met together in the Day-time, or in the Night, to the Number of eight or more, their Aiders and Assisters forcibly Hindring, Wounding, or Beating any *Custom-house Officers* in the due Execution of their Office, and being convicted thereof, shall be transported by the Order of the Court, and for such a Term of Years not exceeding seven Years, as the Court shall think fit, in the same Manner as Felons are transported by 4 Geo. 1. cap. 11.
- Ib. §. 35. And if the Person thus transported shall return into *Great Britain* or *Ireland*, before the Expiration of the said Term, he shall be a Felon without Benefit of Clergy.
- 8 Geo. 1. c. 18. §. 6. All Persons found passing knowingly with foreign Goods, landed from any Ship without due Entry and Payment of Duties, in their Custody, from any of the Coasts of this Kingdom, or within the Space of twenty Miles of any of the said Coasts, and shall be more than five Persons in Company, or shall carry any offensive Arms, or wear any Mask or other Disguise, when passing with such Goods, or shall forcibly hinder or resist any Officers of the Customs or Excise in seising any Sort of Run Goods, shall be deemed and taken to be Runners of foreign Goods within the Meaning of this Act; and being convicted shall be adjudged Felons, and transported for seven Years. And such Offenders returning to *Great Britain* or *Ireland* before the Expiration of the said Term, shall be guilty of Felony without Benefit of Clergy.
- Ib. §. 10. If any Person shall receive or buy any Goods clandestinely Run, before the same be condemned, knowing the same to be so clandestinely Run, and shall be thereof convicted, upon Appearance or Default, on the Oath of one Witness, or by Confession before one Justice of the Peace of the County, &c. where the Offence shall be committed, or the Offender found; he shall forfeit 20 *l.* one Moiety to the Informer, the other to the Poor of the Parish; to be levied by Distress, &c. and for Want of Distress he shall be committed to Prison for three Months.
- Ib. §. 16. All Seizures of Vessels, of the Burden of fifteen Tons, or under, made by Virtue of any Act relating to the Customs, for Carrying uncustomed or prohibited Goods from Ships inwards, or for Relanding Certificate or Debentur Goods from Ships outwards; and all Seizures of Horses, Cattle or Carriages, for being used in the Removing such Goods, shall be heard and determined by any two Justices of Peace residing near the Place, in such Manner as by 6 Geo. 1. cap. 21. (except as excepted by this Act) and their Judgments shall be final, and not liable to any Appeal or *Certiorari*.
- See the Act at large.
- Ib. §. 17. Any two Justices for *London* or *Westminster* shall have the like Power relating to Seizures made within those Cities.
- This Act is continued by 8 Geo. 2. cap. 21. to 29 Sept. 1742.
- 12 Geo. 1. c. 28. §. 16. One Justice of Peace shall have Power to administer an Oath to Persons skilled in the Value of the Goods, Vessels, Boats, &c. mentioned to have been seized in the Information exhibited before any Justice of Peace to view the same, and to make a Return of the Value and Quality thereof, to such Justices in a limited Time; and after the Goods, Vessels, &c. shall have been condemned by such Justices, they shall be publickly sold to the best Bidder, at such Places and Times as the Commissioners shall think proper.
- 9 Geo. 2. c. 35. §. 1. By the Statute 9 Geo. 2. cap. 35. all Subjects of *Great Britain*, who before the 27th of April 1736. incurred any Penalty for Running of Goods, shall be indemnified.
- Ib. §. 7. But if any Person liable to be transported for such Offences shall take the Benefit of this Act, and shall afterwards commit any such Offences, he shall suffer Death as in Cases of Felony, without Benefit of Clergy.
- Ib. §. 10. Upon Information upon Oath, before any one Justice of Peace, that any Persons to the Number of Three have been assembled for Running of Goods, and have been armed with offensive Weapons; such Justice shall grant his Warrant to the Constables and Peace-Officers, to take to their Assistance as many of his Majesty's Subjects as may be thought necessary for the Apprehending every Person against whom any such Information shall be given, and such Justice shall (if upon Examination he find Cause) commit all the said Persons to the next County Gaol, without Bail, until they be discharged by Law; and every such Person, upon Proof of his being assembled and armed, in order to run Goods, upon Conviction, shall be adjudged guilty of Felony, and transported for seven Years.
- Ib. §. 13. All Persons, who, to the Number of Two in Company, shall be found passing within five Miles from the Sea-Coasts, or any navigable River, with Horse or Carriage, whereon there shall be laden more than six Pounds of Tea, or Brandy exceeding five Gallons, not having paid the Duties, and not having a Permit; or any other foreign Goods

Goods above the Value of 30*l.* landed without due Entry, and Payment of Duties, and shall carry offensive Arms, or wear any Disguise, or shall forcibly resist any Officers of the Customs or Excise, in the Execution of their Office, shall be deemed Runners of foreign Goods within 8 *Geo.* 1. *cap.* 18. And the Proof of Entry, and Payment of Duties, and of the Manner how the said Persons so found with the Goods came by the same, shall wholly lie on such Persons; and all Persons convicted of the said Offence shall be guilty of Felony, and shall be transported for seven Years.

Any Officers of the Customs and Excise wounded, &c. by the Offenders last mentioned, upon their Conviction, shall have 50*l.* And the Executor or Administrator of any Person killed in apprehending such Offenders, upon Certificate of the Justice of Assize, or the two next Justices of Peace, shall have 50*l.* over and above any other Reward. Ib. §. 15

Upon Information upon Oath before one Justice of Peace, of Persons loitering within five Miles from the Sea-Coast, or from any navigable River, and of Reason to suspect an Intent of running Goods, such Justice may cause such Persons to be brought before him, and grant Warrants for apprehending them, and if they do not give a satisfactory Account of themselves, they shall be committed to the House of Correction, to be whipp'd and kept to hard Labour, any Time not exceeding one Month. Ib. §. 18

If the Person brought before the Justice desires Time to make it appear, that he is not concerned in such fraudulent Practises, he shall not be punished, but the Justice may commit him to the common Gaol until he gives such an Account, or gives Security not to be guilty of the said Offences. Ib. §. 19.

Persons offering Tea, Brandy, &c. to Sale, without Permit; or if any Pedlar shall offer Tea, &c. to Sale, though with a Permit, the Person to whom such Tea, &c. is offered, may stop it, and carry it to the next Warehouse of the Customs or Excise, and bring the Offender before any Justice of Peace, to be committed to Prison and prosecuted, as if the Goods had been seized by an Officer. The Seisor is intitled to one Third of the gross Produce of the Sale of such Goods; or if he desire it, the Commissioners in the mean Time shall cause 1*s.* for every Pound of Tea, or Gallon of Brandy so seized, to be paid him, upon Certificate by the Justice of the Commitment of such Offender, and after Sale the Money so paid shall be replaced. Ib. §. 20.

Persons employed in knowingly carrying Goods run, in whose Custody the same shall be found, upon Conviction before one Justice of Peace, shall forfeit treble the Value of the Goods, one Moiety to the Informer, the other to the Poor, to be levied by Distress, and for want of such the Offender shall be committed to the House of Correction for any Time not exceeding three Months. Ib. §. 21.

Persons forcibly hindering or beating any Officer of the Customs or Excise, on board any Vessel in Port, shall be transported (by Order of the Court before whom convicted) for any Term not exceeding seven Years, and returning, &c. shall suffer as Felons without Benefit of Clergy. Ib. §. 28.

On all Trials of Seisures, the Seisure shall be taken to have been made as set forth in the Information, without any Evidence; and all Judges and Justices of Peace are to proceed to the Trial of the Merits of the Cause, without inquiring into the Seisure. Ib. §. 34.

Officers of the Customs and Excise may oppose Force to Force; and if any Person resisting the Officers shall be killed or wounded, the Officers and their Assistants being prosecuted, may plead the General Issue; and all Justices of Peace are required to admit such Officers, &c. to Bail. Ib. §. 35.

C H A P. XXXIV.

Custos Rotulorum.

NO Person shall be appointed or assigned *Custos Rotulorum*, but such as have a Bill signed with the King's Hand for the same, which Bill signed shall be a sufficient Warrant for the Lord Chancellor, or Lord Keeper, to grant a Commission to that Purpose, until the King in like Manner shall assign another. 37 H. 8. 1.

Every *Custos Rotulorum* shall nominate and appoint every Person who shall be Clerk of the Peace, and to grant such Offices to such able Persons instructed in the Laws, as shall be able to use the same, for the Time the *Custos Rotulorum* shall continue in his Office. 37 H. 8. 1.

1 W. & M. Stat. 1. c. 21. §. 4. By 1 *Will. & Mar.* the Appointing of the *Custos Rotulorum* through all the Counties shall be as directed by 37 *H. 8. cap. 1.*

See *Clerk of the Peace*, in *Chap. 23.*

Dissenters.

THOSE who refuse to make and subscribe the Declaration 30 *Car. 2.* and to take the Oaths which came in the Room of the Oaths of Allegiance and Supremacy when tendered, are to enter into a Recognizance with two Sureties of 50 *l.* conditioned to procure a Certificate under the Hands of Six of that Protestant Congregation (whereof the Refuser is one) or under the Hands of four Church of *England* Protestants, that he is a Protestant. 1 *Will. 3. cap. 18.*

10 Ann. c. 18. One Justice may require a dissenting Minister preaching in a County where he is not qualified according to the Act of Toleration, to take the Oath and Declaration of Allegiance and Fidelity.

1 Will. 3. c. 2. He who disturbs a Protestant Dissenter, and being convicted at the Sessions by the Oath of two Witnesses, forfeits 20 *l.*

5 Geo. 1. c. 4. By the Act 5 *Geo. 1. cap. 4. sect. 1.* Part of the Statute of 10 *Annæ, cap. 2.* and the *Schijin Act* of 12 *Ann. Stat. 2. cap. 7.* excluding Dissenters from Offices, are repealed; but Magistrates knowingly or willingly being at any Meeting for Religious Worship, other than the Church of *England*, in the Gown or Habit of, or attended with the Ensigns belonging to their Office, shall be disabled to hold such Office, and adjudg'd incapable of any Publick Office.

C H A P. XXXV.

Dyers.

13 & 14 Car. 2. c. 11. §. 26 & 27. IN the former Editions of this Book there was inserted the Act of 39 *Eliz. cap. 11.* against Persons using *Logwood* or *Blockwood* in Dying. But by 13 & 14 *Car. 2. cap. 11. sect. 26.* any Person may import *Logwood*, and use the same in Dying, provided such Importation be according to the Act of Navigation. 12 *Car. 2. cap. 18.*

13 Geo. 1. c. 24. §. 1. By 13 *Geo. 1. cap. 24.* If any Person shall dye Black any Bays, or other woollen Goods, as Mather Blacks, the same not being dyed throughout with Woad, Indigo and Mather only; or shall dye Black any Cloths, Long Ells, Bays, &c. for woaded Blacks, the same not being woaded throughout, he shall forfeit for such false Mathered Blacks as follows:

For every long *Bocking* Bays, containing 70 Yards 44 *s.*

For every *Colchester* Bays, or short Bays, containing 35 Yards, 22 *s.* and so in Proportion for Bays, or other woollen Goods.

For every Cloth dyed Blacks, without being woaded throughout, containing 44 Yards, 40 *s.*

For every Piece of Bays falsely dyed, as aforesaid, containing 70 Yards, 30 *s.*

For every *Colchester* or short Bays, containing 35 Yards, 12 *s.*

For every *Perpetuana* or Stuff, falsely dyed, 4 *s.* and so in Proportion for other woollen Goods deceitfully dyed for woaded Blacks.

Ib. §. 2. All woollen Goods which shall be truly Mathered Black, shall be marked with a red Rose, and a blue Rose; and all woollen Goods which shall be truly woaded Black throughout, shall be mark'd with a blue Rose; and if any Person shall counterfeit the said Marks, or shall affix such Mark to Goods falsely dyed, such Offender shall forfeit 4 *l.* for every Piece of Goods to which the said Mark shall be affixed.

Ib. §. 3. If any Person shall use *Logwood* in dying of Blue, he shall forfeit 40 *s.* for every Piece of Cloth so dyed, containing 44 Yards; and 22 *s.* for every long Piece of *Bocking* Bays, containing 70 Yards; and 12 *s.* for every *Colchester* or short Bays, containing 35 Yards; and 4 *s.* for every *Perpetuana* or Stuff, containing 24 Yards; and so in Proportion.

Ib. §. 4. Dyers of woollen Manufactures within *London*, or within ten Miles compass of the same, shall be subject to the Inspection of the Company of *Dyers*, and the Master, Wardens, and Court of Assistants of the said Company, may appoint Searchers within the

faid Limits; and out of the faid Limits, the Justices of Peace at their Quarter-Sessions may appoint fuch Searchers, who, taking a Constable or other Peace-Officer, in the Day-time, may enter the Shops or Work-houfes of Dyers of woollen Goods, to search for fuch Goods to be dyed Black or Blue; and Persons opposing fuch Search, shall forfeit 10*l.*

Forfeitures by this Act exceeding 5*l.* to be recovered in Courts of Record at *Westminster*, but not exceeding 5*l.* the Matter shall be determined by two or more Justices of Peace of the County, City, &c. where the Offence shall be committed. And Forfeitures by this Act in *London*, and ten Miles Distance, go one Moiety to the Informer, the other to the Company of Dyers; beyond fuch Compañs the Whole goes to the Informers. Offenders refusing to pay the Forfeitures not exceeding 5*l.* for the Space of twenty Days, the Justice may issue his Warrant to levy the fame by Distress, &c. and where no Distress can be found, to commit the Offenders to the House of Correction to hard Labour, not exceeding three Months.

Prosecutions for Offences against this Act shall be commenced within forty Days after the Offence committed. Persons aggrieved by Order of the Justices may appeal to the next Quarter-Sessions, giving reasonable Notice, the Determination of the Sessions shall be final; and they may allow Costs.

Defendant may plead the General Issue, and upon Nonfuit, &c. shall have treble Costs.

C H A P. XXXVI.

Egyptians.

EVERY Justice of Peace, Sheriff, and Escheator, within one Month after their Arrival, may seise all Goods of any outlandish Persons calling themselves *Egyptians*, that shall come into this Realm, and may also keep the one Moiety thereof to his own Use, making Account to the King in the Exchequer for the other Moiety. And every Person that can prove by two credible Witnesses (before the faid Justice or other Officer that so seiseth the faid Goods) that any of those Goods were craftily or feloniously taken from him, shall incontinently be restored thereto (by the Party that so seiseth them) upon Pain of the double Value thereof to be forfeited by fuch Seisor to fuch Prover.

But note, That after the Month the Offence is made Felony by the Statute of 1 & 2 *El.* 20. *Pb. & Mar. cap. 4.* and 5 *Eliz. cap. 20. p. 2.* And then it seemeth the King is to have the Goods wholly. And *Quære* whether the Statute of 22 *H. 8.* be still in Force, or be altered by the faid Statutes of 1 & 2 *Pb. & Ma. cap. 4.* and 5 *Eliz. cap. 20.*

Also note, That by the Statute of 1 & 2 *Pb. & Ma.* and 5 *Eliz.* the Word *Egyptian*, is now extended to fuch counterfeit Rogues and Vagabonds, as being *English* or *Welsh* People, do call themselves *Egyptians*; or do accompany themselves together, disguising themselves by their Apparel, Speech, Countenance, or other Behaviour, like unto *Egyptians*, or like unto fuch Vagabonds as call themselves, or are commonly called *Egyptians*: And so they are all Felons, or at least they are all incorrigible Rogues; therefore the Justice must send all fuch to the Gaol, and they are notailable by Law, because they are all deemed Felons without Clergy.

Escape and Breaking Prison. See *Felony*, Chap. 158, 159.

C H A P. XXXVII.

Estreats.

EVERY Clerk of the Peace shall deliver to the Sheriff within twenty Days after the 29th Day of *September* in every Year, a perfect Estreat of all Fines, Issues, Amerciaments, Recognizances, Monies and Forfeitures imposed, set, lost or forfeited in any Sessions of the Peace, before *Michaelmas*, by any Person due to his Majesty.

And the faid Clerk shall, on or before every second Monday after the Morrow of *All-Souls*, deliver into the Exchequer a perfect Schedule of all fuch Estreats and Schedules by him delivered to the Sheriffs, on Pain to forfeit 50*l.* one Moiety to the King,

1b. §. 9. the other to the Informer. 22 & 23 Car. 2. 2. No Justice of Peace, or Clerk of the Peace, shall spare, discharge, or conceal any Indictment, Fine, Issue, Amerciament, forfeited Recognizance, or Forfeiture, set, lost, or forfeited, or Money paid in Satisfaction of Fine or Forfeiture, unless by Order of Court, nor miscertify any of the same, whereby the Process of Exchequer may be made invalid, upon Pain to forfeit the treble Value thereof, one Moiety to the King, the other to the Informer.

1b. §. 10. Where any Fine or Forfeiture shall be paid to any Clerk of the Peace, and be estreated into the Exchequer, the Summons or Process of Green Wax shall go to the Sheriffs against him.

Quære, Where a Sheriff demands Money on the Green Wax, he ought to shew the same to the Party, and that which is paid shall be totted, or else he shall pay treble Damage to the Party, and be fined to the King, and the Party may bring his Suit before Justices of Peace. Statute 42 E. 3. 9. Statute 7 H. 4. cap. 3.

Evidence against Felons. See Chap. 164.

C H A P. XXXVIII.

Excise.

12 Car. 2.
c. 23.

BY Act of 12 Car. 2. cap. 23. is settled upon the King for Life, these Duties.
For every Barrel of Beer or Ale, above 6 s. the Barrel, brewed by a common Brewer, or any other that doth sell Beer publickly or privately, 15 d.

For every Barrel of 6 s. or under 3 d.

For every Hoghead of Cyder or Perry by the Retailer, 15 d.

For every Gallon of Metheglin by the Maker, to be sold, one Halfpenny.

For every Barrel of Vinegar Beer, brewed by a common Brewer, 6 d.

For every Gallon of strong Water, or *Aqua Vitæ*, by the Maker 1 d.

For every Barrel of Beer or Ale imported from beyond the Sea, 3 s.

For every Ton of Cyder or Perry imported, 5 s.

By 22 Car. 2.
Brandy is de-
clared to be
Strong Water
within this Act.

For every Gallon of Spirits, made of Cyder or Wine imported, 2 d.

For every Gallon of Strong Water imported, perfectly made, 4 d.

For every Gallon of Coffee, by the Maker, 4 d.

For every Gallon of Chocolate, Sherbet, and Tea, 8 d.

Excise to the
King and his
Heirs.

The like Excise is given to the King and his Heirs by the Statute of 12 Car. 2. cap. 24. in lieu of the Court of Wards and Liveries; and the Provisions of both Acts being the same in Substance, and for the most part in Words, are abridged as followeth:

12 Car. 2.
c. 24.

Who shall pay
it.

1. The Excise of foreign Liquors shall be paid by the Merchant Importer in ready Money, and before Landing, and by 15 Car. 2. cap. 11. there is a Penalty of the Forfeiture of the Goods.

Entries.

2. All common Brewers once a Week, and all Retailers once a Month, shall make Entries of what they shall brew or make in that Week, or Month, or else the Brewer to forfeit 5 l. Inn-keeper 5 l. other Retailer 20 s.

Payment.

3. A common Brewer within a Week, and other Retailer within a Month after they make, or ought to make their Entry, shall pay the Duty, or pay double the Duty to be levied of their Goods.

Office.

4. No Person living in a Market-Town, shall go out of that Town, or if he live out of a Town shall go farther than the next Market-Town on the Market-Day.

Gaugers.

5. The Commissioners and Sub-Commissioners in their Divisions may appoint Gaugers under Hand and Seal, which Gaugers may by Night or Day, if by Night in the Presence of a Constable, or other lawful Officer, upon Request, be permitted to enter any House or Place of Brewers and Retailers, and to take Account of such Liquors, and make Return to the Commissioners, or Sub-Commissioners, leaving a Copy of such Return with the Brewer, Maker, or Retailer, under his Hand, which Return shall be a Charge upon the Brewer, Maker, or Retailer; and if such Brewer, Maker, or Retailer, shall refuse such Gauger Entry, or to Gauge or take Account, the Gauger may forbid him to sell or carry out the same; and if he shall sell or carry out the same, not having paid the Duty, shall over and above the double Value pay five Pounds.

Off l.

6. Every 36 Gallons of Beer, and 32 Gallons of Ale to be taken by the Ale-quart, shall make a Gallon of Beer or Ale, and other Liquors by the Wine-quart.

7. No Brewer or Retailer shall upon Sale take more than the usual Prices, saving that *Prices.* common Brewers may take the Excise.
8. Every common Brewer shall out of twenty-three Barrels of Beer, be allowed one; *Allowance.* and so out of twenty-two Barrels of Ale.
9. Every common Brewer wittingly making a false Entry, and convicted as by the Act *False Entry.* is directed, shall forfeit as aforesaid; and so for six Months next following.
10. No Beer or Ale is to be delivered by the common Brewer to the Retailer, until the Duty be paid. If any brew only to sell in a Fair, and shall pay the Day before Sale, he shall be discharged.
11. The Commissioners and Sub-Commissioners may compound with the Brewer or *Composition.* Retailer, as may be for most Advantage of the Receipts thereof.
12. The Lord Treasurer or Commissioners of the Treasury, or such as the King shall *Farming.* appoint, may let to farm the Duty for three Years.
13. All Forfeitures and Offences to be determined within the Limits of the chief Office in *Appeal.* London, by the Commissioners or Governors of Excise, or the Commissioners of Appeal, in case of Appeal. And in other Places, by two or more Justices of Peace, near the Place; and in Case of Neglect or Refusal of such Justice, within fourteen Days after Complaint and Notice to the Offender, then by the Sub-Commissioners; and if any Person find himself grieved with the Judgment of such Sub-Commissioners, he may appeal to the Quarter-Sessions, whose Judgment shall be final. Which Commissioners and Justices are required, upon Complaint, to summon the Party, and upon his Appearance or Contempt, to examine the Matter; and upon Conviction by Confession or Proof, by one or more Witnesses, to give Judgment, and to grant Warrants to levy by Sale of Goods; if not redeemed within fourteen Days, and for Want of Distress, to imprison until Satisfaction.
14. The Justices and Commissioners may mitigate such Forfeitures, but not below the *Forfeiture.* double Duty, besides Costs and Charges of such Officers, which the Justices shall allow them. Which Forfeitures (Charges deducted) the King shall have three fourth Parts, and the Informer one.
15. There shall be a Head-Office in *Head Office.* London, or ten Miles of it, to which all other Offices shall be subordinate and accountable, as long as the King pleases, to be managed by such Persons as his Majesty shall appoint; and London and *Westminster*, and Places within the Limits of the weekly Bills of Mortality, shall be within the Care of that Office; (and that the King shall appoint Commissioners and Sub-Commissioners in all other Places) which Office, in all Places where it is appointed, shall be kept open, from Eight till Twelve, and from Two till Five; and the chief Commissioners shall pay all Monies collected into his Majesty's Receipt of the *Exchequer*.
16. No Person shall be capable of such Office or Employment, relating to the Excise, until he shall, before two Justices of the Peace, take the Oaths of Allegiance and Supremacy, and this Oath.

YOU shall swear to execute the Office of *truly and faithfully, without Favour or Affection, and shall from Time to Time true Account make, and deliver to such Person and Persons as his Majesty shall appoint to receive the same, and shall take no Fee or Reward for the Execution of the said Office, from any other Person than from his Majesty, or those whom his Majesty shall appoint in that Behalf.*

Which Oath every Justice of Peace shall certify at the next Sessions, there to be recorded.

17. No Writ of *Certiorari* shall supersede Execution, or other Proceedings, upon any Order made by the Justices in Pursuance of this Act.

Thus far go these two Acts of Parliament; and 15 *Car. 2. c. 11.*

An explanatory Act was made as followeth,

First, No common Brewer or Retailer of Beer and Ale shall, without Notice to the next *Measures altered.* Excise-Office, or to the Commissioners, Farmers, or Sub-Commissioners of that Division, erect, alter, or enlarge any Tun, Fat, Back, Cooler or Copper, or use them for Brewing; or shall use or make any private Store-house, Cellar, or Place, other than such as were then opened and used in his common and usual Brew-house, upon Pain to forfeit fifty Pounds. And every Person in whose Occupation the same shall be found shall forfeit fifty Pounds. And such Tun, Fat, Cooler, Back or Copper, with the Beer or Wort therein, may be seized and delivered to the Overseer of the Poor, to be sold for the Use of the Poor, and distributed amongst them. *15 Car. 2. c. 11.*

*Commissioners
nor Farmers.*

Secondly, No Commissioner for regulating the Excise, shall directly or indirectly farm it by Patent to himself, or any other in Trust; nor Farmer be capable of being a Commissioner: And if he act, shall lose the Benefit of his Farm, and be disabled to be Farmer or Commissioner; and all Acts made void; and Persons troubled may bring their Actions.

Gauger.

Thirdly, Every Gauger shall weekly, after a common Brewer hath or ought to make his Entry, deliver to him, at his House or some of his Servants a Copy of his Return, or forfeit forty Shillings. And a Brewer, if he certify his Entry, or discharge the same within a Week after such Note delivered, shall not incur any Forfeiture.

Fourthly, Two able Gaugers in every City shall be appointed, one by the Commissioners, the other by the Brewers, and shall take an Oath before one Justice, to gauge all Tuns, Fats, Coppers and Vessels; and deliver one Copy to the Commissioners, and another to each Brewer.

*Officer no
Justice.*

Fifthly, No Commissioner, Sub-Commissioner, Farmer of Excise, common Brewer, or Inn-keeper, shall act as a Justice of Peace; if he do, all Acts done by him are void.

*Deputies in
Towns.*

Sixthly, The Commissioners, Farmers, or Sub-Commissioners, shall under their Hand and Seal, depute some Person in each Market-Town, to be there every Market-day in some publick Place, to receive Entries; and the next Market-day it shall be published, who shall attend each Market-day from Nine to Twelve, and from Two till Five. And if such Office be not so attended, the Commissioners, Farmers, or Sub-Commissioners for each Market-day forfeit ten Pounds to be recovered by Action, one Moiety to the King, the other to the Informer: And the Person coming, and being able to prove a Tender by one Witness, shall be excused of all Penalties.

*Delivery of
Beer.*

Seventhly, No common Brewer shall deliver out Beer, without Notice to the Excise-Office, but between *Michaelmas* and *Lady-day*, between Seven in the Morning and Five at Night; and between *Lady-day* and *Michaelmas*, from Three in the Morning till Nine at Night, or else forfeit twenty Shillings for every Barrel.

Mixing.

Eighthly, If a Brewer or Retailer shall, after any Account taken by the Gaugers, of the Quantity and Quality of Beer, Ale, or Wort, mix his small Beer with strong Beer or Ale, and shall deliver out, or retail the same without giving Notice to the Gaugers, or shall hide or conceal his Beer or Ale from the Gaugers, shall for every Barrel so mingled or concealed, forfeit twenty Shillings.

Utensils.

Ninthly, The Utensils or brewing Vessels, whosoever they be, shall be liable to the Duty and Penalties; and the Duty and Penalties may be levied thereof.

*Brewing for
other.*

Tenthly, If any common Brewer, that is under a Composition, shall, during that Time, suffer any Beer or Ale to be brewed in his House for another common Brewer, without first giving Notice to the Commissioners, Farmers, or Sub-Commissioners of that Division, of how much is to be brewed, and the Quantity and Quality thereof; and forthwith paying down the Duty: As well the Brewer by whom, as for whom, shall pay for every Barrel five Pounds; one Moiety to the King, the other Moiety to the Informer, to be sued for in any Court of Record.

Bribe.

Eleventhly, No Person shall give a Bribe, Money, Fee, or Reward to any Gauger or Officer, to make a false Report or Return; no sworn Gauger, or other Officer, shall so take upon Pain of ten Pounds: And upon Proof by two Witnesses before two Justices, by Warrant to levy of the Goods; for Want of Goods, Imprisonment for three Months.

Appeal.

Twelfthly, No Appeal shall be admitted, unless the Appellant lay down in the Hands of the Commissioners, or Sub-Commissioners, the single Duty of Excise, and give Security to the Commissioners of Appeal or Justices, for the Fine and Penalty: And if the Judgment be reversed, the Commissioners shall restore the Duty, or so much thereof as shall be adjudged. And the Party, originally presented, shall pay double Costs; and if affirmed, the Party appealing shall pay the Commissioners complained of like Costs. *Note*; The Words are not intelligible, but, as I conceive, some Mistake is in the Print; for, it seems the Words should be *prosecuting* for *prosecuted*, or some other Words to that Sense.

Vinegar.

Thirteenthly, Excise shall be paid for Vinegar-Beer, made to sell in any other Place, as well as in a common Brew-house.

Colleges.

Fourteenthly, Colleges and Halls of Universities excepted.

County.

Fifteenthly, All Differences, Appeals and Complaints, touching Excise, shall be determined in the proper County.

Receipts.

Sixteenthly, No Officer of Excise shall take any Money, Fee, or Reward, for any Bond, Note or Receipt, touching the Excise, if he do, shall pay for every Offence ten Shillings.

Seventeenthly, The Justices, or any two of them, of chief Magistrates in all Counties and Places, shall meet once a Month, or oftner, if Occasion be, to hear and adjudge Matters of Excise.

Eighteenthly, One third Part of all Forfeitures (not thereby disposed of) shall be to the King, another to the Poor, a Third to the Informer: And all Fines and Forfeitures, for the Recovery whereof no Remedy is ordained by that Act, shall be recovered by Action of Debt, Bill, Plaint or Information, in any Court of Record in the County, City, or Corporation, where the Offence is committed; or by such other Ways and Means, and in such Manner as is by the said former Act ordained. 15 *Car. 2. cap. 11.*

Nineteenthly, In *London* no Appeal to be received, unless commenced within two Months after the Judgment; and in the County, within four Months after the Judgment. *Time of Appeal.*

Twentiethly, No Commissioner, Farmer, Sub-Commissioner, or other Person, to be employed in the farming, collecting, or taking Accounts for the Duty of the Excise, shall take upon them that Office, or proceed in the Execution of that Employment, until they have taken the Oaths appointed by 12 *Car. 2. cap. 23.* As is appointed by that Act, and have entred his Certificate of taking the said Oaths with the Auditor of the Excise, under the Penalty of fifty Pounds the Month, if he shall neglect it. *Oath.*

By the Statute of 16 & 17 *Car. 2. cap. 4.* Farmers of Excise may put in Execution such Powers and Authorities, as Commissioners, and Sub-Commissioners may do by 12 *Car. 2. cap. 23.* and 15 *Car. 2. cap. 11.* Except the judicial Part of hearing Differences, and mitigating Fines and Penalties. *Farmers.*

By an Act of 22 & 23 *Car. 2. cap. 5.* A Duty of Excise is laid upon Liquors for six Years, from 24 *June, 1671.* in these Proportions.

For every Barrel of Beer and Ale brewed, to be sold, above six Shillings the Barrel, 9 *d.* 22 & 23 *Car. 2. c. 5.*

For every Barrel of six Shillings, or under, 3 *d.*

For every Hoghead of Cyder and Perry, made and sold by Retail, to be paid by the Retailer, 1 *s. 3 d.*

For every Gallon of Mead by the Retail, *ob.*

For every Barrel of Vinegar-Beer, 6 *d.*

For every Gallon of Strong-Water, 1 *d.*

For every Barrel of Beer or Ale imported, 3 *s.*

For every Tun of Cyder or Perry imported, 4 *l.*

For every Gallon of low Wine of the first Extraction made of Wine, Cyder, or other Materials imported, 2 *d.*

For every Gallon of Coffee, 2 *d.*

For every Gallon of Chocolate, Sherbet and Tea, 8 *d.*

Which Duty is thereby declared to be ordered in all Things as in the former Act, with these Additions.

1. For Waste and Leakage in every twenty-three Barrels of Beer shall be allowed three, and in twenty-two Barrels of Ale shall be allowed two. *Waste.*

2. Penalties for all Offences against this Act, shall be thus employed. One Moiety to the King, the other to the Informer; but the Penalties may be mitigated, as in former Acts.

3. All Liquors imported, shall be first entred before landed, and Duties paid, and every Warrant for the landing shall be signed by the Collectors of Excise, before the same shall be put a-shore, or else it is forfeited, or the Value of it; one Moiety to the King, the other to the Informer. *Liquors imported.*

4. No private Person shall lend his Vessels to be brewed in, in his House or elsewhere, upon Pain to forfeit fifty Pounds. *Mixing.*

No Retailer of Beer shall after the Receipt thereof, from a common Brewer, mix Beer, Ale or Wort, of an extraordinary Strength with Small Beer, in any Tub containing three Gallons, or more; and if he do, to forfeit for every Barrel double the Duty of Excise, to be heard before the Justices and Commissioners, and they to summon Witnesses: And any Person refusing or neglecting to testify, to forfeit any Sum under forty Shillings, to be recovered and disposed, as other Penalties by former Laws.

6. No Inn-keeper or Retailer to be troubled for selling at greater Prices than formerly during this Act. *Prices.*

As well Justices of Peace as Commissioners of Excise or Appeals have Power to hear and determine Complaints between the Brewers and Gaugers. *Excise.*

Forfeitures.

No Commissioners, or other Persons employed about the Duty of Excise, shall receive from any Collectors, Surveyors, Gaugers, &c. any Fee or Reward upon Pain of forfeiting their Office, upon Proof by two or more credible Witnesses, before two Justices of the Peace.

Over-charge of Gauger. Ibid.

Commissioners of Excise or Appeals, or Justices of Peace upon Complaint made to them, on Behalf of the Brewers, &c. of any Over-charge returned by the Gaugers, shall hear and determine the same, and examine Witnesses upon Oath, on both Sides.

Brandy exported.

2 W. & M., Sess. 2. c. 9. & 7 & 8 W. 3. c. 30.

Distillers, &c. upon Oath made before two Commissioners of Excise, or Justices of the Peace, that any Brandy, &c. intended to be exported, was drawn from Drink brewed from malted Corn, and not mixed with any low Wines, or any other Spirits made from other Materials, and that the Duties of the same are entered and paid, and that the same are exported for Merchandize, may export such Spirits or Brandy; and upon Certificate from the Officer, &c. such Exporter shall be paid by the Commissioners of the Port 3 *d.* for every Gallon so shipp'd off.

The Authority given to Justices of the Peace by several Statutes concerning the Excise, extends to these Particulars following, *viz.*

To	Brandy and Spirituous Liquors. Brewers. Cyder-Makers. Distillers. Gaugers. Inn-Keepers and Victuallers.	}	To	Makers of Mead, Vinegar, Methlegin and Sweets. Low Wines. Malt. Retailers of Beer, Ale, Cyder, Perry, Methlegin, &c.
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Brandy.

6 Geo. 1. c. 21. §. 12.

AND first as to Brandy; all Distillers, Dealers, Makers, or Sellers of *Brandy, Arrac, Rum, Strong-Waters* or *Spirits*, by Wholesale or Retail, are enjoined by the Statute 6 *Georgii*, to make true Entries in Writing of all Warehouses, Cellars, Rooms, Shops, Store-houses, or Vaults, which they use for keeping Brandy, &c. for Sale, which Entries are to be made at the next Excise-Office.

The Forfeiture is 20 *l.* for every Warehouse, &c. so used without making such Entry; to be sued for, recovered, and levied or mitigated, as any Forfeitures may be by any of the Laws of Excise; one Moiety to the King, the other to the Informer.

Ib. §. 13.

No Brandy, &c. shall be brought into such Warehouse, &c. without Notice first given to an Officer of Excise, and without producing and leaving with him a Certificate, that the Duties of such Brandies have been paid, or that they were condemned as forfeited, or that they were Part of the Stock of some Importer, Distiller, or Maker who paid the Duty.

The Penalty is the Forfeiture of the Brandy, &c. so brought in, *without Notice*, or Certificate, together with the Cask and Vessel.

Ib. §. 14.

Any Distiller or Dealer in Brandy, hindering or refusing an Officer of Excise to enter into their Ware-houses, &c. to take an Account of Brandy, &c. or shall lett, hinder or obstruct Officers in executing the Powers given them by this Statute, shall forfeit 50 *l.* for every Offence, to be sued for, levied, mitigated and divided as before.

Ib. §. 15.

No Brandy shall be sold, uttered, or exposed to Sale by Wholesale or Retail, but when the same shall be in one of the said Ware-houses, &c. and entered as before mentioned, upon Pain of forfeiting 40 *s.* for every Gallon of Brandy, &c.

Ib. §. 21.

And no Brandy, &c. exceeding a Gallon, shall be removed or carried from one Place to another, either by Land or by Water, without a Permit or Certificate, from one of the Officers of Excise, on Penalty of forfeiting the Brandy so removed, together with the Vessel in which 'tis contained.

Ib. §. 18.

Persons who shall have in their Custody any Brandy above 63 Gallons, shall be accounted Sellers of Brandy, and subject to be surveyed by the Officers of Excise.

Ib. §. 20.

Justices of Peace residing near the Place where any *Seizure of Brandy*, &c. shall be made, and which hath *clandestinely been imported*, may summon the Person, in whose Possession it shall be found, to appear before them; and upon his Appearance, or in Case he makes Default after a Summons, the Justices may in a summary Way proceed to examine, and give Judgment to condemn the Brandy, and issue out their Warrant for Sale thereof, together with the Vessel; which Judgment shall be final, without any Appeal or *Certiorari* to be brought.

When

When Brandy is seized, and no Claim made in 20 Days, the Officers must, after the lb. §. 22. said 20 Days, give publick Notice by Proclamation the next Market-Day, of the Day and Place when and where the *Justices* will proceed to examine the Cause of such Seizure, and to give Judgment of Condemnation of the Brandy so seized, which Judgment shall be final, and not controuled by an Appeal or *Certiorari*.

But in both these last Cases, the *Justices of Peace* have no Jurisdiction within the Limits of the Excise-Office in *London*; nor in any Case where the Seizure is made for an unlawful Importation, and where the whole Quantity of Brandy, &c. at any Time seized doth exceed 63 Gallons.

The Master or Purser of any Ship, suffering Brandy, &c. or other uncustomed or prohibited Goods, to be put out of his Vessel into any *Hoy, Lighter, Boat* or *Bottoms* to be laid on Land, if convicted, shall (besides the Forfeitures to which they are liable by any Law now in Being) suffer six Months Imprisonment, without Bail. §. 32.

No Arrack, Brandy, &c. shall be exposed to Sale, but in one of the Warehouses, &c. in Pursuance of *6 Geo. 1. cap. 21.* on Pain of forfeiting such Arrack, &c. together with the Casks, &c. over and above the Penalty of 40 s. imposed by that Act. 11 Geo. 1. c. 30. §. 3.

Sellers of Brandy, and other spirituous Liquors by Retail, shall be licensed in the same Manner as common Alehouse-keepers. See *Tit. Alehouses.* 2 Geo. 2. c. 28. §. 10.

Any Person may export Spirits drawn from Corn of *Great Britain*, upon Oath made before two Commissioners of Excise, or two Justices of Peace, that the same are drawn from Corn in *Great Britain*, without Mixture of other Materials, and that the Duties are paid, and that the same are exported to be spent beyond Sea. 6 Geo. 2. c. 17. §. 7.

As to the Manner of paying the Bounty of 4 l. 18 s. per Ton, see the Act.

None shall sell any Brandy, or other distilled spirituous Liquor, in less Quantity than two Gallons, without taking out a License ten Days before, for which they shall pay 50 l. The License to be renewed Annually, paying 50 l. for every new License: Selling without such License is a Forfeiture of 100 l. Every Gallon retailed is liable to a Duty of 20 s. 9 Geo. 2. c. 23. §. 1.

The Powers of the *12 Car. 2. cap. 24.* or any other Law relating to Excise upon Beer, Ale, or other Liquors, shall be exercised for managing the Duties hereby granted. One Moiety of the Penalties to the King, the other to the Informer. §. 4.

Officers may by Day or Night enter Warehouses described in the Act; by Night it must be in the Presence of a Peace-Officer, Oath being made before any Justice dwelling near the Place, of probable Cause of Suspicion, that spirituous Liquors are there concealed, and Persons hindring such Officer to enter, &c. forfeit 50 l. §. 9.

Persons selling spirituous Liquors about the Streets, &c. or in other Places, but such as are allowed by this Act, forfeit 10 l. and any Justice of Peace, upon View, Confession or Oath of one Witness, may convict the Offender. The Money forfeited shall be for the Use of the Poor, if there be no Informer, but if there be, one Half goes to him. If the Offender neglects to pay the said Forfeiture, he shall be committed to the House of Correction for two Months. §. 12.

Nothing in this Act shall enable any Persons to sell spirituous Liquors by Retail, unless he be licensed by two Justices of Peace, for which License 2 s. 6 d. is to be paid to the Clerks of such Justices, and no other Reward to the Clerk of the Peace, or on any other Account, on Pain of forfeiting 5 l. and if the License is not found by the Justices Clerks, no Fee shall be due. §. 14.

It shall be sufficient for any Justice, who shall convict any Person of selling strong Liquors without License, to draw up such Conviction in the following Form, or any other Form, to the same Effect. §. 15.

Middlesex. **A.** *B. is convicted on his or her own Confession (or on the Oath of) of having sold Beer, Ale or strong Waters, in the Parish of in this County, on the Day of without being duly licensed thereto by two Justices of the Peace.*

Given under my (or our) Hand and Seal, or Hands and Seals this Day of or of keeping a Disorderly House.

And if Occasion requires, to add, that the same is the first, second, or third Conviction, which Convictions shall be effectual, subject to Appeal to the next Quarter-Sessions.

Any Justice of Peace may call before him any Excise-Officer within their respective Divisions, and to examine the said Officer upon Oath, touching the Entry of any spirituous §. 20.

tuous Liquors, Ale, Beer, Cyder or Perry, made by any Person suspected to sell the same without License; and every Person making such Entry shall be deemed a Seller of such Liquors.

11 Geo. 2.
c. 36. §. 2.

This Act is farther enforced by 11 Geo. 2. cap. 26. by which, If any Persons, to the Number of Five, shall in a tumultuous and riotous Manner assemble, to rescue any Offender against the said Act, or to Assault, Beat or Wound any Person, who shall have given, or be about to give any Information or Evidence against, seize or bring to Justice, any Person offending against the said Act; all Persons so assembling themselves, and their Aiders and Abettors, being thereof convicted, shall be guilty of Felony; and the Courts before whom they shall be convicted, shall have Power of Transporting such Felons for seven Years to the Plantations.

§. 3.

Justices of Peace, or others, upon Actions brought against them for any Thing done by Virtue of this Act, or the said Act of 9 Geo. 2. may remove such Action to any of the King's Courts of Record at *Westminster*, so that the Writ for Removing the same be delivered to the Judge of the inferior Court before Issue joined; and such Defendant may plead the General Issue; and if the Plaintiff be Nonsuited, &c. the Defendant shall recover treble Costs.

§. 4.

One Justice of Peace may issue his Warrant to any Peace-Officer for apprehending, and bringing any Hawker or Seller of spirituous Liquors, contrary to the Act, before some Justice of Peace.

§. 5.

Any Person may seize and detain such Hawker and Seller, &c. for such Time as he may give Notice to a Constable or other Peace-Officer, who are required to carry such Offender before some Justice of Peace to be examined, &c.

§. 7.

Constables neglecting the Execution of this Act, forfeit 20*l.* upon Conviction before any Justice of Peace; to be levied by Distress, &c. one Moiety to the Poor, the other to the Informer.

§. 8.

No Distiller shall Act as a Justice of Peace in any Thing concerning the Execution of this Act, or of the forementioned.

Brewers.

15 Car. 2.
c. 11. §. 7.

BY the Statute 15 Car. 2. any Justice of the Peace hath Power to administer an Oath to two able Artists, to complete the Contents and Gage of all Brewing Vessels.

12 Car. 2.
c. 23, 24.
1 Will. 3.
c. 24.

* Upon the
Warrant it
must be return-
ed, that there

And by the Statute 12 Car. 2. Brewers not making true Entries once every Week, forfeit 5*l.* And if they do not pay the Duty within a Week after Entry made at the Office of Excise, they forfeit 10*l.* to be levied by Distress, and Sale of their Goods, if not redeemed within 14 Days after the Distress made; and for want of * Distress, then to be committed till Satisfaction made.

This Forfeiture may be mitigated by the two Justices, so as it be not less than double the Duty of Excise, besides Costs and Charge.

The Conviction must be before two Justices, and by one Witness or Confession of the Party; and the Prosecution must be within three Months after the Offence, and three Parts of the Forfeiture go to the King, and one to the Informer, after Charges deducted.

Brewers not permitting Gagers to enter, and being forbid by Gagers to sell or deliver out any Liquor without paying the Duties, forfeit 5*l.* and 10*l.* more, over and above the double Value, to be levied, mitigated and divided, *ut supra*. And the Prosecution and Conviction must be as before.

Brewers making false Entries shall, over and above the said Penalties, forfeit their Allowance for their Waste and Leakage for six Months; the Prosecution and Conviction must be as before.

15 Car. 2.
cap. 11.
1 Will. 3.
cap. 24.

* By the Stat.
8 Will. 3.
cap. 19. §. 8.

A Brewer or Retailer not giving Notice at the next Excise-Office of setting up, altering, or enlarging any Ton, Vat, Back, Cooler or Copper, and using them; or keeping any private Store-house for laying such Liquors in Casks, forfeits * 50*l.* for every Ton, Vat, &c. to be levied by Distress, and Sale of Goods, &c. and for want thereof to be committed to the County Gaol for three Months.

'tis 200*l.* one Moiety to the King, the other to the Informer.

The Conviction must be by two Witnesses, and the Informations must be brought in three Months, and Notice must be given within a Week after the Information is brought.

Any Person in whose Occupation the House is, where a concealed Ton, Vat, &c. shall be discovered, forfeits 50*l.* to be levied and divided, *ut supra*; and for want of a Distress, to be committed, *ut supra*; and the Ton, Vat, &c. together with the Beer, shall be seized and delivered to the Overseers of the Poor, to be sold for the Use of the Poor, or to be distributed amongst them.

The Prosecution and Conviction must be, *ut supra*; but before the Sale or Distribution, the Justices must make an Adjudication of this very Forfeiture.

Brewers delivering or carrying out Ale or Beer, before Notice, &c. unless between 3 in the Morning and 9 in the Evening, from the 25th of *March* to the 29th of *September*; and between 5 in the Morning to 7 in the Evening, from the 29th of *March* to the 25th of *September*, forfeit 20*s.* per Barrel, to be levied and employed, and the Party to be committed, *ut supra*.

The Prosecution and Conviction must be, *ut supra*.

Brewers converting small Beer into strong, by mixing it after the Gage is taken, without giving Notice to the Gager; or hiding or concealing Drink not gaged, forfeit 20*s.* per Barrel, to be levied and employed, and the Prosecution and Conviction to be, *ut supra*.

By the Statute 1 *Will.* Brewers who neglect, or refuse to shew Gagers, all the Beer, Ale, or Worts of every Guile, are to have no Benefit of the Preamble in the Statute 15 *Car.* 2. concerning Mis-entries, and shall incur all the Penalties imposed by any former Acts. 1 W. 3. c. 24
§. 10.

Brewers or Victuallers cleansing before the whole Guile is brewed, forfeit 40*s.* per Barrel, to be recovered and employed, *ut supra*. 7 W. 3. c. 30.
§. 21.

And refusing Gager to enter, and to stay in the Brewhouse to see the Guile brewed off, forfeit 20*l.* to be recover'd and employed, *ut supra*. §. 22.

Carrying out any Drink, or after 'tis carried out mixing any small with strong upon the Dray, or in the Cellar of the Victualler, forfeits 5*l.* to be employed and levied, *ut supra*. §. 23.

Brewer, or any other, obstructing the Officer in searching for private Tun, Back, Cask, &c. forfeits 20*l.* to be recovered and employed, *ut supra*. §. 27.

Every common Brewer shall tell the Gager how much strong Beer or Ale he intends to make of a Guile, and how much small, before any Part of the Guile is removed; and upon Refusal of such Discovery, the Gager shall return the whole Guile to be strong; and besides the Brewer shall forfeit 20*s.* for every Barrel; and if after the Brewer hath declared how much is in the Guile, any Increase be made thereof, the Brewer forfeits 5*l.* per Barrel; and the Servant assisting him forfeits 20*s.* and if not able, shall be committed for three Months. 8 W. 3. c. 19.
§. 2.

If such Increase is made by adding Ale or Beer of a former Brewing, the Brewer shall incur all the said Penalties, unless 'tis proved on Oath that it was done in the Presence of the Gager.

If it appears to the Gager, that the Quality of strong Beer or Ale remaining of a former, and added to a new Guile, hath been alter'd since it was brewed, he shall return all that is added to the new Drink, as if then brewed, and the Brewer shall pay the Duties accordingly.

No common Brewer shall keep a Pipe or Stop-Cock under Ground, or any private Convenience, by which Worts may be conveyed from one Vessel or Place to another: Penalty is 100*l.* for every Offence.

Gager, or Officer of Excise, may in the Presence of a Constable, after Request made, break up the Ground in the Day-Time, or any Ground joining to the Brewhouse, or any Wall, to search for such Pipes; and if none are found, the Gager shall make good the Damage. Any Person opposing the Gager in such Search forfeits 50*l.*

As to the other Heads relating to the Authority given to Justices by several Statutes concerning the Excise, see the Appendix, Tit. Excise.

C H A P. XXXIX.

Extortion.

- Fees for Arrest.* 23 H. 6. 10. NO Sheriff, Under-Sheriff, and their Clerks, Coroners, Stewards of Franchises, Bailiffs, Keepers of Prison, or other Officers or Ministers, by Colour of their Office, shall take any other Thing by them, or by any other Person, to their Use and Profit, of any Person to be by them arrested or attached, nor of any other, for the permitting any Arrest or Attachment, or of any Person to be arrested or attached for Fine, Fee, Suit of Prison, Mainprife, or shewing Ease or Favour to any Prisoner but as followeth: Sheriff 20 *d.* Bailiff 4 *d.* Gaoler 4 *d.*
- Ibid. Panel.* No Sheriff, Under-Sheriff, Sheriff's Clerk, Steward, &c. or Coroner, shall take for making any Return, Panel and Copy, but 4 *d.*
- Fees for Warrant.* The Sheriffs shall take no more than 4 *d.* for making any Obligation, Warrant or Precept.
- Ibid. Forfeitures.* He that offends shall lose to the Party his treble Damages and forty Pounds, *viz.* a Moiety to the King, and the other Moiety to the Informer.
- Fees.* Justices of Peace have Power to inquire, hear and determine of Office without special Commission.
- See 1 Hawk. P.C. 170, 171.* Extortion is an Offence by the Common Law, and is punishable by Fine and Imprisonment; and generally Fees shall not be taken at the Common Law: And where any are given by Statute, they may not be increased or enlarged, and that not only in the Court belonging to the Common Law, but in the Ecclesiastical Courts: Concerning all which, how necessary it is that they be looked into and moderated, any one may judge, who hath any Thing to do in either Jurisdiction, who must needs see, if not feel, they are much increased, to the great Oppression of Suitors, beyond the most large Pretences and Demands of more sober Times.
- For all which Extortions Bills of Indictment will lie at the Sessions of the Peace, as it is an Offence at Common Law; and where special Penalties are provided by Statutes, these must be recovered in the Method and Courts by such Acts directed.
- And where any Act is either by the Common Law or Statutes appointed to be done by any publick Officer, he ought, in Virtue of his Place, do what is so required without taking any Thing therefore, unless by lawful and reasonable Usage he hath a Fee belonging to him, or by Statute any be given him.
- A Justice of Peace was convicted of Extortion, and fined 100 Marks, and committed during the King's Pleasure, and bound to his good Behaviour for a Year, and ordered to acknowledge his Offence publicly at the next Assises, to be held for the County where he lived, and was turned out of the Commission of the Peace.

C H A P. XL.

Felony.

EVERY Justice of Peace (by Force of the Commission, the first *Assignavimus*) may cause fresh Suit, Hue and Cry, and Search to be made by the Sheriff, Bailiffs, Constables and others, upon any Robbery or Theft: And also may cause the Constables to arrest and to imprison all such as shall be suspected to be Thieves, Murderers, or Felons. *Lamb. 190.*

2 & 3 Ph. & M. c. 10.

- Also every Justice of Peace may and must take the Examination of all such Felons, or Persons suspected for Felony, as shall be brought before him. See *hic cap.* 164.
2. And must take Information against them (of those that bring them) *sc.* of the Fact, and Circumstances of the Felony and Fact.
 3. And must put in Writing such Examinations and Informations, or so much thereof as shall be material to prove the Felony, and must certify the same to the next General Gaol-delivery.

4. And

4. And after such Examination and Information taken, then the Justice must commit such Felons to the Gaol, or may bail them, if they beailable; but then there must be two Justices together, and the one of them of the *Quorum*. See *postea* Tit. *Bailment*. 1 & 2 Ph & M. c. 13.

5. And must bind over (by Recognizance) the Informers to appear, and all such as do declare any Thing material to prove the Felony, and to give Evidence against the Felon at the next General Gaol-delivery to be holden within the County, City or Town Corporate, where Trial of the said Felony shall be. 2 *Pb. & M. cap.* 10. See *hic cap.* 164.

‘ If such Informer be unable to travel, &c. then the Justice of Peace may take his Information upon Oath, and may certify the same, *ut supra*, &c. and may forbear to bind such Informer to appear personally before the Justices at the Gaol-delivery, &c.

‘ Note, That in Case of Treason or Felony, the Party accused may require reasonable Time to answer any Interrogatories, and having answered, ought to have Copies of his Examination, if he desire it. *Co. Inst.* 2 Part, p. 51. The Cases of *Just. Richil*, 1 *Hen.* 4. And the Lord *Carew*, 16 *Jac.*

‘ If the Justice of Peace shall not certify such Examinations and Informations to the next Gaol-delivery, or shall not certify their Bailment, or shall not bind over the Informers to appear, and to give Evidence against the Felon at the next General Gaol-delivery, as aforesaid; he shall be fined (for every such Default or Offence) at the Discretion of the Justices of Gaol-delivery. 1 & 2 & 3 *Pb. & M.* 3 H. 7. 1.

But if it be for *Petty Larceny*, or other small Felonies determinable at the Sessions, the Justices of Peace may bind over the Informers, and may certify the Examinations and Informations to the next Quarter-Sessions of the Peace: And this was the Advice and Direction of Sir *David Williams* Knight, (late one of the Justices of the *King's Bench*) at the Assises at *Cambridge*. For, said he, it was not meet to keep poor Prisoners in the Gaol for small Matters of Felony from one Assises till another; and therefore he gave Order, that the Justices of Peace (at their General Session of the Peace) should try and deliver Offenders for small Felonies. *Petty Larceny.*

Besides, the Justices of Peace, as well by Virtue of their Commission, as also by Force of the Statutes of 18 *Edw.* 3. 2. 34 *Edw.* 3. 1. & 17 *Rich.* 2. 10. have Authority to proceed to the Delivery of Felons, and to hear and determine, and to give Judgment upon all Felonies whereof any Person shall be indicted before them, and are not restrained by the Statutes of *Pb. & M.* but that they may proceed therein before the Coming of the Justices of Assise and Gaol-delivery, the Words of the Commission to that Purpose are, *Assignavimus vos Justiciarios nostros ad Pacem, &c. Ac etiam ad inquirend. de omnibus & omnimodis Feloniis, &c. Et ad omnes, & singulas Felonias, &c. — audiendum & terminandum; & ad delinquentes castigandum & puniendum. Vi. Pl.* 485. b. *Felony.*
P. Just. 1. 18.
Stanif. 58.
Lib. Int. 385.
Co. 9. 118.

‘ And for that Purpose also the aforesaid Statutes of 18 *Ed.* 3. 34 *Ed.* 3. & 17 *Rich.* 2. have ordained, that some learned in the Laws shall be put into the Commission of the Peace in every County within this Realm. *Lawyers.*

Also there be divers Statutes which by special Words did ordain, that the Justices of Peace should have Authority at their *General Quarter-Sessions*, to inquire of, hear and determine certain Felonies. As the Statutes, P. Inst. 14.
P. Sher. 13.

18 *Hen.* 6. 19. & 3 *H.* 8. 5. * of Soldiers departing without Licence. * By this Stat.
of 3 H. 8. c. 5.
Tit. Soldiers.
the Stat. 7 *H.* 7. c. 1. *was re-enacted, and it seems questionable if these two Acts were more than temporary. See Gay's Abridg.*

1 *Ed.* 4. 2. Felonies presented before Sheriffs in their Turns or Law-Days.

22 *H.* 8. 11. Cutting down of Powdick.

25 *H.* 8. 6. Against Buggery.

8 *Eliz.* 3. Transporting of Sheep.

* 39 *Eliz.* 4. & 1 *Jac.* 7. Incurrible Rogues.

39 *Eliz.* 17. Wandering Soldiers and Mariners.

43 *Eliz.* 13. Carrying Men forcibly out of *Cumberland*, &c.

So that the Justices of Peace at their Sessions may safely proceed to try all *Petty Larcenies* and small Felonies, and such other Felonies whereto they are authorized by these last recited Statutes: And in such Cases also the Justices of Peace that shall take the Examination of such Felonies, may safely bind over the Informers, and certify the Examination and Informations to their next General Sessions of the Peace.

And for *Petty Larcenies*, and other *Petty Felonies*, after an Indictment preferred at the *Quarter-Sessions*, if an *Ignoramus* be found by the Great Inquest, here the said Sessions,

P. Just. 11.
P. Just. 32.
P. Just. 15.
P. Just. 74.
P. Mariners 6.
P. Robbery.
* Repealed by
12 Ann. 23.

sions, in good Discretion, may deliver the Gaol of such Petty Felons; otherwise for all Homicides, Robbery, or other Felonies. *Dyer* 29.

Murder. For in Cases of Murder, or other Homicide, (by Misfortune, or in his own Defence, or other Manner) the Offenders by the Statute of *Gloucester* (made 6 *Ed.* 1. *cap.* 9.) are to abide in Prison until the Justices of Gaol-Delivery shall come into the County to deliver the Gaol. And by the Statute of 4 *Ed.* 3. *cap.* 2. two Justices of Peace might take Indictments, &c. but the Persons so indicted were to be delivered by the Justices of Gaol-Delivery.

Lawyers. But after by the Statutes of 18 *Ed.* 3. *cap.* 2. beforementioned, Justices of Peace were assigned to hear and determine Felonies, &c. and to inflict Punishment according to Law, and the Manner of the Dead. And by the Statute of 34 *Ed.* 3. *cap.* 1. Justices of Peace had Power given them to hear and determine, at the King's Suit, all Manner of Felonies done in the same County according to Law, &c. And by the Statute of 17 *Rich.* 2. *cap.* 10. in every Commission of the Peace, two Men of Law (amongst others) are to this Purpose to be assigned, *sc.* to go and proceed to the Deliverance of Felonies as often as they shall think it expedient.

Felons not to be dealt with by Justices of Peace. See Lamb. 529. Crompt. 56. and the Title Felony by Statute *infra*. And yet there are some Felons which the Justices of Peace cannot try at all, neither can they inquire thereof, ' As Namely :

* *This is High Treason.* See *postea.* 3 *Il.* 7. c. 14. ' 1. First, If any Man being the King's sworn Servant, (and his Name in the *Check-Roll* of his Household) under the Degree of a Lord, shall conspire with another to destroy the * King's Majesty, or any Lord of this Realm, or any other sworn to the King's Council, or the Steward, Treasurer or Comptroller of the King's House; every of these Offences are made Felony by the Statute made 3 *Hen.* 7. But such Offences are by the same Statute appointed to be tried by a Jury of the *Check-Roll* of the same Household, and before the Steward, Treasurer or Comptroller of the King's said House.

' 2. All Murders or Manslaughters committed or done within any the King's Palaces or Houses, or within the Limits or Bounds thereof, or within any other House where his Majesty shall happen to be then abiding in his Royal Person, shall be inquired of, tried, heard and determined before the Lord Steward for the Time Being, of the King's Household; and in his Absence, before the Treasurer and Comptroller of the same Household, and the Steward of the *Marshalsea*, or two of them, &c. And such Trial to be by the Inquisition and Verdict of his Majesty's Household Servants in the *Check-Roll.* 33 *Hen.* 8. *cap.* 12.

Records imbezil'd. ' 3. Imbezilling of any Record, Writ, Return, Panel, Process, or Warrant of Attorncy, in the *Chancery*, *Exchequer*, the one Bench or the other, or in the Treasury, whereby any Judgment shall be reversed; every such Offence is made Felony in such Imbezillor, Stealer, or Taker away, and in their Procurers, Counsellors and Abettors, by the Statute of 8 *H.* 6. But such Offences are by the same Statute appointed to be tried by a Jury of twelve Men, whereof the one Half to be of the Men (*scil.* of the Officers and Attornies) of the same * Courts, who shall be sworn before the Judges of the said Courts, *scil.* of the one Bench, or of the other, to inquire of that Offence: And if they shall indict the Imbezillors of such Record, &c. they shall be arraigned thereupon before the same Judges, as in Cases of other Felonies.

Records rased. ' 4. Rasing of any such Record is also Felony within the said Statute of 8 *H.* 6. and to be tried as aforesaid. *Br. Coron.* 174.

2 *R.* 3 fol. 10. ' Note; The Entering of a false Will Nuncupative is not properly Forgery, but it must be of a Will in Writing. *Miller's Case*, 2 *Jac.* C. B.

Forging a Deed. ' 5. Forging any Deed or Writing sealed, or of any Court-Roll, Will or Acquittance, or to cause or assent to be made any such forged Writing, to publish or shew forth in Evidence any such forged Writing, knowing the same to be forged; if any Person being once lawfully convicted of any of the said Offences, shall afterward commit any the said Offences again, every such second Offence is made Felony by the Statute of 5 *Eliz.* But by the same Statute such Offences are to be inquired of, heard and determined by and before Justices of *Oyer* and *Terminer*, and Justices of Assise.

Not indictable at the Sessions. ' And therefore whereas one *R. Smith* was indicted at the Sessions of the Peace in the County of *Oxford*, upon the said Statute of 5 *Eliz.* for forging of a false Deed; it was adjudged by the whole Court in the *King's Bench*, 30 *Eliz.* that the same Indictment was not well taken: For though the Justices of Peace by their Commission have Power (of *Oyer* and *Terminer*) to hear and determine Felonies and Trespasses, &c. and have in their said Commission an express Clause, *Ad audiendum & terminandum*, and so

are Justices of *Oyer* and *Terminer*; yet it was resolved by the Court, that forasmuch as there is a Commission of *Oyer* and *Terminer* known distinctly by that Name, and the Commission of the Peace is known distinctly by another Name, the said Indictment taken before the Justices of the Peace at their Sessions, was not well taken; therefore it was quashed.

The Reason of this last Case and Judgment seemeth to hold in the former Cases, and in all other like Cases, where any Statute doth specially give Authority to any other distinct Court, or to other Justices or Commissioners, (leaving out the Justices of Peace) to inquire of, hear, and determine, or to try Felons, &c. There the Justices of the Peace (at their Sessions) cannot inquire thereof, &c.

6. *Servants imbezilling* or taking away the Goods of their deceased Master, the Executors of the Party deceased may have a Writ directed to the Sheriff, to make Proclamation two Market-Days, that such Offenders shall appear in the *King's Bench* at a certain Day. And if such Writ be returned, that Proclamation was thereupon made accordingly, then, if the said Persons do not appear in the *King's Bench* at the Day specified in the said Writ, they shall be attainted of Felony, by the Statute of 33 H. 6. * So that such Offence beginneth first to be Felony upon their Default of Appearance in the *King's Bench* after Proclamation; of which Default the Justices of Peace cannot take Notice, because they have not before them the Record of such Default, or not appearing, &c. *Crompt. 56. Lamb. 529.*

Servants imbezilling their Master's Goods.

33 H. 6. c. 1. Raft. pl. fo. 592. * Qu. if 33 H. 6. c. 1. be in Force. See Mr. Cay's Abridg. Tit. Servants.

But in the former Cases, if such Offender shall be brought before any Justice of Peace, and charged with any such Felony; *Quære*, what he is to do therein, considering the Justices of Peace are no Judges of such Felonies; neither have they any Jurisdiction given them by the Statutes in such Cases: And yet for that, they are by their Commission authorized to deal with all Felonies, as also with all Offences against the Peace of the King and Realm, of which Sort all these last recited Offences are. *Quære*, If the Justice of Peace shall not do well to examine the Offence, and then to certify his Examination to such Persons as by the Statute are made Judges of the Cause; and also to commit such an Offender to Prison, to bind over the Informer, and to take their Information upon Oath.

Again, If a Man had been feloniously stricken in one County, and after died thereof in another County, (by the Common Law) no Indictment could be taken in either of the said two Counties, for that the Jurors of the County where such Person died (of such Stroke) could not take Knowledge thereof, (being in a Foreign County,) nor the Jurors of the County where the Stroke was given, could not take Knowledge of the Death in another County. But now by the Statute of 2 & 3 Ed. 6. an Indictment thereof found by Jurors of the County *where the Death* shall happen (whether it shall be found before the Coroner, or before Justices of Peace, or other Justices, &c.) shall be good and effectual in Law: And that the Justices of Gaol-Delivery, and *Oyer* and *Terminer* in the same County where such Indictment shall be taken, shall and may proceed upon the same, as if such Stroke and Death had been in one and the same County.

Wound in one County, Death in another.

Co. Instit. 3 part. p. 135. Raft. pl. 5. 2 & 3 E. 6. c. 24.

Also where Felons had robbed or stoln Goods in one County, and after conveyed Goods so stoln, into another County, to their Adherents there, who knowing of such Felony, received the same Goods. In this Case, although the *Principal* were after attainted, the *Accessary* notwithstanding escaped by Reason that he was *Accessary* in another County, and that the Jurors of the said other County (by the Common Law) could take no Knowledge of the principal Felony in the first County. But now by the said Statute, 2 & 3 Ed. 6. it is enacted, that where any Murder or Felony shall be committed and done in one County, and other Persons shall be *Accessary* (in any Manner) to any such Murder or Felony in any other County, that an Indictment thereof found or taken against such *Accessary* before the Justice of Peace, or other Justices, &c. *in the County where such Offence of Accessary shall be committed*, shall be good and effectual in Law; and that the Justices of Gaol-Delivery, or *Oyer* and *Terminer*, of or in such County where the Offence of any such *Accessary* shall be committed, shall write to the *Custos Rotulorum* where such *Principal* shall be attainted or convicted, to certify them whether such *Principal* be attainted, convicted, or otherwise discharged of such Felony; and thereupon the *Custos Rotulorum* shall make Certificate in Writing under his Seal to the said Justices accordingly: And then the Justices of Gaol-Delivery, or *Oyer* and *Terminer*, shall proceed upon every such *Accessary in the County where such Accessary became Accessary*, as if both the principal Offence and *Accessary* had been committed and done in the County where the Offence of the *Accessary* was committed.

Stealing or Robbing in one County and Flying into another.

Accessary.

Co. 9. 117.

‘ So as by the Letter of this last recited Statute, the Jurisdiction over those Felons, and over such Accessories, is not committed to the *Justices of Peace*, to proceed to the Trial of them; but this Authority is remitted to the Justices of Gaol-Delivery, or of Oyer and *Terminer*: Yet the Justices of Peace may examine these Offences, and take Information against the Offenders, and certify the same to the next General Gaol-Delivery, and may bind over the Informers, and commit the Offenders: Also the Justices of Peace may inquire thereof, and take Indictments against them, as in other Cases of Felony.

Lamb. 530.

‘ 8. Lastly, the Justices of Peace (at their Sessions) cannot try such as are indicted of Felony before *Coroners*, or before the Justices of Gaol-Delivery, or of Oyer and *Terminer*, unless the same Persons (*scil.* the said Coroner, Justices of Gaol-Delivery, or of Oyer and *Terminer*) were also Justices of the Peace in the same County, so as the Indictment may be understood to be taken by them, as before Justices of the Peace. For the Commission of the Peace, and the Authority of Justices of the Peace, extendeth only to try such as stand indicted before themselves, or before former Justices of the Peace, or before the Sheriff in his Turn, or the *Steward in a Leet*. See *Lamb.* 486. & *Stat.* 1 *Ed.* 4. *cap.* 2. & *Stamf.* 87. for Indictments taken in the Sheriffs Turn. And for Indictments taken in Leets, see *Br. Tit. Leet* 1. And yet by the Book 8 *H.* 4. *fol.* 18. it seemeth, that Indictments or Presentments of Felony taken in the Leet shall be delivered over to the Justices of Gaol-Delivery. *Br. Frank.* 5.

Treason.

‘ Also in some Cases of *Treason and Misprision of Treason*, the Justices of Peace may inquire, and take Indictments, but cannot proceed to Trial, or to hear and determine the same.

5 Eliz. 1.
23 Eliz. 1.

‘ As to *Maintainers of the Authority of the Bishop or See of Rome*, and of their Procurers and Maintainers, &c. the Justices of Peace in their Quarter-Sessions may inquire of such Offences; but they must certify every Presentment thereof made before them into the *King's Bench* (within forty Days, upon Forfeiture of an Hundred Pounds by every Justice of Peace there present, not making Certificate accordingly). 5 *Eliz.* *cap.* 1.

13 Eliz. 2.
23 Eliz. 1.

‘ 2. So of such as shall obtain from Rome, &c. any *Bulls or Absolutions*; or shall publish, or put in Ure any such Bull; or shall give or take *Absolution* by Colour of any such Bull. And their *Procurers and Maintainers*, &c.

23 Eliz. 1.

‘ And the *Concealers of such Bull or Absolution* offered to them.
‘ 3. So of such as shall withdraw any Subject from the Religion now used to the Romish Religion; or from their Obedience to the King's Majesty, or to the Obedience of the Pope, &c. And of such as shall be so withdrawn. And of their *Procurers and Maintainers*, &c. And of the *Concealers* of such Offences.

13 Eliz. 2.
21 Eliz. 1.

‘ 4. So of such as shall bring into this Realm any *Agnus Dei*, or other *Superstitious Pictures, or Beads*; or shall deliver, or offer any such to any Subject. And of the *Receivers* of such *Superstitious Things*. For all these last recited Offences against the Statutes of 5 *Eliz.* 1. 13 *Eliz.* 2. and 23 *Eliz.* 1. see more fully *postea* *Tit. High Treason*.

‘ And if any such Offender against any of these last mentioned Statutes shall be brought before any Justice of Peace, and charged with any such Offence, the Justices must take the Examination of such Offenders, and bind over the Accusers and Informers to appear and to prefer a Bill of Indictment, and thereupon to give Evidence to the Inquirors against such Offenders) at the next Quarter-Sessions, or rather at the next Assizes, or General Gaol-delivery, or else in the *King's Bench*, whensoever (upon reasonable Warning) they shall be thither called; and then to commit the Offender to Gaol; and after to certify the said Examinations, Informations, and Recognizances (by him taken) to the said Sessions of Gaol-delivery, or into the *King's Bench*, &c.

‘ In other Cases of *High Treason, or Misprision of Treason*, what the Justices of Peace, out of their Sessions, shall do with such Offenders brought before them, see *postea* *Tit. Misprision*.

But now to return to the Business of the Justices of Peace out of their Sessions.

Refusers to
give Evidence.

If one shall bring a Man, suspected of Felony, before any Justice of Peace, *but refuseth to be bound to give Evidence* against the Prisoner (either at the General Gaol-delivery, or Quarter-Sessions, as the Case shall require;) if such Bringer hath given Evidence before the said Justice against the Prisoner, or can declare any Thing material to prove the Felony, and will not be bound to give Evidence upon his Trial, the Justice of Peace (upon his Discretion) may commit to Prison such Person so refusing, or may bind him to his Good Behaviour,

haviour, and to appear at the next Gaol-delivery or Quarter-Sessions. But if the Bringer of a Person suspected of Felony cannot declare any Thing material to prove the Felony, nor any other Person then present, it seemeth the Justice ought not to commit the Prisoner. And so was the Direction of Sir David Williams at the Assizes of Cambridge aforesaid; yet the Justices shall do well to examine the Prisoner, and if he shall not confess the Felony, then to commit him; or if upon his Examination there shall appear any just Cause of Suspicion, or if the Prisoner be a Man of evil Fame, and that there be a Felony committed. In these Cases, the Justice shall do well not to let him go, but at least to bind him over to the next Gaol-delivery, and in the mean Time to take farther Information against him. See the other Title Felony, *postea*, cap. 160.

As to the Value of the Goods stolen, it must be above 1 s. for if under 'tis not * Felony but Petty Larceny, but stealing several Things at several Times, which in the whole amount to the Value of 1 s. or more, is Felony; so if two or more steal together above that Value, 'tis Felony in all of them; but the Jury may find under that Value, and then 'tis Petty Larceny.

Petty Larceny, what.

* Petty Larceny is Felony. See 1 Hal. Hist. P. C. 530.

'Tis Felony maliciously to burn, or cause in the Night-time to be burnt or destroyed, any Ricks or Stacks of Corn, Hay, or Grain, Barn, or other Houses or Buildings, or Kilns, or to kill or destroy any Horses, Sheep, or other Cattle.

Barns burning. 22 & 23 Car. 2. c. 7.

The Offender shall be transported, and if he return within seven Years, he shall suffer Death as a Felon.

But this Conviction works no Corruption of Blood, Loss of Dower, or disinheriting the Heir.

A Man may be guilty of Felony in stealing Goods, tho' he came lawfully to the Possession thereof, as if a Trunk is delivered to a Carrier, directed to a certain Person to be carried to a certain Place, and he carries it to another Place, and there breaks it open and takes away the Goods, this is Felony.

Carrier who hath a lawful Possession. See hic post.

So 'tis where a Shepherd steals Sheep out of a Flock which he was to look after, or a Butler stealing Plate delivered to his Care; for he being a Servant, hath neither a general or special Property in it, for that remains still in his Master.

Servant.

Where Goods were delivered to B. B. and stolen from him by T. S. 'tis Felony, for which B. B. may maintain an Indictment.

Where the Wife steals Goods with her Husband, or by his Compulsion or Command, 'tis not Felony; but if she receives stolen Goods, knowing them to be stole, and her Husband doth not know it, 'tis Felony in her.

Husband and Wife.

If an Infant, before he is of Age of Discretion, steal Goods, 'tis not Felony.

Infant.

He who comes into a Fair or Market, or Shop, and cheapens Goods, as if he cheapens an Horse, and the Owner gives him Leave to ride to try his Paces, and he rides away, this is Felony.

Felony, tho' the Party had a lawful Possession.

Delivering Goods to a Workman to manufacture, and afterwards he steals them, this is Felony notwithstanding the Delivery, because the Property still remained in the Deliverer, and the Workman had only the Possession to a particular Purpose, (*viz.*) to manufacture.

Taking out Execution upon a Judgment in Ejectment, where the Party had no Colour of Title, and breaking open the House and taking away Goods, Felony; for 'tis *in fraudem Legis*; this was Farr's Case, who was convicted and executed. *Sid.* 254.

Felony by other Acts.

Taking out Execution, &c.

Breaking down a Copper fixed to a Freehold and carrying it away at the same Time, no Felony. *Kelynge* 29.

Breaking down a Copper, &c.

Breaking a Dwelling-house in the Day-time, and taking and removing Goods from one Room to another, Felony; for by the taking he had the Possession, and this was Stealing, and by Consequence Felony.

Breaking a House in the Day-time.

A Guest in a common Inn arising in the Night-time, and carrying Goods out of his Chamber into another Room, and from thence to the Stable, intending to ride away with them, Felony.

Guest in an Inn.

By a late Act of Parliament it was enacted, that the Stealing Goods, which by any Contract or Agreement between him and the Owner he is to use, or which is let to him to use in Lodgings, Felony.

Stealing Goods which he had by Contract. 3 & 4 W. 3. c. 9.

Forging Stamps on Indentures denoting the Duties on the Money for putting out Apprentices, Felony without Benefit of Clergy.

Forging Stamps. 8 Ann. c. 9.

Tearing, burning, cutting, defacing, or spoiling Cloaths or Garments in the Streets, Felony and Transportation for seven Years.

Spoiling Cloaths. 6 G. 1. c. 22.

Stealing

Stealing out of a Coach-house. Stealing Goods out of a Coach-house, tho' not broke open, to the Value of 5 s. or assisting in it by Night or Day, Felony.

10 & 11 W. 3. cap. 23.

Coin.

8 & 9 W. 3.

c. 26. §. 6.

1 Hawk.

P. C. 46.

Blanching Copper for Sale, or mixing blanched Copper with Silver, or knowingly Buying or Selling, or offering to sell it, or Buying or Selling any malleable Composition or Mixture of Metals or Minerals which shall be heavier than Silver, and look and wear like standard Gold, but be manifestly worse than Standard, or receiving, paying, and putting off any counterfeit milled Money, or milled Money unlawfully diminished and not cut in Pieces, at a lower Rate than the same by its Denomination shall import, Felony; but without Corruption of Blood or Loss of Dower. The Prosecution must be within three Months after the Offence committed.

This Act was at first temporary, (*viz.*) to continue to the End of the next Sessions of Parliament, and continued by the Statute 1 *Annæ*, cap. 9. and afterwards by the Statute 7 *Annæ*, cap. 25. it was made perpetual.

Robbery.

Robbing one to the Value of a Penny is Felony, if the Party is *put in fear*.

So if T. S. is threatned to be murdered, unless he will swear to bring such a Sum to *℥. L.* at such a Place, which he brings accordingly, this is Robbery.

Apprehending a Felon.

10 & 11 W. 3. c. 23.

He who apprehends a Felon stealing to the Value of 5 s. out of a *Coach-house*, *Stable*, or *Warehouse*, shall upon Conviction have a *Certificate* under the Hand of the Judge, before whom he was convicted, certifying the same; and also within what Parish the Felony was committed; and if several shall assist in Taking such Felon, and a Difference should arise touching their Right to the Certificate, the Judge may direct so many Shares to be divided amongst the contending Parties, which may be assigned once and no more; and by Virtue thereof the original Proprietor or Assignee shall be discharged of all Parish or Ward Offices within the Parish where the Felony was committed, which *Certificate* must be inrolled by the Clerk of the Peace, who shall have for his Fee one Shilling and no more.

And if the Person is killed in taking House-breakers, Horse-stealers, or other Felons, his Executor or Administrator shall have a Right to the Certificate *gratis*.

Felon discovering others.

A Felon out of Prison discovering Two of his Accomplices in any Burglary, House-breaking, or Felony in stealing Horses, Money, Wares or Goods, from whom the Benefit of Clergy is taken away, and such Accomplices being convicted thereof, the Discoverer shall have his Pardon for any Felony committed before the Discovery, which Pardon shall be a good Bar to an Appeal.

Rescuing a Felon.

He who rescues a Felon from the Sheriff, who was carrying him to Execution, is guilty of Felony; and so is he who voluntarily suffers him to escape.

A Person was convicted of Murder, and being in the Place where Prisoners stand at the *Old Baily*, T. S. came thither pretending some Business with him, and watching the Keepers, he took an Opportunity of going out and the Prisoner followed him, but they were soon retaken, and then T. S. said he had done what he ought to do to help his Friend, who was in Danger of his Life; this was adjudged Felony.

Burglary.

A Chamber in *Somerjet-house* was broke open, and the Offender was indicted for breaking *Domum mansionalem*; adjudged not good, because the whole House is *Domus mansionalis*, and this is not like Breaking open a Chamber in the Inns of Court, for every Person hath a separate Interest in those Chambers, and therefore each Chamber may properly be called *Domus mansionalis*.

Outhouses adjoining, &c.

Barns and *Outhouses* adjoining to the Dwelling-house are reputed Part of the Mansion-house, and 'tis Burglary to break them open.

Apartment in the House of another.

So where a Man hires an Apartment in the House of another, if 'tis broke open, some are of Opinion the Offence may be laid in the Indictment to be *in Domo mansionali* of him who hires it; but the better Opinion is, that the Offender ought to be indicted for

* See Hal.

P. C. 237,

238. 1 H. H.

Breaking open *Domum mansionalem* of the Proprietor*.

P. C. 522, 523. 2 H. H. P. C. 354. and 2 Hawk. P. C. 355.

Servant opening the Door.

A Thief finding the Door of a Dwelling-house fast lock'd, pretended to have some Business with the Master, and desired to speak with him, and thereupon the Servant opened the Door, and the Thief entered and robbed the House, this is Burglary; for the Event shews, that he intended at first to commit a Robbery, and the Door being opened upon a false Pretence, made the Fact Burglary, though there was no actual Breaking.

And to this Purpose it was enacted, that if any Person feloniously take away Goods out of a Dwelling-house, the Owner or other Person being therein and put in Fear, or shall rob any Dwelling-house *in the Day-time*, any Person being therein, or shall be necessary to the same, or shall break any Dwelling-house, Shop, or Warehouse thereunto belonging *in the Day-time*, and feloniously take away Goods to the Value of 5 s. though no Person therein, or shall counsel, hire, or command another to commit Burglary, shall not have the Benefit of Clergy.

Breaking open an House, or Shop, or Warehouse in the Day-time.
3 & 4 W. 3. c. 9. §. 1.

He who hath committed Burglary, and being out of Prison, shall discover Two or more Burglars, who shall be convicted thereof, such Discoverer shall have his Pardon for any Burglary which he shall have already committed, which Pardon shall be a Bar to an Appeal.

Discovering Burglars.
10 & 11 W. 3. c. 3.

He who shall apprehend another guilty of Burglary, or felonious Breaking open an House in the *Day-time*, and prosecutes him to Conviction, shall within one Month after such Conviction, receive of the Sheriff 40 l. upon tendring to him a Certificate under the Hand of the Judge who convicted the Offender, certifying such Conviction; and if the Sheriff shall not pay it, he shall forfeit double to the Party grieved, to be recovered in the Courts at *Westminster*, with treble Costs.

Apprehending a Burglar.
5 Ann. c. 31.

And where any Person is *killed* in Taking an House-breaker, then his Executor or Administrator shall be intitled to the 40 l. upon the Certificate of the Justice of Assize in the County where the Fact was done, or of the Two next Justices of Peace, that such Person was killed.

He who enters into the Dwelling-house of another, either by Day or Night, tho' without breaking it, with an Intent to commit Felony, or being in the House, commits Felony, and in the Night-time breaks the House to get out, Burglary without Clergy.

Entering an House without Breaking it.
12 Ann. c. 7. §. 3.

Stealing Money or Goods to the Value of 40 s. being in a Dwelling-house or Outhouse thereunto belonging, though it was not actually broken, and though no Person was therein, Burglary without Clergy; and so 'tis in the Aider and Ailister.

And Taking more than the Value of 40 s.
Ib. §. 1.

By another Paragraph in the same Statute 10 & 11 Will. 3. 'tis enacted, That if any Person shall steal out of a Shop, Warehouse, &c. any Goods privately and feloniously, of the Value of 5 s. or more, though such Shop, &c. be not broke open, &c. or that shall assist in committing such Offence, &c. shall not have the Benefit of Clergy; now the Case at a Sessions in the *Old Baily* 9 Geo. 1. was thus:

A Shirt, which was the Property of *W. R.* was left in the Shop of *T. S.* to be sent to a Sempstres to mend, and it was stolen by the Prisoner out of the Shop, for which he was indicted and convicted; and the Question was, whether he should have his Clergy; and adjudged that he might, for this was not a Felony within that Statute which was made as a Remedy for the Owners of Shops to preserve their own Goods there by Way of Trade, and therefore did not extend to Goods casually lost there, and consequently Stealing such Goods to the Value of 5 s. was not Felony within that Statute, and without Benefit of Clergy.

See also the Titles *Felony* by Common Law and by Statute, *Chap.* 158, 159, and 160.

Fairs. Vide Tit. *Markets.*

C H A P. XLI. (a)

Fees.

GENERALLY, as I have said elsewhere, any publick Officer shall take no other Fees or Rewards, for doing any Thing relating to his Office, than some Statute in Force gives him; or else, as hath been anciently and accustomably taken. And if he do otherwise, he is said to do it *colore officii*, and he is therein guilty of Extortion. I shall therefore, for the Justices of Peace Direction herein, take Notice of some Fees, they and others are to take, and leave them to inquire for the Rest in some proper Titles in this Book.

Where due

Sheriff taking more than 12 d. for every 20 s. of the yearly Value of Lands above 100 l. *per Annum*, and 3 s. 6 d. if under that Value, for executing a *Writ of Possession*, or taking *Poundage* for executing a *Ca. Sa.* or charging one in Execution for a greater Sum than really due, this is Extortion; and being convicted, shall forfeit treble Damages to the

the Party grieved, and double the Sum extorted, and 200*l.* more to be divided between the King and the Profecutor. 3 *Geo.* 1. *cap.* 15.

Sessions Fees.

12 R. 2. 10.

Every Justice of Peace may for every Day they keep their Sessions (which by that Statute may be three Days) take four Shillings, and their Clerk two Shillings *per Diem*, of the Fines and Amercements coming of their Sessions by the Sheriff's Hands; but by

14 R. 2. 11.

14 *Rich.* 2. 11. no Duke, Earl, Baron, or Baronet (so is the Print in *Pulton*, but the Original is Banneret) albeit they be assigned Justices, and hold their Sessions with other, shall take any Wages for their Office.

Inrolments.

27 H. 8. 16.

Where Inrolments are to be made of Deeds, if the Lands exceed not the yearly Value of forty Shillings, the Justice and Clerk shall take two Shillings, *viz.* One Shilling the Justice, and one Shilling the Clerk. And if it exceed forty Shillings *per Annum*, then five Shillings, *viz.* the Justices two Shillings six Pence, and Clerk two Shillings six Pence. *Vide postea* Inrolment.

Fees of Sheriffs, Bailiffs, and Gaolers, about Arrests. See before Tit. *Extortion*.

Alchouse.

5 & 6 E. 6. 25.

The Party licensed to keep an Alchouse, shall pay for the Recognizance directed by 5 & 6 *Ed.* 6. *cap.* 25. but twelve Pence.

Licence.

5 Eliz. 12.

Every Licence to be a Badger, Drover, Lader, Kidder, Carrier, or Buyer of Corn, &c. shall be made by the Clerk of the Peace only; for which he shall take twelve Pence, and no more.

Labourers.

5 Eliz. 4.

Justices of Peace, Mayors, and Head Officers, for every Day they sit in Execution of the Statute of Labourers (not exceeding three Days at one Time) shall take five Shillings *per Diem* each, out of the Fines and Amercements happening by that Statute.

Gun.

1 Jac. 27.

The Clerk of the Peace shall take for a Licence to shoot in a Gun for Hawk's Meat, twelve Pence and no more.

Wills and Administration.

21 H. 8. 5.

Where the Goods amount not to 100*s.* nothing shall be taken for the Probat of a Testament, saving six Pence to the Scribe for Writing, and so for an Administration, the Testament being exhibited to him with Wax; and if the Goods exceed 100*s.* and not forty Pounds, the Party shall pay for the Plea but three Shillings six Pence, *viz.* two Shillings six Pence to the Ordinary, &c. and twelve Pence to the Scribe. And if the Goods exceed forty Pounds, then to pay five Shillings, whereof two Shillings six Pence to the Ordinary, and two Shillings six Pence to the Scribe, or else the Scribe may refuse two Shillings six Pence, and take one Penny for every Line containing ten Inches: And the Party shall pay for Administration where the Goods exceed 100*s.* and not exceeding forty Pounds, two Shillings six Pence, and not above. And if any Person require a Copy of the Testament or Inventory, the Ordinary, &c. shall deliver it, taking only such Fee as is to be taken for Probat, or else the Scribe may take one Penny for every Line being ten Inches: But as to Seamens Estates and Administration thereof granted, there are cer-

tain Fees appointed by a Statute made 22 & 23 *Car.* 2.

Testimonial.

5 Eliz. 4.

The Parson, Vicar, or Curate of a Parish, shall take for the Making of a Testimonial of a Servant, &c. but two Pence.

Citation.

23 H. 8. 9.

No Ordinary shall take for the Seal of any Citation above three Pence.

Coroner.

3 H. 7. 1.

No Coroner shall take above thirteen Shillings four Pence for his Fee, upon View of the Body, of the Goods of the Slayer or Murderer of any; or else of the Amerciaments, upon any Parish for an Escape, and nothing where the Person is dead by Misadventure.

1 H. 8. 7.

As for the Fees in Sessions, for traversing, trying, or discharging Indictments, discharging Recognizances of the Peace and Good Behaviour, &c. These vary according to the Custom of the Country, and in that Case *Consuetudo loci est observanda*.

See the Oath.

c. 1. §. 2.

As to the Justice of Peace himself touching Fees or Profit by him to be taken, his Oath ought to direct him, which is as to that Purpose, That you take nothing for your Office of Justice of Peace to be done but of the King, and Fees accustomed, and Costs limited by the Statute.

C H A P. XLII.

Fish.

EVERY Justice of Peace by 17 R. 2. cap. 9. is a Conservator of Rivers, and of the *Conservators*
 Statutes made in that Behalf, (*sc.* of the Statutes of 13 Ed. 1. cap. 47. 13 R. 2. *West.* 2. 47.
cap. 19. and 17 R. 2. cap. 9.) within this County where he is a Justice, and may ap- 13 R. 2. 19.
 point and swear Under-Conservators; and (when he may attend it) ought to survey all P. Fish, 1.
 the Wears in the Rivers, that they be of a reasonable Wideness, and all other Defaults P. Just. 14.
 done against the aforesaid Statutes. 17 R. 2. c. 9

Every Justice of Peace may burn the Nets and other Engines put or cast into Waters, *Nets.*
 wherewith the Fry or Breed of any Fish may be taken or destroyed; And this shall be
 for the first Offence: And for the second Offence the said Justice of Peace may (as
 it seemeth) imprison such Offenders for a Quarter of a Year; and for the third Of-
 fence, one whole Year: And as the Trespass or Offence increaseth, so may the Justice
 of Peace increase the Punishment of such Offenders. See the Statute 13 E. 47.
 13 R. 2. 19. and 17 R. 2. 9.

To speak it once for all, where a Penalty is appointed upon Conviction of a third *2 Inst.* 468.
 Offence, it must be intended (if not expressed in that Statute) that there be, and ought
 to be Convictions for the first Offence, and so for the second, before the Person shall
 incur or bear the Penalty for the third Offence; and the third Offence must be com-
 mitted after the second Offence, and Conviction thereof, that is, lawful Judgment
 given for the second, and so the second after the first.

By Warrant of any one or more Justices of Peace, the Constables and Church-wardens *3 Jac.* 1. 12.
 (where any Offence is committed in destroying the Spawn or Brood of Sea-fish, against
 the Statute 3 Jac. 1.) may levy the Forfeitures of the Offenders by Distress and Sale of
 the Offenders Goods, rendring to the Offenders the Surplusage.

(a) The Particulars of the said Statute 3 Jac. 1. are as followeth:

1. No Person in any Haven, Harbour or Creek, or within five Miles of the Mouth
 of any Haven, Harbour or Creek of the Sea, shall fish with any Draw-net, or Drage-
 net, under three Inches Meash, (*viz.* one Inch and an half from Knot to Knot) except
 for Taking of Smoulds in *Norfolk* only; and except for Taking of Herring, Pilchards
 and and Spicots.

2. No Person in any Haven, Harbour or Creek, or within five Miles of the Mouth
 of any Haven, &c. shall fish with any Net with Canvas, or other Engine or Device,
 whereby the Spawn, Fry or Brood of any Sea-fish may be destroyed.

And for every such Offence the Offenders shall forfeit their Nets, and ten Shillings in *3 Jac.* 1. 12.
 Money; the one Half thereof to be to the Use of the Poor of the Town or Parish
 where the Offence shall be committed, and the other Half to him that will sue for the
 same; and to be levied by the Mayor or other Head Officer of every City, Borough or
 Town Corporate, or by Warrant from one or more Justices of Peace, *ut supra.*

Touching the Fishing for Pilchards, &c. in *Cornwall* and *Devon*, see the said Act;
 and for general Fishing the Act of 15 Car. 2. cap. 14.

If any Ling, Herring, Cod or Pilchard, fresh or salted, dried or bloated, or any Sal- *Imported.*
 mons, Eels or Congers taken by any Foreigners, Aliens to this Kingdom, shall be *18 C.* 2. c. 2
 imported, sold, uttered or exposed to Sale in *England*, any Person may seize it; one
 Moiety to the Seisor, the other to the Poor where seized. 18 Car. 2. cap. 2. Made
 perpetual 32 Car. 2. cap. 2.

But now by the Statute 32 Car. 2. Stock-fish and live Eels may be imported into
England, notwithstanding 18 Car. 2.

No suspicious or idle Person shall in the Night-time assemble or gather together about *Assemblies.*
 the Boats, Nets or Cellars belonging to any Pilchard-Craft upon the Coasts of *Devon*, *13 & 14 C.* 2
 and having no Business there, and having Notice by the Company to be gone; every *c. 25.*
 Person so refusing, upon Complaint to a Justice of Peace, shall pay five Shillings to the
 Poor, or be set in the Stocks five Hours. 14 Car. 2. cap. 28. sect. 5.

If any Person shall use any Casting-net, Chief-net, Drag-net, Tramel-net, Shove-net, *22 & 23 C.* 2
 or other Net whatsoever; or any Angle, Hair-noose, Troll or Spear, or shall lay any *c. 25.*
 Wear, Pots, Nets, Fish-hooks, or other Engines, or shall take any Fish by any other
 Means

Means or Device whatsoever, in any River, Stew, Pond, Mote, or other Water; or shall be aiding and assisting thereunto, without the Consent of the Lord or Owner of the Water, and be convicted by Confession or Oath of one Witness before one Justice of Peace of the County, Division, Riding or Place, shall recompence the Party such Damages, and within such Time as the same Justice shall think fit, not exceeding treble Damages, and pay to the Overseers for the Use of the Poor such Sum of Money as the Justice shall think fit, not exceeding ten Shillings, and in Default of Payment to be levied by Distress and Sale of Goods; and for Want of Distress to commit the Offender to Prison for such Time as the Justice shall think fit, not exceeding one Month, unless he shall by Bond with one competent Surety or Sureties be bound to the Parties injured, not exceeding ten Pounds, never to offend in like Manner. 22 & 23 Car. 2. cap. 25. sect. 2.

If a Fishmonger sell Fish at unreasonable Prices, he is punishable for it by Indictment. So likewise if a Malster buy Barley, and sell the Malt at unreasonable Prices, he is punishable for the same by Indictment. P. 12 Jac. Rolls, Part 15. 11.

Severn.
30 C. 2. c. 9. If any Person shall in the River of *Severn* fish with, or make use of any Engine or Device whereby any Salmon, Trout or Barbel under the Length appointed by the Statute of 1 Eliz. shall be taken or killed, or shall fish with any Net for Salmon, Salmon-mart, Salmon-peal, Pike, Carp, Trout, Barbel, Chub or Grayling, the Mesh whereof shall be under two Inches and an half Square from Knot to Knot, or above twenty Yards in Length, and two Yards in Breadth, or above fifty Yards in Length, and six Yards in Breadth in the Wing of the Net in the said River, from *Ripplestock-lake* to *Gloucester-Bridge*, or above sixty Yards in Length below *Gloucester-Bridge*, and six Yards in Breadth in the Wing of the Net, or shall fish with more than one of those Nets at once, or shall use any Device for Taking the Fry of Eels, he shall forfeit five Pounds for every Offence, and the Fish so taken, and the Instruments used in Taking them; and shall also forfeit five Pounds for every Time he or they shall water any Hemp or Flax in the said River.

Spawm.
Ibid. If any between the first of *March* and the last of *May* shall do any Act whereby the Spawm shall be destroyed, they shall forfeit forty Shillings for every Offence, and the Instruments employed for the said Purpose.

Conservators.
Ibid. The Justices of Peace of the Counties of *Worcester*, *Salop* and *Gloucester*, shall be Conservators of the said River in their respective Counties, and make one or more Under-Conservators in their respective Limits, to whom or to any Constable, Tithingman or Headborough, upon their own Knowledge or Information of any such Offence, they shall issue Warrants under the Hands and Seals of any two of them, to search in all suspected Houses, &c. for such unlawful Instruments, and seize them, and bring them to the Quarter-Sessions to be destroyed.

Punishment.
Ibid. None shall be punished for the said Offences but by Information or Indictment before the Justices of Assize and *Nisi prius*, Oyer and Terminer and Gaol-delivery, or the General Sessions of the Peace; the one Moiety of the Forfeitures shall be to the Use of the Poor of the Parish where the Offence shall be committed, the other to the Prosecutor, to be levied by *Fieri facias* or *Capias ad satisfaciendum*.

10 W 3 c. 25.
§. 13.
In the Edition
1727 of this
Book, 6 & 7
W. 3. c. 16.
which has no
Relation to this Place, was here inserted. See an Abstract of it Tit. Carriages.

By Stat. 10 W. 3. cap. 25. sect. 13. All Robberies, Murders, Felonies, and other capital Crimes committed upon Land in *Newfoundland*, or any of the Islands thereunto belonging, may be inquired of, tried, heard and determined in any County of *England*, by Commission of Oyer and Terminer and Gaol-Delivery, according to the Laws of this Land for Punishment of such Crimes committed within this Realm.

Salmon.
4 & 5 Ann.
c. 12. An Act was made 4 & 5 Ann. for the Increase and better Preservation of the Salmon and other Fish in the Rivers in the Counties of *Southampton* and *Wiltshire*.

By the aforesaid Statute 'tis declared, that the Statute 13 Ed. 1. shall extend and be in Force as well to Rivers, Creeks and Waters in the said Counties, as to the Waters of *Humber*, *Ouse*, *Trent*, in that old Act mentioned, and under the same Penalties as therein are set forth.

And 'tis farther enacted, That the Justices of Peace residing within six Miles of any Rivers, &c. in *Hampshire* or *Wilts*, may under their Hands and Seals appoint Overseers of the said Statute 4 & 5 Ann. who shall be sworn before the said Justices, and then they may take Offenders and destroy their Nets or Engines, which are kept or used contrary to any Statute relating to Fishing.

And such Overseers of the said Statute may bring Offenders, &c. before a Justice of Peace, and every Offender shall for the first Offence forfeit not under 20 s. nor above 5 l. and double for the second Offence; and as that shall increase, so the Penalty shall be doubled by the Justice before whom convicted, which is to be upon the Oath of one or more Witnesses, or the Confession of the Party offending; one Moiety to the Informer, the other to the Poor of the Parish where the Offence was done; and if not paid on Demand, or if not able to pay it, then the Justice before whom the Party was convicted shall send him to the House of Correction for three Months.

After the 30th of June till after the 11th Day of November, Salmon shall not be taken or offered to Sale under the like Forfeiture and Penalty.

This Clause is repealed by the Stat. 1 G. 1.

c. 18. §. 11. as to Owners of Fishery, &c. See the Proviso infra.

And if any Salmon shall swim into Ditches, Cuts or Water-carriages of Meadow-Grounds, within the Time restrained by this Act; then the Owners or Tenants of such Grounds shall suffer them to pass into the main Rivers, and not wilfully destroy them, under the like Penalties.

Those who are Owners or Tenants of Mills in *Hampshire* or *Wilts*, upon any of the Waters or Rivers there, must keep open a small Hatch of a Foot square in the direct Stream; and where there is no Wheel for the Salmon to pass and repass, from 11th Day of November to the last Day of May, and shall not during that Time use any Devices for killing or taking Salmon in that Hatch, under the like Penalties.

If Pots are laid to catch Eels between the 1st of January and the 10th of March, Racks must be set before them to keep out the old Salmon, and after the said 10th of March to the 30th of May, no Pot shall be laid but such as shall be wide enough to let the young Salmon pass thro' to the Sea, and shall not take or keep, or offer to Sale any of the young Fry during that Time, under the like Penalties.

Sea Trouts shall not be taken in any of the said Rivers, Creeks, or Arms of the Sea, in either of the said Counties, after the 30th of June to the 11th of November, under the like Penalties.

Sea Trouts.

To be levied by a Warrant of the Justice, &c. before whom the Conviction is made by Distress and Sale of the Goods of the Offender; and for Want of Distress to be sent to the House of Correction.*

** This Act only extends to*

the County of Southampton, and Southern Part of Wiltshire.

The Court of Assistants of the Fishmongers Company, or the major Part of them, may make By-Laws for the Government of the Company, to be approved by the Lord Mayor and Aldermen, and allowed and confirmed according to the Statute, &c. and every Year there shall be a fit Person chosen out of the six Wardens of that Company, after the 10th of June, by the Lord Mayor and Aldermen, to be a Master of the Art of Fishery, and out of the twelve Assistants six fit Persons to be Wardens of that Art, whereof the Water-Bailiff of London shall be one; and out of Sixty of the Commonalty, thirty Persons to be Assistants; which said Master, Wardens and Assistants, or any sixteen of them, with three Wardens, are constituted the Court of Assistants, and shall meet on the first Thursday in every Month in their Common Hall to form a Court, and keep it for regulating Abuses in Fishery. The Water-Bailiff shall be summoned to attend the Court, and the major Part of them may call before them any Person who shall fish or drudge as common Fishermen, within the Limits of the Fishery, and cause every Person duly qualified, or who have served on board the Navy two Years, to register their Names there, together with the Place of his Abode, and the Name of every Servant or Apprentice he hath, using the Trade of Fishing or Drudging within the said Limits; and shall cause a Mark to be set on every Boat, not to be defaced, changed or altered, that Offenders, &c. may be found out, and that the Crown may know what Number of able Seamen that Company can furnish; and if any Person duly summoned shall neglect to appear at the said Court, he shall be sent on board the Navy, and disabled from Fishing in the Thames for two Years.

Court of Assistants.

Water-Bailiff.

Boats to be marked.

The Lord Mayor, upon Application to him made by the Court of Assistants, may order Stakes to be driven in any Place within the River, between the London Mark-stone above Stains-Bridge and London-Bridge, so as it be not prejudicial to the Navigation of the River, and no Person shall remove or loosen them.

Ib. §. 2.

Fish shall be sold once and no more within Billingsgate, or 150 Yards of the Dock, and no Person shall sell or expose to Sale any Fish in Billingsgate Market, or within 150 Yards,

Billingsgate-Market.

Ib. §. 3.

Yards, &c. except free Fishmongers in their Houses and Shops, and Fishermen and the first Importers thereof, &c.

Water-Bailiff. The Court of Assistants shall pay the Water-Bailiff every Year 30 *l.* clear of all Taxes, on *Easter* and *Michaelmas*, by equal Portions; and he may grant Licenses to fish in their several Seasons, according to Custom.

Ib. §. 5. No Fish shall be sold or exposed to Sale in *Billingsgate Market*, or within 150 Yards of the Dock, before Three of the Clock in the Morning, from *Lady-day* to *Michaelmas*, and before Five in the Morning from *Michaelmas* to *Lady-day*, and the proper Officer shall ring a Bell for that Purpose.

Ib. §. 6. The Lord Mayor and Aldermen of *London*, and the Justices of Peace of the respective Counties, or one of them, for all Offences committed out of the Jurisdiction of the Conservator, in wilfully killing or exposing to Sale any Brood or Fry of Fish, or any Spawn or Spat of Oysters, or any unwholesome Fish, or in catching, killing, or destroying any Fish out of Season, or by exposing such Fish to Sale, or by wilfully buying, harbouring, or receiving, or using as Food for Hogs, or otherwise, any Spawn or Fry of Fish, or catching Salmon between the 24th of *August* to the 11th of *November* every Year, may either upon View or Complaint made, examine and determine the same upon Oath; and upon Conviction set a Fine not exceeding 10 *l.* nor under 5 *s.* to be levied by Distress as aforesaid, unless the Fine be forthwith paid, or good Security given to abide the Order of the Court of Conservancy, if the Conviction be before the Lord Mayor, or at the Quarter-Sessions by the Justices, in Case the Offender shall appeal to either; and for Want of Distress, then to be committed to the House of Correction, without Bail, for any Time not exceeding two Months. And if the Offence is committed within the Jurisdiction of the Lord Mayor, then one Moiety of the Fine shall be paid to him, the other to the Informer; and if elsewhere, then to the Poor of the Parish, &c. and the Prosecutor.

Ib. §. 10. This Act shall be taken as a publick Act; and if an Action is brought for putting it in Execution, the Defendant may plead the General Issue, and give the Statute in Evidence together with the Special Matter, and if he recover shall have full Costs.

1 Geo. 1. c. 18. §. 1. No flat or fresh Fish whatsoever shall be imported, which were taken, bought, or received of any Foreigner, or out of any Stranger's Bottom (except Protestant Strangers dwelling here) nor shall any Person give or exchange Goods for such Fish so taken.

Ib. §. 2. Master, &c. of a Smack in which any Fish shall be brought to Shore contrary to this Act, being lawfully convicted upon his Appearing, or after, or Default to appear, being summoned before one or more Justices, &c. where the Offender resides or shall be found, and this upon the Oath of two credible Witnesses, shall forfeit 20 *l.* for every Offence, to be levied by Warrant of such Justices, by Distress, &c. and for Want thereof to be committed to Gaol for 12 Months.

Ib. §. 3. Nothing in this Act shall extend to prevent the importing or buying Anchovies, Botarge, Cavear, Eels, Stockfish, or Sturgeon.

Nets. Ib. §. 4. Any Person using at Sea, upon the Coast of *England*, any Sea-net for catching Fish (except Herrings, Pilchards, Sprats and Lavidnian) with a Mesh in his Net less than three Inches and an half from Knot to Knot, or any false or double bottom Cod or Pouch, or shall put any Net, tho' of a legal Size, upon or beyond the other, in order to destroy the small Fish, the Forfeiture is the Nets and 20 *l.* for every Offence, to be recovered as the Penalty above inflicted on the Master, &c. and in Default of Payment or Distress, to be committed to Gaol for twelve Months.

Ib. §. 5. The Penalties in this Act (except for illegal Nets) shall be one Moiety to the Informer, the other to the Poor of the Parish where the Offence shall be committed, necessary Charges being deducted.

Ib. §. 6. Where any illegal Nets shall be proved to be forfeited, they shall be publickly burnt by Virtue of a Warrant of a Justice, &c. for that Purpose.

He who brings on Shore in *England*, or sells or exposes to Sale, or exchanges for other Goods any unfizable Fish, which shall not be of the several Lengths from the Eyes to the Extent of the Tail,

	Inches.		Inches.		Inches.
ff. Bafs	12	Dab	8	Plaice	8
Bret	16	Flounder	7	Sole	8
Brill	14	Mullet	12	Turbot	16
Codlin	12	Pearl	14	Whiting	12

shall

shall forfeit the Fish, and 20 s. for every Offence, one Moiety to the Informer, the other to the Poor of the Parish, to be levied by Warrant of a Justice, by Distress, &c. and for Want thereof to be sent to the House of Correction and whipp'd, and kept to hard Labour for six Days, and not longer than fourteen Days.

The Prosecution must be within one Month after the Offence.

Any Person may import and sell any Quantity of Lobsters or Turbots, in the same Manner they might have done before the Statute 10 & 11 Will. 3. cap. 24. was made.

It shall be lawful for Owners of Fisheries at any Time from 11th of June till 1 August *Salmon*. every Year, to take or kill any Salmon, or Salmon-Peel or Salmon-Kind, or expose them *Ib. §. 11.* to Sale within the Times aforesaid.

Provided, that such Owners, &c. or their Servants, shall not, between the 1st of *Aug-* *Ib. §. 13.* *ust* and the 12th of *November*, take, kill, or wilfully hurt any Salmon by *Angles, Gins, Harroks, Nets, Racks,* or other Devices, or offer to Sale any of the said Fish so taken, under the like Penalties as in the Statute 4 & 5 *Anne*.

Laying or drawing any Nets or Engines, or doing or causing to be done, any other Act *Nets*. in the Rivers herein mentioned, *viz. Air, Calder, Derwent, Dee, Dum, Ewe, Mercy,* *Ib. §. 14.* *Ouze, Ribble, Severn, Swaile, Team, Tees, Trent, Ware and Wye,* or any of them, where- by Salmon, &c. not eighteen Inches long, from the Eye to the Middle of the Tail, may be taken or killed, or hindered by any Bank, Dam, &c. from going up the said Rivers to spawn; and being convicted before one Justice, either upon View, Confession, or Oath of one Witness, forfeits 5 l. for every Offence, &c. And so shall he, who from the last Day of *July* to the 12th of *November*, hurts any Salmon, or who shall after that Day fish in any of those Rivers with Nets not allowed by the Statutes 1 *Eliz.* and 30 *Car. 2.* besides the Fish and Nets; one Moiety to the Informer, the other to the Poor of the Parish where the Offence was done, to be levied by a Warrant of a Justice, and by Distress and Sale, &c. and for Want of a Distress, to be committed, for not less Time than one Month, nor for more Time than three Months; and to be held to hard Labour, and to suffer such other corporal Punishment as the said Justice before whom convicted shall think fit, who shall order such Nets to be seized and cut to Pieces, or destroyed in his Presence, and shall cause such Banks to be removed at the Charge of the Offender, which, if not paid upon Conviction, &c. shall be levied in the same Manner as aforesaid.

Salmon shall not be sent from any of the said Rivers to Fishmongers in *London*, or their *Salmon to* Agents, weighing less than six Pounds each Fish; he who is convicted of buying, selling, *weigh six* or sending Salmon of less Weight, shall forfeit 5 l. besides the Fish so bought and sold; one *Pounds.* Moiety to the Informer, the other to the Poor, &c. and if not paid upon Conviction, then *Ib. §. 15.* to be levied by Warrant, &c. by Distress and Sale, &c. and for Want of Distress to be committed and kept to hard Labour for three Months, unless the Forfeiture be paid in the mean Time.

Offenders punished by this Act shall not be prosecuted, nor incur the Penalty of any *Ib. §. 16.* other Law for the same Offence.

An Appeal lies to the Quarter-Sessions, who are finally to determine, &c. *Ib. §. 17.*

This Act shall not extend to any ancient Locks or Wears, but that the Proprietors may *Ib. §. 18.* repair, rebuild, remove, or take them down, &c.

By *Stat. 9 Geo. 2. cap. 33. sect. 1.* every Person offending against the 1 *Geo. 1. cap. 18. 9 Geo. 2.* *sect. 1.* against importing Fish by Foreigners, shall forfeit 100 l. to be recovered in any *c. 33. §. 1.* Court at *Westminster-Hall*, one Moiety to the Informer, the other to the Poor, &c. and the Master of the Vessel forfeits 50 l. The Prosecution must be within 12 Months.

Persons killing Lobsters on the Coast of *Scotland*, from the 1st of *June* to the 1st of *Ib. § 4.* *September*, forfeit 5 l. for each Offence, to be recovered upon a summary Complaint before any two Justices of Peace.

The Rates allowed for Fish exported are as follows.

For every Cask of Pilchards or Seads, containing 50 Gallons, 7 s. *5 Geo 1.*

For every Hundred of Codfish, Ling or Hake (except Haberdine) in Length fourteen *c. 18.* Inches from the Bone in the Fin to the third Joint in the Tail, 5 s.

For every Barrel of wet Codfish, Ling or Hake, containing thirty-two Gallons, 2 s.

For every Hundred of dried Codfish, Ling or Hake, called Haberdine, 3 s.

For every Barrel of Salmon, containing thirty-two Gallons, 5 s. 6 d.

For every Barrel of white Herrings, containing thirty-two Gallons, 2 s. 8 d. And of Red Herrings, 1 s. 9 d. And of shotten Herrings, 1 s.

For

For every Last of dried red Sprats, 1 s.

And so in Proportion for a greater or lesser Quantity, which Allowances shall be paid by the Collector of the Duties on Salt in the Port from whence exported, within thirty Days after Demand, &c. See the Statute, and also the Statutes 8 Geo. 1. cap. 4. & 16.

Black Faces.

9Geo. 1. c. 22. He who shall be armed and have his Face black or disguised, and shall unlawfully take away or steal any Fish out of a River or Pond, or break down any Head or Mound of a Fish-pond, whereby the Fish shall be lost, is a Felon without Benefit of Clergy. See *Felony by Statute.*

C H A P. XLIII. (a)

Fire.

6 Ann. c. 31. SERVANT firing any Dwelling-house or Out-house, thro' Negligence, forfeits One hundred Pounds, to be paid to the Church-wardens, to be given to the Sufferer; or to be committed to the House of Correction, as two Justices shall think fit.

C H A P. XLIV.

Forcible Entry.

One Just.

WHAT is Forcible Entry, and what is a Forcible Holding or Detainer; see the other Title, *Forcible Entry, hic postea cap. 125.*

15 R. 2. 2.
SH. 6. 9. P. 2.
Dyer 210.
Lamb. 150.

Every Justice of Peace, upon Complaint to him made, or upon other Notice to him given, of any Forcible Entry into, or Forcible Holding or Detainer of Possession of any Lands, Tenements, or other Possessions (or of any Benefices or Offices of the Church) contrary to these Statutes, without any examining, or standing upon the Right or Title of either Party, ought in convenient Time (at the Costs of the Party grieved) to do Execution of these Statutes in Manner and Form hereunder following.

View.

15 R. 2. 2.
Lamb. 152.

1. First, he ought to go to the Place where such Force shall be.

2. He may take with him sufficient Power of the County or Town, by his Discretion; and the Sheriff also, if need be, to aid him, as well for the arresting of such Offenders, as also for removing the Force, and for conveying them to the next Gaol. (a) And whosoever (of that County) shall refuse to attend and assist the Justice of Peace herein, shall be imprisoned, and fined to the King. 15 R. 2. cap. 2.

Arrest.

3. (d) He ought to arrest and remove all such Offenders, as at his coming he shall see or find continuing the Force; and may take away their Weapons and Armour, and cause them to be praised, and after to be answered to the King as forfeited, or the Value thereof.

Break open Doors.

If the Doors be shut, and they within the House shall deny the Justice to enter, it seems he may break open the House to remove the Force.

But if such Offenders, being in the House at the coming of the Justice, shall make no Resistance, nor make Shew of any Force, then the Justice cannot arrest or remove them, except upon the Enquiry, a Force be found. See *Cromp. 73.* and the other Title, *Forcibly Entry.*

Two Counties.
Cromp. 71.

Also if the House or Land which is holden with Force, shall extend into two Counties, and the Offenders remove their Force into that Part of the House or Land which is in the other County, when the Justices do come, they cannot then remove the Force.

Restitution not without Enquiry.

And if the Justice at his coming shall see or find a Force, and shall remove the Offenders, yet he may not upon his own View restore the Party ousted to his Possession again, without Enquiry first made of the Force by a Jury, as appears hereafter.

Record.

14 H. 7. 8.

4. Also the Justice ought to make a *Record of such Force* by him viewed; which Record shall be a sufficient Conviction of the Offenders, and the Parties shall not be allowed to *traverse it.*

And this Record (being made out of the Sessions by a particular Justice) may be kept by him; or he may make it indented, and certify the one Part into the King's Bench, or to leave it with the Clerk of the Peace, and the other Part he may keep himself. Lamb. 152, 163 & 375. 21 H. 6. 5.

The Form of the Record, see the other Title, *Forcible Entry*, and *Precedents*.

5. Also he ought to commit (immediately) to the next Gaol all such Persons as he shall find and see continuing the Force at his Coming to the Place; the said Offenders there to remain convict by his own View, Testimony and Record, until they have paid a Fine to the King: For this *View of the Force by the Justice*, being a Judge of Record, maketh his Record thereof, in the Judgment of the Law, as strong and effectual, as if the Offenders had confessed the Force before him; and touching the Restraining of Traverse, more effectual than if the Force had been found by a Jury upon the Evidence of others. Imprison convicted on View. Br. Peace. 4. Co. 8. 120. P. 2.

And yet the Words of the Statute seem more large; *sc. And if he do find any that made any such Forcible Entry, or that hold the Place with Force, &c. he shall commit the Offenders to the Gaol, &c.* But such Force must be in the Presence or View of the Justice of Peace, or else he can neither record it, nor yet commit the Offenders. 13 H. 7. Crom. 195. b. Crook 41. P. 2.

The Form of the *Mittimus*; see the other Title, *Forcible Entry*.

6. Also the same Justices of Peace, or some of them that shall see the Force, as having best Knowledge of the Matter, and having the Custody of this Record, are the proper Judges of this Offence; and therefore may assess the * Fine upon every such Offender; but it must be imposed severally, and not upon them jointly: And the Justice ought to estreat the same Fine, and to send the Estreat into the Exchequer, that from thence the Sheriff may be commanded to levy it for his Majesty's Use. But upon the same Fine so assessed and estreated, the Justice is to deliver the Offenders. Lamb. 554. Fine. Co. 8. 41. a. Lam. 193. 597. Co. 11. 43. a. * If the Fine is set, the Conviction cannot be quashed on Motion, but the Defendant must bring his Writ of Error. 2 Salk 450.

Also upon Payment of the Fine to the Justice, or upon Sureties found (by Recognizance) for the Payment thereof, he may deliver the Offenders out of Prison again at his Pleasure, by some Opinions: But *quare* whether the Justice of Peace shall meddle with receiving the Fine, for that the Sheriff is accountant for all Fines. Lamb. 555. Br. Imp. 10. Lam. 162.

Or the Justices of Peace, by some Opinions, may record such Force, and commit the Offenders, and after certify the Record to the Justices of Assize and Gaol-delivery, (as it was done at *Stafford Assizes, Ann. 26 Eliz.* by the Report of Mr. *Crompton*;) or else to certify it to the General Sessions of the Peace, (as it seemeth to Mr. *Crompton*) and there the Offenders may be fined: For, saith he, the Statute doth not say, that the Fine shall be assessed by them that record the Force, more than by other Justices. Cromp. 161. Lam. Ed. 1582.

Or rather the Justice of Peace may certify or deliver the Record by him made (and refer the Fine and farther Proceedings therein) to the King's Bench (in regard of their supreme Authority in such Cases.) And this Mr. *Lambard* thinketh to be the safest Course. Lamb. 163.

7. Also the Justice of Peace, notwithstanding his own View of the Force, may and ought in some Town or Place, near where the Force was, to inquire by a sufficient Jury of the same County, to be returned by the Sheriff, as well of those who made such Forcible Entry, as of those who made such Forcible Detainer. Enquiry. See the Stat. 8 H. 6. c. 9. & Plo. 86.

And here note, that any Justice of Peace alone out of the Sessions may make an Inquiry (being so appointed by the Statute;) whereas otherwise there must be two Justices at the least, to make an Inquiry, or to hold a Sessions, and one of them of the *Quorum*. Br. Peace 14.

And this Inquiry ought to be made, whether the Offenders be present or gone, at the Coming of the Justice of Peace; and though he go not to see the Place where the Force is; for without this Inquiry there can be no Restitution. See more concerning this Inquiry in the other Title, *Forcible Entry, &c.* Br. Forcib. 27.

(a) Also by the Words of the Statute of 8 H. 6. cap. 9. (*maintenant mesme les Justices doivent enquerir, &c.*) the Justices are to make this Inquiry immediately after the Force committed, and Complaint made to them by the Party griev'd; and yet they may make this Inquiry at any convenient Time after. Crom. 124.

If the Sheriff shall not duly execute the Justices Precept directed to him for returning a Jury, he shall forfeit 20*l.* And the Justice of the Peace may proceed to hear and determine such Default of the Sheriff. See 8 H. 6. cap. 9. *hic postea.*

(d) The Form of a Precept to the Sheriff to return a Jury, see the Title *Precedents*.

The Form of the Inquiry, Presentment or Verdict, see as before.

Restitution.

* P. R. 41. b.
36. b. See the
Words of the
Stat. 8 H. 6.
c. 9. §. 3.

8. And if upon such Inquiry, such Forcible Entry, or * Forcible Detainer, shall be found by the Jury, then the said Justice of Peace shall reseise the Lands or Tenements so entered upon or holden, and put the Party in Possession again, who was put or holden out. See the other Title of *Forcible Entry*.

But the putting out, must of Necessity be found, and that by express Words in the Indictment. See as before.

(a) And so note, that the Justice or Justices of Peace, recording only the Force by his or their View, may not put the Party into his Possession again, but the Justice must first make Inquiry thereof by a Jury of the County at a special Sessions by the said Justices to be holden; and then the Force being found by the said Jury, the said Justice or Justices may put the Party into his former Possession.

(d) And this Restitution the Justice of Peace may make himself; or he may make his Warrant to the Sheriff to do it: Or else he may certify such Presentment or Indictment taken before him, into the King's Bench, and so leave the Restitution to be awarded out of that Court. See as before.

Co. 9. 118.
Co. 11. 65.
7 E. 4. 18.

But the Justices of Assise and Gaol-delivery, nor the Justices of Peace at their General Sessions, cannot, it seems, make or award Restitution, except the Indictment were found before them; but the Justices of Peace only, or some of them, that were present at the Inquiry, and when the Indictment was found, they only have Power to make Restitution; except the Justices of the King's Bench, who have a supreme Authority in all Cases of the Crown.

And therefore if the Record (*sc.* the Presentment of such Force,) shall be certified by the Justices of Peace into the King's Bench, or that the same Presentment or Indictment shall be removed thither by *Certiorari*, there the Justices of the King's Bench may award a Writ of Restitution to the Sheriff of the same County, to restore Possession to the Party so expelled.

Break open the House.

P. R. 41. b.

After it is found by such Inquiry, that such Forcible Entry or Detainer is made, the Justices of Peace may break open the House by Force, to reseise the same, and to put the Party, so put out, in Possession again. And so may the Sheriff, having the Justice's Warrant.

The Form of such Warrant from the Justice of Peace to the Sheriff, to make Restitution, see in the other Titles, *Forcible Entry*, and *Precedents*.

But the Justice of Peace may not (in any Case) make a Restitution without such an Inquiry first had, and such Force thereby found: For if the Justice shall make Restitution without Inquiry, it seems to be punishable in the Star-Chamber*.

* But now in
the King's
Bench.

Also this Restitution ought to be made to none, but to him only that was put out; so that if the Father be put out by Force, and dieth (after Inquiry, and before Restitution) his Heir shall not have Restitution.

To whom Restitution shall be made, see the other Title, *Forcible Entry*.

Also such Restitution must be made only, where a Man is put out, or holden out, &c. of House or Land, and is not to be understood of a Rent, Common, Advowson, or such like. See the other Title, *Forcible Entry*.

Traverse.

Also the Justice may make Restitution, notwithstanding any Offer of *Traverse*; but yet upon *Traverse* tendred, the safest Way for the Justice of Peace seems to be to deliver or certify the Presentment into the King's Bench, and so to refer the farther Proceedings therein to them. See the other Title, *Forcible Entry*.

Default of the Justices.

And although these Statutes do inflict no Penalty upon the Justices of Peace, if they shall not execute them; yet if upon Complaint (or other Notice given of such Force) they shall not at least remove the Force, record it, and commit the Offenders, they are punishable in the Star-Chamber.

(a) In the Case of *Drayton Bassett* (in the County of Stafford) Ann. 22 Eliz. certain Justices of Peace of that County, (although they dwelt not near the Place) where a great Riot was committed by a Forcible Detainer, were for their Default fined in the Star-Chamber, upon the Statute 17 R. 2. cap. 8. (as Mr. Crompton reporteth) which Statute is, that the Sheriff, and all other the King's Officers, shall suppress Rioters who shall assemble themselves in outrageous or great Numbers. See *Crompt. Author. des Courts*, fol. 32.

Fine and commit.

(d) Although the Justice of Peace ought to commit to the Gaol, and may fine all such as he shall see continuing their Force at his Coming to the Place; yet upon Force found by the Inquiry only, and not viewed and seen by the Justice, (although this Presentment of the Jury be a Conviction of the Offenders) the Justice of Peace may neither fine, nor send

to the Gaol the said Offenders, by the Statute of 8 H. 6. which appointeth the Inquiry: For the Justice hath Power by the said Statute to make Restitution only, as saith Mr. Lambard 162. yet Mr. Crompton holdeth the contrary. Crompt. 161. b. 162. a. contra.

But howsoever, the Justice of Peace (upon Force found by the Jury) is to remove the Offenders that be present, that so he may restore the other, and may bind the Offenders to their good Behaviour; and if the Offenders be gone, yet the Justice may make his Warrant to take them, and may after send them to the Gaol, until they have found Sureties for their good Behaviour.

Note, That if such Forcible Entry or Detainer shall be made by *Three Persons, or more*, then it is also a *Riot*; and then if there be no former Inquiry thereof made, the two next Justices of Peace, upon Notice thereof, ought to inquire thereof, as a Riot, by a Jury, within one Month, upon Pain to either of them making Default, to forfeit 100 l. Riot. Cro. 68. b.

Also one Justice of Peace may hear and determine the Defaults of Sheriff and Bailiffs, in not returning sufficient Jurors (whereof every one shall have Lands, &c. to the Value of forty Shillings by the Year at the least) before him, to inquire of such Forcible Entry or Detainer: And the said Justice of Peace may proceed therein as well by Bill, at the Suit of the Party grieved for himself, as also by Indictment only for the King; and the same Process shall be made against such Persons indicted or sued by Bill in this Behalf, as should be made against Persons indicted or sued by Writ of Trespass, with Force and Arms against the King's Peace. What the Process in such Case is, *vide Tit. Process.* Defaults of Sheriffs in not returning a Jury. 8 H. 6. 9. P. Just. 8. 9. Rait. 174. c.

And though any one Justice of Peace may proceed in every of the former Cases of *Forcible Entry or Detainer*, as aforesaid; yet if two or more Justices shall join therein, it is better; for *Plus vident oculi quam oculus; & securius expediuntur negotia commissa pluribus.* Two Justices. Co. 4. 46.

Also the *Mayors, Justice or Justices of Peace, and the Sheriffs and Bailiffs of Cities and Boroughs having Franchise*, shall have in the said City, Towns and Boroughs, like Authority to remove such Entries, and to inquire thereof, and of *putting or holding out*, as the Justices of Peace and Sheriffs in Counties and Shires have. Corporate Towns. 8 H. 6. 9. Rait. 174. d.

Also every Justice of Peace, to whom a Writ upon the Statute of *Northampton* concerning the removing a Force shall be delivered, ought to execute the same Writ, *sc.* he ought to remove the Force, and to certify his Doings therein to the *Chancery*. The Statute of Northampton. 2 Ed. 3. 3.

And for that the Justice of Peace, to whom this Writ shall be delivered, is herein but a Minister, and is to certify that which he shall do therein, I will here set down the Manner how he shall proceed to execute this Writ.

First, When the Justice of Peace shall come to the Place where the Force is supposed, by this Writ, he may cause Three Oyes for Silence to be made, and then he may make Proclamation in the King's Name, to this Effect:

The King's Majesty's Justice of Peace strictly chargeth, and in his Majesty's Name commandeth, all and every Person to keep Silence, whilst his Majesty's Writ, &c. be read, and Proclamation be thereupon made accordingly. Lam. 173.

Secondly, Then may he read, or cause to be read, the Writ, or may declare the Effect thereof.

Thirdly, Then let Three other Oyes be made; and thereupon make Proclamation again, as followeth.

His Majesty's said Justice doth, by Virtue of his Majesty's Writ, strictly Charge and Command, that no Manner of Person, of what Estate, Degree or Condition soever, now being within the House of B. &c. (named in the said Writ) shall go armed, or keep Force of Armour or Weapon, nor do any Thing there, or elsewhere, in Disturbance of his Majesty's Peace, or in Offence of the Statute made at Northampton in the Second Year of King Edward 3. upon Pain of losing his said Armour and Weapons, and of imprisoning his Body at his Majesty's Pleasure. Fitz. 249. 2 Ed. 3. c. 3

God save the King.

Fourthly, Then the Justice of Peace may enter and search whether there be any Force of Armour or Weapon worn or born, against this Proclamation: Or otherwise he may inquire thereof by a Jury, for so the Writ itself doth warrant him. And if after Proclamation any such be found, he ought to imprison the Offenders, and to seize to the King's Use,

and prize (by the Oaths of some present) the Armour and Weapons so found with them; and the Offenders so imprisoned are to remain there until some other Command be given concerning them from his Majesty, or his Justices. See the Writ, *Fitz.* 249. and the Title, *Bailment, posse.*

But if, upon the Proclamation made, they do depart in peaceable Manner, then hath the Justice no Authority by the Writ to commit them to Prison, nor to take away their Armour.

Crom. 74,
162.

But when the Justice hath removed the Force, (upon this Writ) he may not put the Party that was put out in Possession again; if he do, he and the Party also are punishable in the Star-Chamber, for the Writ doth authorize the Justice only to remove the Force, and not to make Restitution.

The Form of this Writ upon the Statute of *Northampton*, you may see in *Fitz. N. B.* 249.

The Form of a Certificate, or Return of this Writ into the *Chancery*, see in the other Title, *Forcible Entry.*

Without Writ.

P. Armor 1.
2 Ed. 3. 3.

Also every Justice of Peace (*ex officio*, and without any Writ) may do Execution of this Statute of *Northampton*, and that as well by Force of the Commission, as of the said Statute.

Lam. 176.

The Manner to execute this Statute by the Justice of Peace (*ex officio*) seemeth to be all one as before, *where he hath a Writ delivered him*; saving that when he doth this *ex officio*, and *without Writ*, he needeth not make any Proclamation, nor to send any Certificate into the *Chancery*: But the Justice may go to the Place where the Force is, and (if it be in a House) he may enter and search, if any Force of Armour or Weapon be worn or born against this Statute; and if any such Offenders be found, he may commit them to Prison, and may seise and prize the Armour and Weapon so found with them. And he ought to record all that which he shall do in this Behalf, and to send some Estreat into the Exchequer, that the King may be answered of the Armour, or of the Value thereof.

But here again the Justice must not make any *Restitution of the Possession* to the Party ousted, but must *only remove the Force.*

Fine.

Cro. 160.
Lam. 176,
516.

And concerning the Offenders so found, and committed by the said Justice of Peace, he (at his Discretion) may fine them, and upon Payment thereof, or upon Sureties found for the same, that the said Justice may deliver the Offenders, even as in the former Statutes of 15 R. 2. & 8 H. 6. or else he may record such Force, and commit the Offenders, and after certify the Record into the King's Bench, or to the Justices of Gaol-delivery, or to the General Sessions of the Peace, as here in this Title a little before. *Vide Tit. Bailment.*

* 15 Ric. 2.
c. 2.

(a) The Defendant was convicted for a Forcible Detainer, upon the * View of a Justice of Peace setting forth that he held a *Chamber in a House*, in such a Street and Parish by Force; but did not shew whose House it was, nor whether the Chamber was backward or forward, or how many Pair of Stairs high, and the Commitment was to Newgate; but it did not set forth that Newgate was the County Gaol; and the Statute expressly requires that the Commitment should be thither.

But the Court would not intend that there were two Chambers on one Floor, for they held the Chamber was sufficiently described: However the Conviction was quashed, for though they would intend that Newgate was the County Gaol, yet the Words in the Record being all in the preterperfect Tense, when they should be in the present Tense, for that Reason it was quashed.

See the Form of Records and Warrants on this Head, Chap. 182.

C H A P. XLV. (a)

Forestallers, Regraters, Ingrossers.

Butter, Cheese.
3 & 4 Ed. 6.
c. 21.

NO Person shall buy to sell again any Butter or Cheese, unless he sell the same in open Shop, Fair or Market; and not in Gross upon Pain of Forfeiture of the double Value, to be recovered in any of the King's Courts of Record, one Moiety to the King, the other to the Informer.

The Word *Retail* shall be expounded, where a Weigh of Cheefe or Barrel of Butter, ^{3 & 4 E. 6. c. 21.} or less, and not above, shall be sold at any Time without Covin.

The Statute shall not extend to *Inn-keepers or Victuallers*, where the same is spent in *Ibid.* their Houses.

Any Person who shall buy any Merchandize, Victuals or other Thing whatsoever coming *Forestaller.* by Land or Water to a Market or Fair to be sold, or coming towards any City, Port, ^{5 E. 6. c. 14. §. 1.} Haven, Creek, or Rode of *England* from beyond Sea, to be sold, or make Promise, or contract for the same, before the same shall be in Market, Fair, City, &c. to be sold, or shall make any Price or dearer Selling of any such Things, or dissuade, move or stir any Person not to come thither, shall be accounted a Forestaller.

Any Person that doth reqrate, or get into his Hands in any Fair or Market, any *Reqrater.* Corn, Wine, Fish, Butter, Cheefe, Candles, Tallow, Sheep, Lambs, Calves, Swine, ^{Ib. §. 2.} Piggs, Geese, Capons, Hens, Chickens, Pigeons, Conies, or other dead Victuals whatsoever brought thither to be sold, and shall sell the same again in the same Fair or Market, or any other within four Miles thereof, shall be taken for an Ingrosser.

Any Person that shall get into his Hands by Buying, or Promise-taking, other than *Ingrosser.* by Demise, Grant, or Lease of Land; or Tithe any Corn growing in the Fields, or ^{Ib. §. 3.} any other Corn, Grain, Butter, Cheefe, Fish, or other dead Victuals, with Intent to sell the same again, shall be taken for an unlawful Ingrosser.

Any Person thereof convicted by Law of the Realm, or in Form prescribed by that *Penalty.* Act, shall for the first Offence suffer Imprisonment for two Months without Bail, and ^{1 Offence.} shall forfeit the Value of the Goods so bought. ^{Ib. §. 4.}

For the second Offence, being thereof attainted, shall suffer Imprisonment by Half a ^{2 Offence.} Year, without Bail, and shall lose double the Value of the Goods so bought. ^{Ib. §. 5.}

And for the third Offence shall be set on the Pillory where he inhabits, and forfeit all ^{3 Offence.} his Goods and Chattels, and be committed to Prison, there to remain during the King's ^{Ib. §. 6.} Pleasure.

First, *buying Barley or Oats*, to be made into *Malt* or *Oatmeal*, not by forestalling; *Exception.* or Secondly, *buying*, (not by forestalling) by *Fishmongers, Butchers or Poulterers*, Things ^{Ib. §. 7.} belonging to their Trades, being sold again by Retail at reasonable Prices. Thirdly, *Taking Corn, Cattle, Butter, Cheefe*, upon Reservation in Lease. Fourthly, *Inn-holders, buying Wine or Victuals*, and selling them by Retail in their Houses, or to their Neighbours for Sustenance, at reasonable Prices. Fifthly, *Buying of dry'd Fish, &c.* not forestall'd, and sold at reasonable Prices. Sixthly, a *Badger, Lader, Kidder or Carrier*, being licensed by three Justices where he dwells, *buying Corn, Fish, Butter or Cheefe*, he selling the same within one Month in Fair or Market, or to a Victualler or other Person for Provision for the House, the same being bought without forestalling. Seventhly, Provision for a *City, Town Corporate, or Victualling for Ships or Forts*, without forestalling, shall not be adjudged Offences.

A Man *buying Corn for Change of Seed*, and not bringing so much to the Market, ^{Ib. §. 8.} shall forfeit the double Value thereof.

The Justice of Peace at Sessions shall inquire, hear and determine these Offences by *Inquisition, Bill, Presentment or Information* before them exhibited, and by Examination *Who may inquire.* of *two lawful Witnesses*, or by any other Ways or Means in their Discretion, and to ^{Ib. §. 10.} make Process, as if they were indicted by Inquisition or Verdict, and upon Conviction, by Information or Suit at any other Prosecution, to make *Estreats* of the King's Part, as in other Cases, and to award Execution for the Plaintiff, or Informer, by *Fieri facias*, or *Capias*, as the King's Justices may do; and if the Conviction be for the King, then the whole Forfeiture to be estreated.

Forestalling of Corn, Vide Corn, Chap. 27.

^{Ib. §. 12.}

No Person shall be impeached on this Act, if not sued within *two Years* after the ^{Ib. §. 14.} Offence.

Any Person living within a *Mile of the Sea*, may buy *Fish*, fresh or salted, selling ^{Ib. §. 15.} the same again at reasonable Prices.

Forestalling Cattle, Vide Cattle.

^{Ib. §. 16, 17.}

So much of this Statute of the ^{5 & 6 Ed. 6. cap. 14.} and all other Statutes against Reqrators, &c. as concerns the Buying of Sea-fish unsalted, or Mud Fish, or Wine, Oil or Salt, bought at Sea, and brought in *English* Ships, and discharg'd in any Harbour within the Realm, is repealed by ^{5 Eliz. cap. 5. sect. 13.}

London. The Statute of 3 & 4 E. 6. 21. & 5 & 6 E. 6. 14. shall not extend to Freemen of
 21 Jac. 1. c. London buying *Butter* and *Cheese*, and selling the same again in *London Liberties*, *South-*
 22. §. 6. *wark* and *Westminster*.

Ib. §. 7. If Justices of Peace shall declare in their open Sessions the Traders in *Butter* and
Cheese shall forbear to buy; if they shall not forbear during such Restraint, they shall
 not be exempted from the Penalties of these Laws.

Licences. No *Drover*, *Badger*, *Lader*, *Kidder*, *Carrier*, *Buyer* or *Transporter* of *Corn* or
Badger. *Grain*, *Butter* and *Cheese*, shall be allowed but in the open and general Quarter-Sessions
 5 El. 12. §. 4. of the Peace of the County where the Party dwells, and dwelt three Years together be-
 fore the Teste of his *Licence*; and none but such as *are or have been married*, and such
 as are at the Time of their *Licence* *Houholders*, and not *Servants* or *Retainers*, and of
 the Age of *thirty Years* at least, and shall be *licensed only for one Year*.

Crom. 72. Note; a *Woman* can have no such *Licence*, for the Statute speaks only of a *Man*, and
 he that hath such *Licence* shall not sell by his *Servant*.

5 El. 12. §. 5. The *Licences* shall bear Date the Day and Place of the Sessions, and shall be signed
 and sealed with the proper Hand and Seal of *three Justices* then present, *Quorum unus*,
 upon Pain that he that takes a *Licence* contrary to that Statute, shall forfeit 5*l.* to
 the King.

Ib. §. 6. The Justices in Sessions shall take *Bond and Surety* by their Discretion; that the Per-
 sons licensed do not *forestal*, *ingross*, or do any Thing contrary to 5 E. 6. 14. The
 Clerk or his Deputy, and none other, shall write them, for which *Licence* he shall pay
 12 *d.* at most, for the Recognizance 4 *d.* at most; for which Fee the Clerk shall keep a
 Register of the Names, &c. and bring it to the Sessions.

Ib. §. 7. No Person shall by Authority of such *Licence* buy *Corn* or *Grain* out of open Fair
 or Market, unless he be thereunto licensed, and that by special Words in his *Licence* so
 to do, or forfeit 5*l.*

Hear and de- The Justices of Peace in their Quarter-Sessions shall hear and determine the Offences
termine. against that Act, by Inquisition, Presentment, Bill or Information, before them exhibited;
 Ib. §. 8. and by Examination of two Witnesses, or by any other lawful Means by their Discretion,
 and may make Process, as if they were indicted: And upon Conviction, by Information
 of any other than the King, they may extract the King's Moiety as in other Cases, and
 to make Execution for the other Moiety for the Informer by *Fieri facias* or *Capias*, as
 in the Courts at *Westminster*; and if the Conviction be at the King's Suit only, he shall
 have the whole Forfeitures.

Ib. §. 9, 10. This Act shall not prejudice *Corporations* in their Purveyance, nor extend to the
 Counties of *Westmorland*, *Cumberland*, *Lancaster*, *Chester*, nor *York*.

Bark. No Person shall *regrate* or *ingross* any *Oaken Bark*, before it be stripped or after, to
 1 Jac. 1. c. 22. the Intent to sell the same again, upon Pain to forfeit the *Bark*.
 §. 19.

Hides. No Person shall *forestal* any *Hide* coming to a Fair or Market, or buy any *Hide* but
 Ib. §. 7. in a Fair or Market, except of the Owner who killed the Beast, to be spent in his own
 House, upon Pain to forfeit for every *Hide* 6 *s.* 8 *d.*

Where a Man buys Meal and converts it into Starch, he is no *Engrosser*, because 'tis
 not the same, but altered by a *Trade*; but if he buys Corn and converts it into *Meal*
 with an Intent to sell it again in the same Market, he is an *Engrosser*, because it remains
 Corn still.

Fishmongers, Poulterers and Butchers, are not within this Law, if they buy what
 belongs to their respective Trades; but if they buy with an Intent to sell again contrary
 to Law, they are punishable; nor Inn-holders nor Victuallers buying Wine or any Thing
 for the Sustenance of Man. *Cro. Car.* 381. 1 *Rol. Rep.* 134.

See 1 *Hawk. P. C. Chap.* 80. p. 234, &c. of *Forestalling*, &c.

Forest. See *Hunting*, Chap. 55.

Forfeiture for Felony. See *Chap.* 163.

Forgery. See *Felonies by Statutes*, Chap. 160.

C H A P. XLVI.

Games and Plays.

(a) **T**HERE shall be no Meeting of People out of their own Parishes on the Lord's ^{Sunday.} Day (or *Sunday*) for any Sport or Pastimes whatsoever; nor any Bear-baiting, ^{1 Car. 1. c. 1.} or Bull-baiting, Interludes, Common Plays, or other unlawful Exercises or Pastimes, used by any within their own Parishes, upon Pain that every Person offending in any the Premises do forfeit for every Offence three Shillings and four Pence, to be employed to the Use of the Poor of the same Parish where the Offence shall be committed. And any one Justice of Peace of the County (or the Chief Officer of any City, Borough or Town Corporate) upon his or their View, or Confession of the Party, or Proof of any one Witness by Oath, shall give Warrant under his Hand and Seal to the Constables or Church-wardens of the Parish where the Offence shall be committed, to levy the said Penalty by Distress and Sale of the Offenders Goods, rendering them the Overplus; and in Default of Distress, the Offenders to be set in the Stocks by the Space of three Hours; provided that none be impeached by this Act, except he be called in Question within one Month next after the said Offence committed. *1 Car. 1. cap. 1.* Continued indefinitely by *3 Car. 1. cap. 4.* & *16 Car. 1. cap. 4.*

King *James*, *Anno 1618.* publickly declared to his Subjects, these Recreations or Exercises hereunder mentioned to be lawful; that is to say, Dancing of Men or Women, Archery, Leaping, Vaulting, May-games, Whitson-Ales, Morris-Dances, and set up May-Poles, and other Sports therewith used: And commanded that no such honest Mirth or Recreation should be forbidden to his Subjects upon the *Sunday* or Holy-days, after Divine Service (*ſc.* Evening Prayer) ended. Restraining and barring notwithstanding from this Liberty any Recufants, and all such as absent themselves from Church upon those Days; commanding each Parish by itself to use these Recreations, and only after Evening Prayer ended: And prohibiting all unlawful Games to be used upon *Sunday*, Bear-baiting, Bull-baiting, Interludes and Bowling by the meaner Sort.

All which King *Charles* the First, by publick Declaration, *Anno 1633.* confirmed; allowing farther the Feasts of the Dedication of Churches, commonly called Wakes, and all Manlike Exercises to be there used with all Freedom, yet so as none bring any Weapons thither: Commanding all Justices of Peace to look that no Disorder be at such Wakes, but to be prevented or punished, &c.

The Statute of *12 R. 2. cap. 6.* is repealed by *21 Jac. 1. cap. 28.* and by the Statute of *33 H. 8. cap. 9.* all Statutes for the Restraints of unlawful Games, as touching the Penalties and Forfeitures of the same, are repealed; so that now the Statute of *33 H. 8. cap. 9.* as to any Penalties is in Force, and such Games as be prohibited by *11 H. 4. cap. 4.* & *33 H. 8. cap. 9.* are unlawful, *viz.* Tables, Tennis, Football, Coits, Dice, Bowls, Cloysh-cales, half Bowls, Cards, Logats; so that the Offences relating to Games are upon these Accounts: First, Games are by those Statutes said to be unlawful in Respect of the Condition of the Persons playing; such are Servants and Labourers in Husbandry, &c. by *12 R. 2. cap. 6.* *11 H. 4. cap. 4.* & *33 H. 8. cap. 9.* Secondly, Persons keeping Houses or Places for those Games for Lucre, Gain or Living. Thirdly, Persons haunting such Houses for those Games sake, out of which Cases Gaming is lawful, and not only the Games before mentioned are in Cases and Circumstances aforesaid unlawful, but any new Game to be invented, if used by Persons of the mean Condition aforesaid, or used and kept by Persons for Game, Lucre and Living, are unlawful by *33 H. 8. cap. 9.* that is, as to some Persons using them, and the Places where used, as being to such Persons, and in such Places, Means of Idleness, Debauchery, and other grievous Mischiefs.

The Punishment of Players at Dice, &c. by the Civil Law, besides Infamy, avoiding of the Contract and Security for any Money so won, and Restitution of the Thing so obtained, was and is Arbitrary. *See Altkufius Diceologicæ, p. 417. l. 26.*

(d) Every Justice of Peace may from Time to Time (as well within Liberties as with- ^{Search.} out) enter into any common House or Place where any Playing at Dice, Tables, Cards, ^{33 H. 8. c. 9.} Bowls, Coyts, Cailes, Logats, Shove-groat, Tennis, Casting the Stone, * Foot-ball, or ^{§ 64.} other unlawful Game now invented, or hereafter to be invented, shall be suspected ^{P. Just. 64.} to be used; and may arrest the Keepers of such Places, and imprison them till ^{Plays, 5.} they ^{* 12 R. 2. c. 6} ^{Lamb. 196.}

they find Sureties by Recognizance no longer to occupy any such House, Play, Game, Alley, or Place.

Places. (a) Yet it was resolved in 3 *Jac.* That if the Guests in any Inn or Tavern, call for a Pair of Dice or Tables, and for their Recreations play with them, or if any Neighbours play at Bowls for their Recreations, or the like, that these are not within the Statute of 33 *H. 8. c. 9.* for the Statute consists of two Parts. 1. That no Person shall for his or their Gain, &c. So that although these Games are used in any Inns, Taverns, or other Houses, if the House be not kept for Gaming, Lucre or Gain, but they play only for Recreation, and for no Gain to the Owner of the House, this is not within the Statute, nor is such Person, that plays in such House that is not kept for Lucre or Gain, within the Penalty of that Law.

33 *H. 8. c. 9.*
§. 14. (d) Also he may arrest and imprison the Players there, till they be bound by themselves, or with Sureties, by Recognizance to the King's Use, no more to play at, or to haunt any of the said Places or Games.

Ib. §. 15. (a) The said Statute of 33 *H. 8.* prohibited all Manner of Persons to play at any unlawful Game in any *common House, Alley, or Place*; except the Keeper of such House or Place have a *Placard*, containing what Games shall there be used, as also what Persons shall play thereat; and then such Persons may play there, &c.

Ib. §. 16. Also the said Statute prohibiteth all *Artificers, Husbandmen, Labourers, Mariners, Fishermen and Watermen*, and all *Apprentices and Servants* whatsoever, to play at any unlawful Game, in any Place, or at any Time, except in *Christmas Time* only and in their Houses, or Servants in their Masters Houses, and by their Master's Licence; or Serving Men within the Precinct of their Master's House, Garden, or Orchard, and by their Masters Licence. Also no Manner of Person shall at any Time play at *Bowls* in any open Places out of his Garden or Orchard, under Pain to forfeit 6 s. 8 d.

Bowls. And the said Statute makes all Games almost unlawful, save Shooting in the long Bow, that being a great Defence for the Realm, and a meet Exercise for all Manner of Persons to use, and a Means to prevent or divert Men from other unlawful, crafty and deceitful Games, and from the inordinate and common Haunting of Alhouses and Tipling.

Ib. §. 16. (d) Every Justice of Peace finding or knowing any Person to exercise or use any of the aforementioned unlawful Games (contrary to this Statute of 23 *H. 8. cap. 9.*) may commit him to Gaol, there to remain without Bail, until he become bound (in such Sum of Money as he the said Justice shall think reasonable) that he shall not from henceforth use such unlawful Games.

Penalties. (a) The Penalties for Artificers, Husbandmen, Labourers, Apprentices, Servants at Husbandry, Journeyman, or Servant of Artificers, Mariners, Fishermen, Watermen, or Serving Men, Playing at Tables, Tennis, Dice, Cards, Bowls, Clash, &c. out of *Christmas*, is twenty Shillings, and in *Christmas Time*, to play in their Master's House or Presence.

Ib. §. 11. The Penalty for keeping an House of unlawful Games, is forty Shillings *per diem*.

Ib. §. 12. The Penalty for resorting thither, or playing there, is six Shillings and eight Pence for every Time.

Ib. §. 15. Mayors, Sheriffs, Constables, and Head Officers, &c. shall once a Month search Places suspected, or forfeit for every Month forty Shillings.

Ib. §. 19, 20. All Mayors, &c. and Head Officers, shall four Times every Year proclaim this Statute in the Market. And all Justices of Peace shall proclaim the same in their Sessions.

31 *Eliz. c. 5.*
§. 7. All Suits upon the Statutes of unlawful Games, shall be heard, sued, and prosecuted, at the Assizes or Sessions of the County where the Offence is committed, or in the Leet.

2 & 3 *Ph. & M. c. 9.* Every Licence, Placard, or Grant, made to any Person for having or keeping any Bowling-Alley, Dicing-Houses, or other unlawful Games, prohibited by the Laws of the Realm, shall be void.

Although these Games aforementioned, are by Statute prohibited as unlawful for some Places, Persons, and Times; yet they are not unlawful or evil of themselves, but are Matters of Recreation and Pleasure, (though some of them more vain and more idle than others :) And the King by his Prerogative may tolerate and licence the moderate Use of all such Games. *Co. 11. 85. b.*

Cards and Dice. (d) Note also, that playing at *Cards, Dice*, and the like are not prohibited by the Common Laws of this Realm (except one be deceived by *false Dice*, or *false Cards*; * and then he that is deceived may have his Action of the Case for such *Deceit*; neither are they *malum in se*, or of their own Natures, for then none might be tolerated or licensed to use them; whereas

* According to
2 *Rol. Abr.*
78. a *Player*
at *Barra* using *false Dice* may be indicted and set in the Pillory.

the Statute doth except and tolerate certain Persons, Places and Times. And yet good * Divines do hold divers of these Recreations to be altogether unlawful, as being Actions wherein we neither bless God, nor look to receive a Blessing from God; nay, such as we dare not pray to God for a Blessing on them, nor on our selves in the Use thereof. (a) But especially on the Sabbath Day all such Recreations and Games are holden unlawful. For if lawful Works be forbidden on that Day, much more unlawful Sports, (yea, such Sports and Games, which otherwise, and at other Times are lawful.) See *Ijai.* 58. 13.

For the preventing deceitful and excessive Gaming, a good Law was made 16 *Car. 2. cap. 7.* but the Justices have nothing to do therein.

(d) But inquire what Games shall be said to be unlawful, other than those aforementioned. *Quere* of dancing the Morrice, or other open Dancings, Bear-baitings, Common Plays, and Fencings. All these seem to be prohibited by the Statute of 39 *El. 4.*

(a) Two or more Justices may cause any Person to come before them, whom they shall have Reason to suspect hath no visible Estate, Profession, or Calling, to maintain himself, but doth for the most part support himself by Gaming: And if he cannot make it appear that the chief Part of what he expends is not got by Gaming, the Justices may require him to find Sureties for his good Behaviour for twelve Months; and if he cannot find such Sureties, they may commit him till he can.

And if he doth give Security, &c. and afterwards play for more than 20 s. at one Sitting, this is a Breach of his good Behaviour, and he shall forfeit his Recognizance.

* *B. Baily.*
400.
Dr. Wellet.
498.
M. Perkins.

Persons who live by Gaming may be bound to their good Behaviour.
9 *An. c. 14.*
§. 6.

Playing for more than 20s. is a Breach of Good Behaviour. 9 *An. c. 14.* §. 7.

This Act shall not extend to hinder any Person from Gaming in any of the King's Palaces during his Residence there, so as such Gaming be not in any House, Lodging or other Part of the Palace, the Freehold whereof is not in the Crown, and so as such playing is for ready Money.

King's Palace.
Ib. §. 9.

And no Bankrupt shall be discharged or receive any Benefit by the Statute 5 *Geo. 2.* who shall have lost in one Day 5 *l.* or 100 *l.* in twelve Months before he became a Bankrupt, either at Play, or in Racing or other Pastimes, or by bearing a Share in the Stakes, Wagers; or Adventures, or by betting on the Sides of such as shall play, ride or run.

Bankrupts.
5 *G. 2. c. 30.*

The Defendant was convicted for keeping a Cock-pit six Days; this was adjudged an unlawful Gaming within the Statute, and he was fined 12 *l.* being 40 *s. per diem*, according to the Statute 33 *H. 8.* tho' the Indictment was at Common Law. 3 *Keb. 510.*

Cockpit.

All Securities for Money won at Play, or which shall be lent at that Time and Place of such Play to any Person gaming or betting, shall be void. And where such Securities shall be a Charge on any Lands, they shall enure and be to the sole Use of the Heir at Law, or to the Reversioner, as if they had been made to him, and the Grantor had been actually dead; and all Conveyances made for preventing such Lands from devolving upon such Person, shall be void.

Securities for Money won at Play void.
9 *Ann. c. 14.*
§. 1.
Such Securities shall be to the Use of the Heir at Law.

Any Person, who at one Time shall lose by playing or betting to the Value of 10 *l.* and shall pay or deliver it or any Part thereof, may within three Months then next following recover what was so lost, or any Part thereof, from the Winner by Action of Debt, with Costs in any Court of Record; and if the Loser shall not within that Time without Collusion sue for the same with Effect, any Stranger may sue for it, and recover it with treble the Value, together with Costs; one Moiety to the Prosecutor, and the other to the Poor of the Parish where the Offence was done.

Losing above 10 l. may be recovered of the Winner within three Months.
Ib. §. 2.
A Stranger may sue for it if the Loser will not.

Every Person, who is liable to be sued for Money or other valuable Thing won at Play, shall answer upon Oath any Bill which shall be exhibited against him for the Discovery thereof, but upon Discovery and Repayment of the Money or other Thing, the Person shall be discharged from any farther Punishment he may have incurred by Playing.

The Winner must answer a Bill of Discovery on Oath.
Ib. §. 3.

If any Person shall by Fraud or Deceit at any Games, or bearing a Share in the Stakes or Wagers, or betting on the Side of the Players, win any Sum or valuable Thing, or shall at one Time win above the Value of 10 *l.* and being convicted of either the said Offences, upon an Information or Indictment he shall forfeit five Times the Value of the Sum or Thing so won, to the Informer, &c. and shall be deemed infamous, and suffer corporal Punishment as if he was guilty of Perjury.

Cheating at Play, or winning above 10 l. at one Time, forfeits five Times the Value.
Ib. §. 4.

Affaulting or Beating, or Challenging another to fight for Money won at Play or Betting, and being convicted thereof upon Indictment or Information, forfeits to the Crown all his Goods and Chattels, and personal Estate, and shall suffer Imprisonment for two Years without Bail.

Challenging another for Money won at Play.
Ib. §. 5.
Ib. §. 8.

The Court was moved for Leave to file an Information against the Defendant upon an Affidavit of the Prosecutor, that he had lost 15 *l.* to the Defendant at one Sitting; but this was opposed, because the Prosecutor had indicted the Defendant for the same Offence, and the Bill was found; 'tis true, the Indictment was quashed, and the Defendant was never tried upon it, but the Court would not give Leave to file an Information, because the Jury might find another Bill for the same Offence. *Mich. 9 Geo. 1. B. R.*

2 Geo. 2.
c. 28. §. 9. Where it shall be proved on the Oath of two Witnesses before any Justice of Peace, as well as where such Justice shall find upon his own View, that any Person hath used any unlawful Game, contrary to the Statute 33 *H. 8. cap. 9.* the Justice shall have Power to commit such Offender to Prison, unless he enter into Recognizance with Sureties, or without, at the Discretion of the Justice, that he shall not play at such unlawful Games.

10 Geo. 2.
c. 28. §. 1. Any Person representing any Interlude, Play, or other Entertainment of the Stage, or acting any Part therein, for Gain, (in case such Person shall not have any legal Settlement in the Place where the same shall be acted) without Authority of a Patent from his Majesty, or without Licence from the Lord Chamberlain, shall be deemed a Rogue and a Vagabond within the Act 12 *Ann. stat. 2. cap. 23.* See Chap. 83. of *Rogues and Vagabonds.*

Ib. §. 2. If any Person, with or without a legal Settlement, shall act without Licence for Gain, he shall forfeit 50 *l.* and in Case the said 50 *l.* be paid or recovered, he shall suffer no other Penalty of the said Act.

Ib. §. 4. Acting any Play, &c. unless a Copy be sent to the Lord Chamberlain fourteen Days before representing, or contrary to his Prohibition, is a Forfeiture of 50 *l.* each Offender, and the Licence by which the Managers set up the Play-house or Company shall cease.

Ib. §. 5. No Patent or Licence shall be granted to act, &c. in any Part of *Great Britain* but in *Westminster*, or in the Place of the King's Residence during such Residence only.

Ib. §. 6. The pecuniary Penalties of this Act, may in any Part of *Great Britain* be recovered in a summary Way before two Justices of Peace, by the Oath of one Witness, or Confession of the Offender, to be levied by Distress and Sale of Goods, and for Want of Distress the Offender to be committed to the House of Correction, for any Time not exceeding six Months, to be kept to hard Labour, or to the common Gaol of such County, &c. for the like Time. Persons aggrieved may appeal to the next Quarter-Sessions: The Penalties shall belong one Moiety to the Informer, the other Moiety to the Poor of the Parish.

Ib. §. 7. If any Interlude, &c. be represented in any Place where Wine or other Liquors are sold, the same shall be deemed to be represented for Gain.

Ib. §. 8. Prosecutions must be in six Kalendar Months. If a Verdict be for a Justice or other Person, upon an Action for any Thing done in Pursuance of this Act, such Justice, &c. shall recover treble Costs.

12 Geo. 2.
c. 28. By the Statute of 12 *Geo. 2. cap. 28.* it is enacted, That if any Person shall erect any Office or Place, under the Denomination of a Sale of Houses, Land, &c. Plate, Jewels, Ships or other Goods, by Way of Lottery, or by Lots, Tickets, Numbers or Figures, Cards or Dice, or shall publish Proposals for advancing small Sums of Money by several Persons, amounting in the whole to large Sums, to be divided among them by Chances of the Prizes in some Lottery allowed by Parliament, or shall deliver out Tickets to Persons advancing such Sums, to intitle them to a Share of the Money so advanced, or shall expose to Sale any House, &c. by Device of Chance of any Kind, whether by Cards, Dice, or any Machine, such Person upon Conviction before any Justice of the Peace, or Mayor of any City, &c. by Oath of one credible Witness, or View of such Justice, &c. or by Confession of such Person accused, shall forfeit 200 *l.* to be levied by Distress and Sale of the Offender's Goods, by Warrant from any Justice of Peace of the County or Place where the Offence shall be committed; One Third to the Informer, and Two Thirds to the Poor, except within the City *Bath*, where the Two Thirds shall go to the Infirmary there, after deducting the Charges of Conviction.

The Games of the *Ace of Hearts*, *Faro*, *Basset* and *Hazard*, are declared to be Lotteries; and Persons setting up such Games shall be liable to the Penalties of this Act.

Every Adventurer in such Games, Lotteries or Sales, shall forfeit 50 *l.* to be recovered as aforesaid.

All such Sales of Houses, &c. are declared void, and the Houses and Goods forfeited to those who sue for the same.

Persons aggrieved by the Judgment of any Justice or Mayor, may appeal to the next Quarter-Sessions, giving reasonable Notice, and entering into a Recognizance with two sufficient Sureties to try such Appeal; and in Case the Conviction be affirmed, the Party appealing shall pay the Prosecutor treble Costs.

No Conviction shall be set aside for want of Form or removed by *Certiorari*, until such Proceeding have been first determined by the Quarter-Sessions.

Nor shall any Writ of *Certiorari* issue to remove the Record of any Conviction, or Order from the Quarter-Sessions, until the Party convicted find two sufficient Sureties to become bound to the Prosecutor in the Sum of 100 *l.* to prosecute the same with Effect within six Months, and to pay treble Costs, in case such Order or Conviction be affirmed.

And if any Person convicted of erecting any of the said Lotteries or Games, or of being an Adventurer in such, shall not have sufficient Goods whereon to levy the Penalties, or shall not pay, or give Security for the same, the Justice may commit such Person to the common Gaol for any Time not exceeding six Months.

Justices or Mayors refusing to do what is required by this Act, shall forfeit 10 *l.* for each Offence; one Moiety to the Person who sues, and the other to the Poor, to be recovered with full Costs; such Prosecution being commenced within six Months after such Refusal.

Actions against any Person for any Thing done in pursuance of this Act, shall be brought within three Months after the Fact committed, and shall be laid in the County or Place where the Cause of Action shall arise. The Defendant may plead the General Issue, and if the Plaintiff be nonsuited, &c. the Defendant shall recover treble Costs.

By 13 *Geo.* 2. the Game called *Passage*, and all other Games with Dice (*Backgammon*, ^{13 *Geo.* 2. c. 19.} and Games with the Backgammon Tables only excepted) shall be deemed Lotteries by Dice within the Meaning of the Act of 12 *Geo.* 2. and the Keepers of any Office or Table for, and the Players at such Games shall be liable to the Penalties of the said Act; and the Plaintiff, besides the Penalties recovered, shall have double Costs.

See also the Appendix, *Tit.* Lotteries.

Game. (a)

BY the Statute 4 & 5 *W.* 3. 'tis enacted, that inferior *Tradesmen*, *Apprentices*, and ^{*Trespassers and*} other dissolute Persons, neglecting their Trades and following *Hunting*, *Fishing*, ^{*to pay full*} and other Game, if sued for a wilful *Trespass*, and found Guilty, shall pay full Costs as ^{*Costs.*} well as Damages. ^{4 & 5 *W.* c. 23. §. 10.}

All Statutes in Force for the Preservation of the Game not altered or repealed by the ^{*Ib.* §. 1.} aforesaid Statute 4 & 5 *Will.* shall be put in Execution.

Constables, &c. may by Warrant of a Justice enter and search (in Manner as by the ^{*Search.*} Act 3 & 4 *Will.* 3. *cap.* 10. against Deer-stealers) the Houses of *suspected Persons* not qua- ^{*Ib.* §. 3:} lified, and if any *Game* shall be found, then to carry the Offender before a Justice, to whom he must give an Account how he came by the same, or if not, or doth not produce the Party of whom he bought it, or some credible Witness to make Oath of whom he bought it, the Justice shall convict him of the Offence, and he shall forfeit for every Hare, Partridge, &c. or other Game, not under 5 *s.* nor exceeding 20 *s.* one Moiety to ^{*Hare and*} the Informer, and the other to the Poor of the Parish where the Offence was done, to ^{*Partridge.*} be levied by Warrant, &c. by Distress and Sale, &c. and for Default of a Distress, to be sent to the House of Correction for any Time not exceeding a Month, nor less than 10 Days, there to be whipt and kept at hard Labour. He who is not qualified and doth keep or use any *Bows*, *Greybonds*, *Setting-Dogs*, *Coney-Dogs*, *Ferrets*, *Lurchers*, *Fer-* ^{*Dogs, Nets,*} *rets*, *Hays*, *Nets*, *Tunnels*, *Low-bells*, *Hare-pipes*, *Snares* or other Instruments to destroy ^{*&c.*} the Game, and shall be convicted as aforesaid, shall suffer the Penalties as aforesaid, and if the Person charged doth not give Evidence to the Justice of his Innocence, he shall be convicted thereof in Manner as the first Person charged therewith, and so from one Person to another till the first Offender is found.

Lords of Manors, and those to whom they give Authority, may resist Offenders in the ^{*Ib.* §. 4.} Night-time, in their respective Manors and Royalties, as if the Fact had been done in any ancient Chase, Park or Warren.

No Person shall keep any Net, &c. or other Engine for taking Fish, other than the ^{*Nets to take*} Makers for Sale or Owners or Occupiers of a Fishery; if they do, such Owners, &c. ^{*Fish.*} may either seize, or give Authority to others to seize and keep to their Use any such Engine of any Person fishing in a River, without the Consent of the Owner or Occupier. Any Person by Warrant from a Justice, in the Day-time, may search the Houses and ^{*Search.*} other Places of Persons prohibited and suspected to have such Engines, and seize and keep them to their Use, or destroy them.

- Ib. §. 6. This shall not extend to abridge Fishermen or their Apprentices to fish in navigable Rivers with lawful Nets and Engines.
- Certiorari. No *Certiorari* shall be allowed, unless the Party convicted shall, before the Allowance, enter into a Bond to the Prosecutor in the Sum of 50 *l.* with Sureties to be approved by the Justice before whom convicted to pay the Prosecutor his full Costs, on Oath, within a Month after Conviction confirmed, or *Procedendo* allowed, and in Default thereof, it shall be lawful to proceed for the Execution of the Conviction, as if no *Certiorari* had been awarded.
- Ib. §. 8. Offenders punished by this Act shall not incur the Penalty of any other Law for the same Offence.
- Ib. §. 9. He who is prosecuted for doing any Thing in Execution of this Statute may plead the General Issue, and give this Act and any Special Matter in Evidence; and if the Plaintiff is cast, or discontinued, or is nonsuit, the Defendant shall have treble Costs.
- Heath and Furze. For Preserving the red and black Game of Grouse, called Heath-Cocks, or Heath-Polts, no Person shall burn on any Hills, &c. or Waste, between the 2d of *February* and 24th of *June*, any Greg, Ling, Heath, Furze, &c. if he doth he shall be sent to the House of Correction for any Time not exceeding a Month, nor less than ten Days, there to be whipp'd and kept to hard Labour; this is for the better Preservation of Heath-Cocks, &c.
- Ib. §. 11. Any *Higler, Chapman, Carrier, Alehouse-keeper, Innkeeper* or *ViQualler*, having in their Custody any *Hare, Partridge, &c.* (unless sent by the Carrier by some Person qualified) shall be brought before a Justice where the Offence was done; and upon View of the Hare, &c. or Oath made of the Fact, shall forfeit for every Hare, &c. 5 *l.* to the Informer and to the Poor, to be levied by Distress, by Warrant of a Justice before whom the Offender was convicted, and for Want of such Distress to be committed to the House of Correction for three Months without Bail for the first Offence, and four Months for every other Offence. The Conviction must be within *three Months* after the Offence, and before a *Certiorari* shall be allowed, the Offender shall be bound in 50 *l.* to the Prosecutor, with sufficient Sureties conditioned to pay him full Costs, to be ascertained on Oath, within fourteen Days after Conviction confirmed, or *Procedendo* granted; and in Default thereof the Justice, &c. may proceed to execute the Conviction.
- 5 Ann. c. 14. made perpetual by 9 Ann. cap. 25. Any Person who shall destroy, sell, or buy a *Hare, Pheasant, &c.* and shall within three Months discover any *Higler, Chapman, Inn* or *Alehouse-keeper*, who hath bought, sold, or had the same in his Possession, so as one may be convicted of the said Offence, shall be discharged himself of the Penalties, and have the same Benefit as the other Informers.
- Certiorari. Person not qualified, and keeping *Greyhound, Lurcher, Setting-dog, &c.* or any Engine to destroy the Game, and being thereof convicted before a Justice, &c. shall forfeit 5 *l.* Half to the Informer, and the other to the Poor, to be levied by Distress and Sale, by Warrant of the Justice before whom convicted, and for Want of Distress, to be sent to the House of Correction for three Months for the first Offence; and for every other Offence four Months. Justices within their Jurisdiction, and Lords of Manors within their respective Manors, may take away any *Hare, Pheasant, &c.* or other Game, from such *Higler, &c.* or from any one not qualified to kill it, and also to take away the Dogs, Nets and Engines to their own Use. And any Lord or Lady of a Manor may, under his Hand and Seal, empower a Game-keeper to kill any Game; but if under Colour of such Power he kill and sell, or dispose of it without Consent of his Lord or Lady, and shall upon his Complaint be convicted thereof before a Justice, he shall be sent to the House of Correction for three Months, and kept to hard Labour.
- Who may take away any Hare, &c. No Person shall cut Ling, Heath or Brakes, to burn them to Ashes in *Sherwood Forest*, or in any Waste or Land in the County of *Nottingham*, without License from the Owner of the Soil, under the Penalty of 10 *s.* and the Person buying such Ashes, forfeits 10 *s.* per Peck to the Poor and the Informer; and the Offender being convicted before a Justice, upon Oath, and not paying the Penalties, shall be committed to the House of Correction for a Month, and there kept to hard Labour, unless the Penalties are sooner paid: And the Officers of the Forest, or the Owners of Lands, &c. may take away to their own Use the Instruments used for Cutting, &c.
- 5 Ann. c. 14. §. 5. By this Statute that of 5 *Annæ*, which was temporary, is made perpetual; and it is further enacted, that a Lord of a Manor shall appoint but one Game-keeper in one Manor, with Power to kill the Game, and his Name shall be entered with the Clerk of the Peace without Fee, who shall give him a *Certificate* thereof, paying 1 *s.* and if his Name is not entered, and he kill Game, and is not qualified by Law so to do; or

if any other, not being qualified, shall sell or expose to Sale any Hare, Pheasant or Partridge, Moor-heath, Game or Grouse, he shall for every Offence incur such Forfeiture as inflicted by the Statute 5 *Annæ*, against * Higlers, &c. for buying or selling Game, and to be recovered in such Manner as provided by that Act.

If a Hare, &c. shall be found * in the Shop, House, or Possession of a Person not qualified in his own Right to kill the Game, or being intitled to do it by some qualified Person, the same shall be adjudged an Exposing to Sale.

must be understood of Proof made that it was found. 6 Mod. 57. Queen and George.

He who kills or destroys a Hare, &c. in the Night-time, shall for every Offence incur such Forfeitures as aforesaid, and to be recovered as aforesaid.

Any Person between 1 *July* and 1 *September*, in any Year, driving by *Hayes*, *Tunnels* or *Nets*, and taking *Wild-duck*, *Teal*, *Widgeon*, or any other *Water Fowl*, in Places of Refort for Wild-Fowl in the Molting-time, and being convicted thereof before one Justice where the Offence was done, and by the Oath of one Witness, shall forfeit 5 *s.* for every Fowl to the Informer, and to the Poor, &c. to be levied by Warrant, &c. by Distress and Sale, &c. and for Want of Distress to be committed to the House of Correction, not exceeding one Month, nor less than fourteen Days, to be whipp'd and kept to hard Labour, and the Justice shall cause such Nets, &c. to be seized and destroyed in his Presence.

No Lord or Lady of a Manor shall appoint any Game-keeper with Power to take or kill any Hare, &c. or other Game, unless such Person is qualified so to do by Law, or be truly a Servant to such Lord or Lady, or be immediately employed by them to kill the Game for their sole Use; and no Lord of a Manor, &c. shall give Authority to any Person not qualified by Law, to keep or use any *Greyhound*, *Setting-dog*, *Hayes*, *Lurchers*, &c. *Guns*, or other Engines, to kill the Game; and any Person not being qualified, or not being truly a Servant to the Lord of the Manor, or not immediately employed to take or kill the Game for his sole Use, who under Pretence of any Deputation, &c. to him granted by such Lord, shall take or kill any Game, or use any *Greyhounds*, &c. being convicted thereof, shall for every Offence incur such Forfeitures, and to be recovered and employed, as are appointed by the Statutes 5 *Ann. cap.* 14. and 9 *Ann. cap.* 25. the which said Acts, and all other Laws now in Force for the Preservation of the Game, not hereby altered, shall remain in Force.

Where a Person shall for any Offence to be committed hereafter against any Law now in Being for the better Preservation of the Game, be liable to any *pecuniary Penalty* upon a Conviction before a Justice, it shall be lawful for any other Person whatsoever to proceed to recover the said Penalty, by Information before a Justice, or to sue for the same by *Action of Debt*, in any Court of Record; and if the Plaintiff recover, he shall have double Costs.

Such Suit must be brought before the End of the *next Term* after the Offence done; but the Offender shall not be doubly charged for the same Offence; if he is, he may plead the former Prosecution pending, or the Conviction and Judgment thereon.

The Defendant was convicted upon the Statute 5 *Annæ*, for Keeping a *Greyhound* and killing four Hares, not being qualified; but it was by his own Confession, and not upon the Oath of one credible Witness, as that Statute directs; now the Forfeiture of 5 *l.* relating to the Conviction, if that is not according to the Statute, then nothing is forfeited; and the Justice of Peace having no Power in this Case but what he derives from the Statute, therefore it ought to be pursued, especially where 'tis Penal.

But adjudged, that the * Confession of the Offender is within the Intention, though not within the Letter of the Act; and 'tis the strongest Evidence against the Person confessing, therefore where a Justice convicts upon a stronger Evidence than is required by the Statute, such Conviction must be good. *Hil. 9 Geo. 1. B. R. The King versus Gage.*

Another was convicted for keeping *Dogs*, *Nets*, *Ferrets*, &c. to catch *Conies*, not being qualified, and by Virtue of a Warrant his Goods were distrained for the Forfeiture, and a *Town-Clerk* granted a *Replevin* to take them out of the Possession of the *Constable*; the Court would not set aside the *Replevin*, but made a Rule for the *Town-Clerk* to shew Cause why an Attachment should not go. *Mich. 9 Geo. 1.*

If any Person between the first of *June* and first of *October*, by *Hayes*, *Tunnels*, or other *Nets*, drive and take any *Wild-Ducks*, *Teal*, *Widgeon*, or other *Water Fowl*, in *Marshes*, or other Places of Refort for *Wild-Fowl*, and shall be thereof convict, as

Hare sold by one not qualified. Pheasant, Partridge.
* viz. 5 l.

What shall be exposing to Sale.
Ib. §. 2.

* This it seems

Hare killed in the Night-time.
Ib. §. 3.

Wild Fowl.
Ib. §. 4.

Game-Keeper.
3 Geo. 1.
cap. 11.

Dogs, Guns.

Ib. §. 2.

8 Geo. 1.
cap. 19. §. 1.

Ib. §. 2.

* See Tit. Perjury.

10 Geo. 2.
c. 32. §. 10.

by 9 *Ann. cap. 25.* he shall be liable to the Penalties of the said Act for taking Water Fowl.

See also the Titles Hunting, Chap. 55. Partridges and Pheasants, Chap. 68. Wild-Fowl, Chap. 110.

C H A P. XLVII.

Guns.

One Justice.
Dyer 254.
Co. 11. 87.
33 H. 8. 6.
* Co. 5. 72.
P. 1, 2, 6.

Whosoever shall shoot in, carry, keep, use, or have in his House, or elsewhere, any Guns, Cross-bows, (* Dags, Pistols, or Stone-bows, contrary to the Statute of 33 H. 8. 6. every Person seeing or knowing this, may arrest or attach the Offenders, and bring or convey them to the next Justice of Peace in the same County (where they were found Offending;) which Justice, upon due Examination and Proof thereof, before him had or made, by his Discretion, may commit the Offenders to the Gaol, there to remain until they have paid the Penalty of the Statute, *scil.* Ten Pounds.

The Effect and Particulars of which Statute be as followeth.

33 H. 8. c. 6. §. 1. Co. 5. 72. 1. No Person may shoot in, or keep any Gun, Dag, Pistol, Cross-bow, Hagbut, Demi-hake, or Stone-bow, except he hath *per Ann.* 100*l.* in Lands, Tenements, Fees, Annuities, or Offices, *in his own Right, or in the Right of his Wife, or any other in Trust for him, or forfeit ten Pounds for every Time.*

§. 2. 2. No Person may shoot in, carry, keep, use, or have any Hand-Gun under one whole Yard in length, in the Stock and Gun, nor any other Gun (* Dag or Pistol) that shall be under three Quarters of a Yard in length, *or forfeit ten Pounds for every Time.*

Every Person having in Land, &c. 100 *l.* *per Annum*, may seize and take from the Offender every Gun (Dag and Pistol) shorter than is before limited, and every Cross-bow (or Stone-bow) from him that hath not 100 *l.* *per Annum*, and may keep such Bow; but must break such Guns within twenty Days next after such Seizure, *or forfeit forty Shillings for every Gun not broken, and may keep the Gun so broken.*

3 Jac. 1. c. 13. §. 5. (a) But now, by the Statute made 3 *Jac.* 1. *cap.* 13. if any Person, not having Lands, &c. of the yearly Value of forty Pounds, or not worth in Goods Two hundred Pounds, shall use any Gun, Bow, or Cross-bow, to kill any Deer or Conies, or shall keep any Buck-stall, or Engine, Hays, Gate-nets, Purse-nets, Ferrets, or Coney-dogs, (except such Persons shall have any Ground inclosed, used for the Keeping of Deer or Conies, &c. or be Keepers or Warreners) any Person having in Lands an hundred Pounds by the Year in Fee, or for Life, may take from such Malefactors, and to his own Use for ever keep such Guns, Bows, Cross-bow, Buck-stalls, or Engines, Hays, Gate-nets, Purse-nets, Ferrets and Coney-Dogs.

33 H. 8. c. 6. §. 3. Lamb. 462. (d) 3. No Person may carry in his Journey any Gun (Dag, or Pistol) charged, or Bow bent, but only in Time and Service of War, or in going to or from Musters) except he hath *per Annum* 100 *l.* in Lands, &c. *or shall forfeit ten Pounds.*

§. 4. 4. No Person may shoot in any Gun, &c. within any City, Borough or Market-Town, nor within one Quarter of a Mile of any City, Borough or Market-Town, except for the Defence of his Person, or House, or at a But, or Bank of the Earth, and in a Place convenient: *Or if he do, shall forfeit ten Pounds.*

§. 4. §. 5. 5. The Master may not command his Servant to shoot in any Gun or Cross-bow, &c. except at a But, or Bank of Earth, or in Time of War: *Or if he do, shall forfeit ten Pounds.*

§. 7, 8, 9. Except notwithstanding out of this Statute, Shooting at a But or Bank of Earth by Serving-Men, whose Masters are inabled by Statute, and by Inhabitants of Cities, Boroughs and Market-Towns; except also all Lords, Knights, Esquires, and Gentlemen, and the Inhabitants of every City, Borough and Market-Town; as also all Persons dwelling alone, or near the Sea, and Makers and Sellers of Guns, &c. These may keep Guns, &c. of the Length aforesaid, in their Houses, (yet only to use and shoot therein at a But, or Bank of Earth :) And Persons having lawful Placards, they may shoot according to such Placard or License. See other Exceptions there.

(a) Any Person keeping Hawks, having Licence from the Sessions to shoot at Crows, &c. for Hawks-meat only, may kill Hawks-meat, so as he do at the same Quarter-Sessions become bound by Recognizance in twenty Pounds, not to shoot at any Fowl prohibited by that Law, nor within six Hundred Paces of a Hornery or Pigeon-house, nor in any Forest, Chase or Park, whereof his Majesty is not Owner.

Hawks-meat.
1 Jac. 1. c. 27.
§. 7.

(d) But forasmuch as in these former Cases the Justice of Peace hath the whole Matter committed to himself, and that such Offenders remain convict upon his Examination and Proof of Witness made before him; therefore he ought to be circumspect in his Examination, as also in his *Mittimus*. And farther, to make a Record of the Matter, (in Writing under his Hand) and also to send the *Estreat* of it into the *Exchequer*, whereby the King's Duty may be levied. *

* The 2 & 3
Ed. 6. c. 13.

against Persons under the Degree of a Lord of Parliament, and not having 100 l. per Ann. shooting with Hail shot, &c. which was heretofore inserted in the former Editions of this Book, is repealed by 6 W. 3. c. 13. §. 3.

The Form of a *Mittimus*, *vide hic postea*, Chap. 179.

The Form of the *Record* see there also.

Any two Justices of Peace may commit to the Gaol for three Months, &c. every such Person as shall shoot with any Gun, or Bow, at any Partridge, Pheasant, House-Dove, Mallard, or such Fowl, or at any Hare. See more in the Title *Partridges*, Chap. 68. and *Wild Fowl*, Chap. 110.

Two Justices.
1 Jac. 1. c. 27.
P. Pheasants.

(a) But Note, That the Sheriff, or any of his Officers, for the better executing of their Office, may carry with them Hand-Guns, Dags, or other Weapons, (invasive or defensive) notwithstanding the Statute of 33 H. 8. c. 6. Co. 5. fol. 72.

All Justices of Peace in their Sessions may hear and determine these Offences, so as no less Fine than ten Pounds be assessed for any such Offence; which Fine so assessed in Sessions, shall be to the King's Use only.

33 H. 8. c. 6.

Any Person seeing, finding, or perceiving any Person to offend against the Act, may attach and arrest, and bring him before the next Justice of Peace, who shall upon due Examination and Proof, by his Discretion, commit him to the next Gaol, there to remain till the Penalties be paid; one Moiety to the King, the other to such Bringer.

33 H. 8. c. 6.

If any Jury conceal the Offence, the Justices may impanel Twelve or more; who, if they find the Concealment, every one of the first Jury shall pay twenty Shillings to the King.

An Indictment will lie on the Statute 33 H. 8. cap. 6. before the Sessions, tho' this hath been formerly doubted, because tho' the Justices have Power by the general Words of their Commission to punish Offences against the Peace, yet Shooting is not such an Offence, for 'tis only a Defect of the Qualification of the Person who shoots in a Gun.

Indictment.

There are several Instances of such Indictments, tho' they have been quashed for Insufficiency, as an Indictment for Keeping *diversa Tormenta* (*Anglice*, Guns) *carentia longitudine secundum formam Statuti*, not good. 4 Mod. 49.

The Defendant was convicted upon the aforesaid Statute for carrying a Gun, not being qualified; but upon a *Certiorari* to remove it into B. R. he was discharged, and the Conviction quashed, because it was *coram nobis*, &c. *justiciariis Domini Regis ad pacem conservand'*, but did not say *Assignatis*. 1 Vent. 39. Sid. 419. S. C.

The Defendant being convicted before a Justice of Peace for Shooting with Hail-shot in an Hand-Gun, was committed until he paid the Fine of 10 l. one Moiety to the King, the other to the Informer; and the Justice having recorded the Conviction, it was certified upon the Return of an *Habeas Corpus* into B. R. and there upon Debate in the Court it was adjudged, that the Statute being pursued, no Court could discharge the Defendant without paying the Forfeiture inflicted by that Act.

Gunpowder. See the *Appendix* under this Title.

Gaol. See *Prison*.

Hats and Caps. See 8 El. 11. and 1 Jac. 17. 5 Geo. 2. 22.

Hawkers and Pedlars. (a)

PETTY Chapmen trading without a Licence forfeit 12 l. one Moiety to the Informers the other to the Poor, to be levied by a Warrant by Distress and Sale, &c. being convicted by Confession, or by one or more Witnesses, before one Justice on Oath.

8 & 9 W. 3.
c. 24.
9 & 10 W. 3.
c. 27.

Any

Any Person so trading and refusing to shew a Licence to one Justice, on Demand, forfeits 5 *l.* to the Use of the Poor, being convicted as before; and upon Non-payment shall, as a Vagrant, be committed to the House of Correction.

Constables or other Officers refusing or neglecting on due Notice to aid or assist in the Execution of these Laws, forfeit 40 *s.* to the Poor and the Informer, to be levied by Distress, &c.

Any Person may seize and detain a Hawker, &c. till he shall produce his Licence, and if he hath none, then till Notice is given to some Parish-Officer, who shall carry the Offender before a Justice, who shall levy the Penalty on the Goods and Wares, &c. with reasonable Charges.

3 & 4 Ann.
c. 4. §. 1.

Any Person trading as an Hawker, &c. and who hath not a Licence ready to be produced on Demand, forfeits as one trading without a Licence, and may be committed, and the Forfeiture levied by Distress and Sale.

4 G. 1. c. 6.
§. 1.

Makers and wholesale Traders in *English* Bone-lace, and selling the same by Wholesale, are not Hawkers. And they may go from House to House to their Customers, who sell again, without being liable to the Penalties against *Hawkers*.

C H A P. XLVIII.

Hawking.

P. Pheafants 4.
P. Just. 38.

EVERY Justice of Peace may examine the Offences for Hawking or Hunting with Spaniels in eared or codded Corn, and may bind the Offenders with good Sureties to appear at the next General Sessions of the Peace, to answer their said Offences. 23 *Eliz.* 10. It seemeth requisite also that the Justice do bind over the Witnesses which shall discover the Offence.

Against Hawking at Pheafants or Partridges between the first Day of *July* and last of *August*, see 7 *Jac.* 1. 11. Tit. *Partridges*, Chap. 68.

Hawks that be found shall be delivered to the Sheriff. See Tit. *Felonies by Statute*, Chap. 160.

Hawks, where the Taking or Concealing them is Felony. See there also.

(a) If any Person shall take any Hawk, or the Eggs of them, out of the Woods or Ground of another, not having Licence so to do, he shall be imprisoned three Months, and pay the Party his treble Damages, and give Security to be of the Good Behaviour seven Years, or else lie in Prison seven Years. 5 *Eliz.* 2. sect. 3. See more largely in Tit. *Hunting*.

C H A P. XLIX. (a)

Hearth-Money and Chimney-Money. The Statute 14 Car. 2. cap. 10. which gave this Duty, is repealed.

Hedges. See *Trespass*, Chap. 101.

Hides. See *Leather*.

C H A P. L.

Highways.

(a) *Maxima* priscis temporibus Senatus diligentia fuit faciendis sarcieudisque viis tam intra quam extra urbem, saith *Rosinus*, *Antiq. Rom.* l. 7. p. 300. And the Care of them was first committed to the *Censors*; but they having other Employment, they chose

chose Men whom they called *Quatuor viros viarum curandarum*; but the Number of their Ways increasing, particular Ways had particular Citizens appointed, who were called *Curatores viarum*, which *Cæsar Augustus* made an ordinary Office. *Ibid.* p. 301. to which our Surveyors now exactly answer.

VIA, a Way, is defined to be *Transitus à loco in locum*.

Definition.

Note, That there are three Kinds of Ways, *scil.*

Co. l. 56.

1. A Foot-way called *Iter*, *quod est jus eundi vel ambulandi hominis*.
2. A Foot-way and an Horse-way called *Actus*, *ab agendo*; and this vulgarly is called a Pack or Drift-way, and is both a Foot-way and Horse-way.
3. The Third, a Cart-way, &c. called *Via* or *aditus*, (and containeth the other Two, and also a Cart-way) for this is *Jus eundi, vehendi, & Vehiculum & Jumentum ducendi*: And this is twofold.

Kindi.

Viz. $\left\{ \begin{array}{l} \textit{Via Regia}$, the King's Highway for all Men: With this only, The Justices of Peace are to meddle.
 $\left\{ \textit{Communis Strata}$; belonging to a City or Town, or between Neighbours.

Minib. out of *Ulpian* maketh also three Kinds of Ways, *Publicam, Privatam, & Vicinalem*.

Via Publica, quam Latini *Regiam* appellant.

Vicinalis, quæ in vicis est, vel quæ in vicos ducit: Ways between Street and Street, Neighbour and Neighbour, and House and House in Cities and Towns.

Privata est, quam agrariam dicunt; And these are of two Sorts.

Vel ea quæ ad agros ducit, per quam omnibus commeari licet.

Vel ea quæ est in agris, cui imposta est servitus, ita ut ad agrum alterius ducat.

(d) Every Justice of Peace may cause the Highways to *Markets*, where any *Woods, Bushes, One Justice.* or *Ditches* be, to be enlarged and cleansed of Bushes and Trees, (so that there be neither *Ways enlarged.* *Bush, Ditch, or Tree*, within Two hundred Foot of either Side of the Way. The *Woods.* Statute 13 E. 1. excepteth *Ashes* and *great Trees*; but by the Statute 5 El. 13. all *Trees* 13 E. 1. ff. 2. 5. and *Bushes* therein are to be cut down, &c. And this the Justices of Peace may do by 5 El. 13. Force of the Commission, the first *Assignavimus*, (*Lamb.* 190.) But how the Justice shall See postea *compel the same to be done*, I see not, otherwise than by Admonition; and if they be *Tit. Robbery.* not obeyed, then to present it, or cause it to be presented at the *Quarter-Sessions*, &c. *Vide Tit. Commission of the Peace.*

(a) Also by the Articles of Inquisition upon the Statute of *Winchester*, (made about 34 E. 1.) it is appointed, That if the *Highways be not enlarged* accordingly, Inquiry shall be made where the Ways be, who ought to enlarge them, and of such as do hinder such *enlargements*, as well in *Parks* as in other *Woods*. See *Poulton's Statutes at large, fol. 93.*

The Highway is not only the common Tract, where *Carts, Carriages* and *People* have gone; but if the Way be foundrous, that *People* cannot pass in the common Tract, and there be *Outlets* out of it into the Soil of another adjoining, the *People* may in such *Extremity* use those *Outlets* upon another's Soil, altho' it be sown with *Corn*, which in such Case is the *King's Highway* as well as the other; for the *King's Subjects* must have a convenient *Passage*, as was resolved in a *Trial at Bar* against *Sir Henry Duncumb*, *T. 10 Car. Roll's 1 Part of Abridgment, fol. 390.* Therefore where a Way goes thro' a *Man's Land*, and the *Owner* of the Land fences it on both Sides, he by so doing *Inclosure.* hath made himself liable to repair the Highway, and keep it passable; and it is not sufficient for him to keep it in as good Repair as it was at the Time of the *Inclosure*, for by so doing he hath straitned the Highway.

(d) Every Justice of Peace (upon his own Knowledge) may present in open *General* *Presentment.* *Sessions* any Highway not sufficiently repaired and amended within the County and *Li-* 5 Eliz. 13. *mits* of his Commission. P. Just. 69. *Cromp. 31.*

Every Justice of Peace (upon his own Knowledge) may present in open *General* *Ses-* sions, any other *Default* or *Offence* committed (within the County and Limits of his Commission) contrary to the Statutes of 2 & 3 P. & M. 8. and 5 *Eliz. cap. 13.* concern- 5 Eliz. 13. *ing* the Amendment of Highways; and every such *Presentment* shall be of the Force of *Cromp. 131.* a *Presentment* of twelve Men, (*scil.* shall be a good *Indictment* against the *Offenders*;) so that upon such *Presentment* the Justices at the said *Sessions* may assess the *Fine* upon *Fine.* such *Offenders*, and that in the *Absence* of the *Party*, and without calling them to it by any *Process*, saving to every *Offender* their lawful *Traverse*.

So that every Justice of Peace may present, as aforesaid, all and every these *Defaults* 2 & 3 Ph. & *following*, being all contrary to the said Statutes, &c. M. c. 8. 5 Eliz. 13. 29 Eliz. 5.

Surveyors.
P. 1.

1. If the Constables and Church-wardens of every Parish yearly, upon the *Tuesday* or *Wednesday* in *Easter Week*, do not call together the Parishioners, and do not then also chuse Surveyors, for the amending of Highways in their Parish leading to Market-Towns, according to the Statute 2 & 3 P. & M. 8.

Workers.

P. 2.
4 Rast. 199.
Lamb. 459.
2 P. & M.

2. If every Person having in his Occupation a *Plough-land* in *Tillage* or *Pasture* in the same Parish, or keeping there a *Plough*, or a *Draught*, do not send at every Day and Place appointed, &c. for every *Draught* or *Plough-land*, in *Tillage* or *Pasture*, one Cart furnished with necessary Tools, and two able Men with the same; and that they do such Works as they shall be appointed (by the Surveyors) by the Space of eight Hours, every of the said * six Days.

* *Indictment*
Setting forth,
that six Days
the particular

inter such a Time and such a Time were limited; and that the Defendant did not work on any of the Days, was held ill; for the particular Days ought to be set forth. 1 Salk. 357.

Chargeable in
the Parishes
where they
live.

But by the Statute 18 *Eliz.* 10. he that shall occupy a *Plough-land* in *Tillage* or *Pasture*, lying in several Parishes, shall be chargeable only in the Parish where he dwelleth; and he that occupieth several *Plough-lands* as aforesaid, in several Parishes, shall be charged in each Town or Parish where such Land lieth, *scil.* To find in each Town or Parish one Cart furnished as aforesaid.

(a) In Places where there is no Use of Carts and Teams, but the Usage is to carry Materials on Horses Backs, or by other Kind of Carriages, then the Inhabitants using such Kind of Horses or Carriages, shall send in the same with able Persons, to work under such Directions, Forfeitures and Penalties, as by former Statutes is appointed for Carts and Teams. 22 *Car.* 2. *sect.* 8.

P. 13, 14.
P. 3.

(d) 3. If any of the Carriages shall not be thought needful by the Surveyors upon any the said Days, if then every such Person shall not send two able Men for every Cart of theirs so spared. 2 & 3 P. & M.

P. 4.

4. If every other Housholder, Cottager, or Labourer, (able to labour, and being no hired Servant by the Year) do not by himself, or one sufficient Labourer, work every of the said six Days by the Space of eight Hours, as they shall be appointed by the Surveyors. 2 & 3 P. & M.

Cottage.

(a) A Cottage one describeth to be, *Casa rustica ex leviori materia excitata, arundine aut ulva palustri tecta.* Minsh.

And he is a Cottager that dwelleth in such Cottage or House without Land belonging to it. 4 *E.* 1. *Stat.* 1.

P. 12.

(d) 5. Note, That all Persons being chargeable but as Cottagers, yet if they be in the Subsidy five Pounds in Goods, or forty Shillings in Lands, or above, they shall find two able Men to work every of the six Days by the Stat. 18 *El.* cap. 10. But it seemeth the Justice cannot present such Default upon his own Knowledge.

18 *El.* 10.

Hedges and
Ditches.

P. 7.

6. If all Fences, Hedges and Ditches, next adjoining on the other Side any Highway, be not from Time to Time diked, scoured, repaired and kept low by the Owners of the Ground. 5 *El.* cap. 13. and 18 *El.* cap. 10.

7. If all Trees and Bushes growing in the Highways be not cut down by the Owners. 5 *El.* cap. 13. 18 *El.* cap. 10.

(a) And now it seemeth, that if (according to these last mentioned Statutes of 5 *El.* cap. 13. & 18 *El.* cap. 10.) all the Hedges and Fences be kept low, the Trees and Bushes cut down, and the Ditches scoured and repaired, it sufficeth though the Ways be not Two hundred Foot wide on each Side.

Whose the Soil
is.

Roll's 1 Pt. p.
392.

Note, That the King's Highway (or *Regia via*) leading either to the Market, or from Town to Town, the Freehold and Soil thereof, and the Interest of all the Trees, and other such Profits thereupon growing, do belong to the Lord of the Soil, or the Lord of the Manor. 17 *E.* 3. fol. 43. and 8 *E.* 4. fol. 9. *Br. Chemin* 10, 11. and 27 *H.* 6. fol. 9. *Br. Leet* 3. And therefore such Lords are chargeable to cut down the Trees and Bushes growing in such Highways; and yet by the Opinion of *Keble*, 8 *H.* 7. fol. 5. the Freehold of the Highway, and the Trees thereupon growing, are belonging to him (*scil.* to any Freeholder) that hath the Land next adjoining. *Br. Nufance* 28. But it seemeth this must be understood of common Field-ways, or other private Ways, and not of the King's Highway. See 2 *Ed.* 4. fol. 9. *Britton*, fol. 111.

2 *Leon.* 148.

Yet generally he that hath the Soil, or both Sides the Highway, shall have the Trees growing on the Highway; as was held 18 *El.* *B. R.* Cited P. 11 *Jac.* *Roll's* 1 Part 392. Yet the Lord of a Rape that hath several Hundreds in it, may prescribe to have the Trees growing in any Highway, within that Rape, for the Usage, to take the Trees as a Badge of Ownership; as was adjudged 11 *Jac.* *B. R.* in the Case of Sir *John Pelham*.

Note also, that he who hath Land adjoining next to the King's Highway, by the Common Law (before these Statutes) was and is chargeable, and bound of common Right, to cleanse and scour the Ditches adjoining to the said Way, *scil.* Between his Land and the Highway, *without any Prescription so to do; but if another's Land lie next the Highway, then he that lies not next is not bound, but by Prescription.*

S.H. 7. 5. Br. Nufance 28.

At Lent Assises at Cambridge, Anno 1622. Sir *Ja. Ley* delivered it in his Charge, that if any Person hath made, or shall make any Inclosure next the King's Highway, that such Person shall be charged to amend the Highway adjoining to his said Inclosure; especially where he hath inclosed on both Sides, he shall be charged with mending the whole Way between his Inclosures. And if one Man hath inclosed on the one Side or Part, and another Man on the other Side, they shall both be charged to amend the same Way; and the Parish is to be discharged.

Inclosure. Style, p. 364. per Roll.

1 Roll's Abr. 390.

Otherwise Highways must be sufficiently amended at the Charge of the whole Town; and it is not enough for the Inhabitants to do their full *six Days Work yearly*, except their Ways be all well and sufficiently repaired: For if all their said Ways be not sufficiently amended, the whole Town may be indicted therefore.

Where a Highway lies out of a Parish or Hundred in a County, the County ought of Right to repair it; and Process shall go against the whole County.

Because every Town regularly is to maintain and amend the Highways within their own Parish, except it can be proved to have been usually amended by any other Person or Town, or by the Hundred, or County, &c. Therefore if six Days Work in the Year will not serve to amend them, the Surveyors may, yea must, appoint more Days, &c.

And in the Case of *Mile-end Green*, it was resolved M. 1649. that a *Hamlet* is not bound of common Right to repair the Highways, unless it be by special Custom; but a Village or Town is, as I have it in a *MS.* and you may see to the same Purpose, *Style Rep. p. 163.*

Also concerning the *Causey* (near Cambridge) called Doctor *Harvey's Causey*, towards the Repair whereof Doctor *Harvey* hath given eight Pounds *per Annum*, (payable by the Master and Fellows of *Trinity-Hall* in Cambridge.) Sir *James Ley* said, That if this eight Pounds *per Annum* were not sufficient to repair the said *Causey*, that then the Towns adjoining, within which that *Causey* or Way doth lie, ought to help to repair the same.

Causey.

It is called the *King's Highway*, for that the King at all Times hath therein Passage for himself and his People, and may punish all *Nuifances* therein; though otherwise the Interest thereof be in the Lord, to take all the *Trees*, and such other Profits there growing, and to bring his Action for digging therein, or for any other like *Trespafs* there done.

Highway. 12 E. 4. 9. 9 E. 4. 9. 2 E. 4. 9. 8 E. 4. 9. F.N.B. 113. a.

And the King (by the Common Law) may award his *Commission* for the amending the Highways and Bridges throughout his Realm, so as his People may have safe Passage thereby.

P. 1.

(d) 8. If any chosen to be Surveyor shall * refuse the Office, or will not take upon him the Execution thereof, 2 & 3 P. & M. every Justice of Peace may present this, as aforesaid.

* By Stat. 3 & 4 W. 3. he forfeits 5 l. to be levied by Warrant and Distress, &c. P. 8.

9. So if the Surveyors shall not within one Month after any of the former Offences committed, present every such Offence to the next Justice of Peace. 5 *Eliz.*

10. Also if the Bailiff or High Constable (who hath received an *Estreat* for the levying of any Forfeiture upon these Statutes) shall not levy the same, or shall not (between the first Day of *March* and the last of *April* yearly) make a true Account and Payment of all Sums as he hath levied to the Constables and Church-wardens of every Parish, wherein the Offence was committed; or if the Constables and Church-wardens have not employed the same upon their Highways; it seemeth every Justice of Peace may (upon their own Knowledge) present every of these Defaults, as aforesaid.

Estreats and Levies. P. 10. Raft. 199. c. 2. P. & M.

And if the Surveyors shall present any of the former Offences (by them to be presented) to the next Justice of Peace, within one Month next after the Offence committed; the same Justice ought to certify such Presentment at the next General Sessions, *sub pœna* 5 l. But if the Surveyors do not make their Presentment to the Justice till after the Month, and the Justice certifieth it, this seemeth not good against the Offenders.

P. 3.

(a) Every such Surveyor (for the better Amendment of the Ways within the Parish) may by their Discretion take and carry away the *Rubbish* or *smallest Stones* of any *Quarry* within their Parish, *scil.* such *Rubbish* as they shall find there ready digged by the Owners of the said *Quarry*, or otherwise by their License.

The Surveyors Authority. 5 Eliz. 13. P. 3.

Materials.
Ibid.

Every such Surveyor may also (for the Use aforesaid, dig for and take) or cause to be digged for and taken (in the several Grounds of any Person within the Parish, near adjoining to the Way to be amended) any *Gravel or Sand*; so as they dig in no Man's Garden, Orchard, or Meadow, and but one only Pit, and not above ten Yards over at the most, and the same within one Month to be filled up again with Earth at the Charge of the Parish.

Ibid.

Every such Surveyor may likewise cause Stones to be gathered upon any Man's Ground within the Parish, and the same to carry away for the Use aforesaid.

Ib. §. 6.

Every such Surveyor may cause any Water-course or Spring of Water (being in the Highway within their Parish) to be turned into another Man's several Ditch (or Ground) next adjoining to the said Way, in such Manner as by the Discretion of the said Surveyors shall be thought meet.

Two Justices,
Accounts.
2 P. & M. c. 8.
§. 4, 5.

(d) Also any two Justices of Peace, (the one being of the *Quorum*) upon Complaint to them made by the Church-wardens of any Parish, may convene before them the Bailiff and High Constables, (to whom the Clerk of the Peace or Steward of any Leet hath delivered any Estreats for the collecting of the Fines, Forfeitures, or Amercements for the Defaults aforesaid) and may take their Accounts; and may compel them to pay all such Arrearages; as they shall adjudge, to the Constables and Church-wardens of the Parish where the Offence was committed; or may imprison them until they have paid such Arrearages.

(a) Every Bailiff and High Constable upon their said Accounts shall have allowed for every Pound he shall collect and pay 8 *d.* for his own Pains, and 12 *d.* for the Fee for the Estreat delivered him.

Also it seemeth any two such Justices of Peace, upon Complaint to them made by the succeeding Church-wardens or Constables, may convene before them the precedent Constables and Church-wardens, and may take their Accounts, and may compel them (as aforesaid) to pay all Arrearages in their Hands 2 *£* 3 *P.* & *M.* 8.

(d) Note, That all such Fines or Forfeitures arising in the Sessions, shall be levied by Estreats indented, made by the Clerk of the Peace, who shall Seal and Sign such Estreats, and shall deliver the one Part thereof so sealed and signed to the Bailiff or High Constable of the same Hundred, and the other Part thereof to the Constables or Church-wardens of the Parish where such Default was made; and to be delivered by the Clerk of the Peace within six Weeks after *Michaelmas* yearly; the which Estreats shall be a sufficient Warrant to the said Bailiff or High Constable, to levy such Fines and Forfeitures by Distress: And all such Fines and Forfeitures shall be bestowed by the Church-wardens on the Highways in the same Parish.

18 Eliz. 10.

Also two Justices of Peace (by the Statute 18 *El.* 10.) may take the Account of the Surveyors of the Ways, and of the Petty Constables and Churchwardens, for all such Forfeitures (within the Statute) as they have levied. 18 *El.* cap. 10.

Here I thought good to move some Doubts, and desire that some Resolution may hereafter be given, for better Satisfaction, for that they be so ordinarily questioned.

Queries.

Co. 9. 124.
Co. L. 69.

What, and how much a Plough-land is, Sir *Ed. Coke* in his Ninth Part, in *Low's Case*, and upon *Littleton*, telleth us, and saith, That a *Carue or Hide of Land, or a Plough-land*, which is all one, is not of any certain Content, but so much as one Plough may plough in one Year; and so in some Countries it is more, and in some other it is less, according to the Heaviness of their Soil: And herewith agreeth Mr. *Lambard*, verbo *Hide*.

35 H. 6. 9.

And of the same Opinion was Judge *Priest*, 35 *H.* 6. 29. where he saith, That a *Carue of Land* is greater in one Country than in another, for that a Plough may plough more Land in the Year in one Country than in another.

(a) And yet some others do make a Difference between an *Hide of Land*, and a *Carue or Plough-land*: For they say that an *Hide of Land* doth contain four Plough-lands, sc. 480 Acres; whereas a *Carue or Plough-land* containeth but sixty Acres; and every Plough-land or Carue is four Yard-lands, (in *Latin* called *Quatrina terræ*) every Yard-land containeth thirty Acres). But a Plough-land or Carue of Land, is called in *Latin* *Carucata terræ*, that is *quantum aratrum arare potest in æstivo tempore*: For which see *M. Skene*, *Minsb.* and the *Surveyors Dialogue* made by *John Norden*, p. 59. And yet this Definition or Description of *Carucata terræ* sheweth, that it is not of any certain Content.

Co. 4. 37. b.
& 9. 124.

A Plough-land
is 50 l. per
Annum. post.
7 & 8 W.

(d) Also a Carue of Land (or a Plough-land) may contain House, Meadow, Pasture and Wood.

1. Now a Man with one Plough and five or six Horses will plough and dress seven or eightscore Acres of Land yearly, (as many do with us in the East Parts of *Cambridgeshire*) and

and will in Summer go usually with two Draughts or Carts; yet such Person is usually charged to the amending of the Highways but with one Cart furnished. And another Man dwelling in the same Town, occupieth but 40 or 50 Acres, or not so much, and keepeth but three Horses, and one Draught or Cart, and he likewise is usually charged as the former, with one Cart furnished. Whether should their two Charges for Carriages for the Highways be alike? For mine own Opinion, I think it both reasonable and warranted by the Words of the Statute, that he that for his own private Business shall set up two Draughts or Carts, shall also for the King and Country's Services be chargeable with two Draught, or Carts, though he occupy all his Land but with one Plough.

(a) This Matter came in Debate in *B. R. M. 27 Ca. 2.* upon Order made by the Justices of Peace in *Middlesex*, for charging several Brewers and Brickmakers living there, and using several Draughts or Carts, to send so many as they kept for the repairing of the Highways, and the Order being removed in *B. R.* a *Procedendo* was awarded by *Hale* Justice, and the whole Court, who were strongly of Opinion, that so many Draughts as they kept, so many they ought to send, for so the Service they do will answer the Wrong and Damage by them occasioned.

(d) 2. Again, what a Draught for Carriage shall be, *sc.* with how many Horses; and whether he that keepeth but two Horses and a Cart (as many with us do) be chargeable or no: I find that a Draught for the King's Carriages heretofore hath been sometimes with two Horses, as by the Statute of *Magna Charta, cap. 21.* (the Words of the Statute are, *No Sheriff, &c.* shall take the Horses or Carts of any Person for Carriage, except he pay for one Cart with two Horses 10 *d.* by the Day, and for a Cart with three Horses 14 *d.* by the Day: And therefore I should think him who usually goeth to Cart (for his own Business) with two Horses, to be chargeable to find a Cart and two Horses for the amending of the Highways, and to carry such Loads as his two Horses are well able to draw.

3. Again, if one occupieth a Plough-Land in Pasture, *viz.* six or eightscore Acres or more of Pasture for feeding of Cattle, but keepeth neither Cart nor Plough, how shall he be charged to find a Cart or Draught that keepeth none? and yet the Words of the Statute seem to charge him. *Rastal 199. (a)*

4. Again, he that shall keep a Draught for Carriage, or a Plough, though he occupy little or no Land or Pasture in his own Hands, but only carteth or plougheth for other Men, whether he is not chargeable to find a Cart for the amending the Highways. It seemeth he is: But *quære* whether he be chargeable to find two able Men with his Cart, except he hath in his Occupation a Plough-land: Perhaps also he keepeth no Man.

(a) Any Constable or Surveyor not putting the Acts, touching the Repair of Highways, in Execution, or suffering Carts to pass through their Limits, otherwise than as aforesaid, shall upon Complaint to any Justice of Peace of that Place, or Division, and Proof of such Neglect, by Oath of one credible Witness, or upon View of such Justice, incur such Fine as such Justice shall impose, not exceeding 40 *s.* to be levied by Distress, &c.

If any Person shall resist or oppose any Person employed in the due Execution of the Acts, touching Highways, or make Rescue of any Goods distrained, being convicted in Form aforesaid, shall forfeit forty Shillings, which if he pay not within seven Days after Notice of such Conviction, any Justice of Peace residing near the Place of such Rescue or Opposition, may commit him to Gaol till he pay the Forfeiture to the Surveyor.

Where Lands are given for Maintenance of Causeways, Pavements, Highways or Bridges; the Feoffees and Trustees shall let them to Farm at the best improved Value without Fine: And the Justices of Peace in their Quarter-Sessions may inquire into the Value thereof, and if they find a Neglect or Fault in the Trustees, may order the Improvement and Employment thereof (except where there be proper Visitors.)

Where the Highways cannot be repaired before *Midsummer-day*, the same may be repaired before *St. Luke's Days* yearly, without incurring any Penalty.

All Defects of Repairs of Highways, Causeways, Pavements or Bridges, shall be presented only in the County where they lie, and not elsewhere; and that no such Presentment or Indictment shall be removed by *Certiorari*, or otherwise out of the said County, till Traverse and Judgment given.

A Bridge lying between two Counties, and not known in which of these two Counties Part lies, nor who ought to repair the same, an Indictment for the same seems to be removeable by *Certiorari*, notwithstanding this Statute: So likewise if a Person in Respect of Lands in one County, ought to repair a Bridge or Highway in another County; *ne deficeret justitia.*

The Justices of Peace have also Power in their Sessions by Indictment, to punish by Fine all Nufances, Encroachments and Purprestures in the Highways, as namely,

1. The building and erecting of Gates on the Highways, where none have ancient'y been, and these as every private Person may pull down and break, in Order thereto, if it cannot be done otherwise, as was resolved in the Case of *Jones and Harward, P. 6. Ca. B. R. Jones Rep. p. 221. & Cro. 1 Part, p. 133.* So the Persons so doing may by Indictment being found guilty be fined therefore, and enjoined to remove the same.

12 E. 4. 9.
8 E. 4. 9.

2. The Encroaching on any Part of the Highway by Building, or other Inclosure, the King shall have the Punishment of it, although the Soil be another's.

3. Another's annoying thereof, by laying Carrion on the same.

4. The Overflowing the same with Water stopp'd in those Ways, or in any Man's private Grounds; whereby the publick Ways are overflowed.

5. Digging Pits in the Ways, or near them, by which Passage becomes dangerous.

27 H. 8. 26.

6. The Laying Loggs, or any Things obstructive of their Use, for which although none can have an Action but he that hath particular and special Damage, yet any one may indict, and so procure to be reformed.

3 & 4 W. &
M. c. 12. §. 3.

Constables, Headboroughs, &c. and other the Inhabitants of every Parish, shall on the 26th Day of *December* yearly, make a List of the Names of the most substantial Inhabitants, and such as are legally qualified, and return it to two or more Justices of the Peace, at a special Sessions to be held for that Purpose on the 3d of *January* next following, or within 15 Days after: Out of which said Lists the Justices are, by Warrant under their Hands and Seals, to nominate one, two or more to be Surveyors of the Highways for the Year ensuing. Which Nomination shall be notified by the Constables, &c. to the Persons nominated within six Days: And if Persons so nominated shall refuse, &c. they shall forfeit 5*l.* to be levied by Distress on their Goods, and Sale thereof by Warrant of two Justices of the Peace, which Warrant the Justices are to make upon Information of one credible Witness upon Oath; one Moiety of such Forfeiture to the Informer, and the other to the Repair of the Highways: And in such Case the Justices shall nominate some other fit Person to execute the Office, who shall upon like Notice take upon him the Office, under the same Penalty. And Constables, &c. neglecting to return such List of Names shall forfeit each 20*s.* to be levied and employed as aforesaid.

Surveyors nominated, and by whom. Penalty on Refusal.

Obstructions to be removed.

3 & 4 W. & M.
c. 12. §. 4. 5.

No Person shall lay in any Highway not 20 Foot broad, any Matter whereby the same may be obstructed, on Pain to forfeit 5*s.* to be levied and disposed as aforesaid. And shall clear the Highways and cleanse their Ditches within ten Days after Notice given by any of the Surveyors, on Pain of forfeiting 5*s.* to be disposed as before.

Roads to be viewed.

Ib. §. 8.

Surveyors shall view the Roads, &c. and within every four Months present upon Oath to some Justice of Peace, in what Condition they find them, or incur the Penalty as in Case of refusing to execute their Office, except they have some reasonable Excuse allowed by two Justices of Peace. If any Offender, after 30 Days Notice given by the Surveyors, neglect to amend the same, the Surveyors amending the same shall be allowed such Charges by the Defaulter as the Justice shall think fit, to be levied as aforesaid.

Presentment.

Ib. §. 9.

Justices of Peace shall once in four Months hold a Special Sessions, and summon all the Surveyors of Highways, and declare to them what they are to do by Virtue of this or any other former Act. And the Surveyors shall upon Oath make Presentment of what Offences any are guilty. And before any Surveyor shall be discharged of his Office, he shall at some Special Sessions give an Account upon Oath of all Monies come to his Hands concerning the Highways, and how disposed; and if any be remaining in his Hands, he shall deliver it to the next Surveyors, and upon Failure shall forfeit double the Value, to be levied and disposed as aforesaid. Surveyors neglecting their Duty, shall forfeit 40*s.*

Ib. §. 10.

Justices neglecting.

Ib. §. 11.

Justice of Peace neglecting or refusing his Duty, shall forfeit five Pounds, one Moiety to the Prosecutor, the other towards amending the Highways, to be recovered in any of his Majesty's Courts of Record, by Action of Debt, &c.

Surveyors to be reimbursed.

Ib. §. 13.

The Surveyors giving Notice to the Justices at their Special Sessions upon Oath, of what Sums they have expended in repairing the Highways, the Justices (or any two of them) may by Warrant cause an equal Rate to be made to reimburse them, according to an Act of 43 *Eliz. cap. 2. for Relief of the Poor*; and if any refuse, the same to be levied by Distress, &c.

Fines levied into the Hands of Surveyors.

Ib. §. 14.

No Fine, Forfeiture, &c. for not repairing the Highways shall be returned into the Exchequer, or other Court; but levied into the Hands of the Surveyors, to be employed for the Amendment of such Highways: And if any Fine, &c. be levied, on one or more particu-

particular Inhabitants, upon Complaint to the Justices at their Special Sessions, or any two of them by their Warrant, may cause a Rate to be made for their Reimbursement.

If Justices at their Quarter-Sessions shall be satisfied, that the Highways, &c. cannot be sufficiently amended without the Help of this Act, Assessments upon Persons usually ratable to the Poor, shall be made and levied by such Persons, and in such Manner as the Justices at such Sessions shall appoint; the Money so raised to be employed according to their Orders, for repairing the Highways, &c. The said Assessments, if not paid within ten Days after Demand, to be levied by Distress, rendering the Overplus, Charges deducted.

Assessments.
3 & 4 W. & M. c. 12. §. 17.

No such Assessments in one Year shall exceed 6 *d.* in the Pound of Lands, nor 6 *d.* for 20 *l.* personal Estate.

Ib. §. 18.

If any Persons shall find themselves agrieved by such Assessments, or by any Act of the Justices of Peace, the Justices of Peace at their General Quarter-Sessions shall take Order therein, which shall conclude all Parties.

Appeal.
Ib. §. 19.

All Prosecutions for Offences against this Act shall be within six Months; nor shall any be punished by this Act, being punished for the same Offence by any former Law.

Six Months.
Ib. §. 20.

Justices at their Quarter-Sessions shall assess the Prices of all Land-carriage of Goods. See Tit. Carriages, Chap. 21.

Rates for Carriage.
Ib. §. 24.

Where any Liberty, Precinct, or Village, have used to repair their own Highways, and have levied 6 *d.* in the Pound towards the Repairs, &c. and yet they are not well repaired, the Justices in their special Sessions, for Consideration of the Highways, may order the *whole Parish* to contribute to the Repairing.

7 W. 3. c. 29. §. 4.

He who hath in his Occupation *Woodland*, or other Land to the Value of 50 *l.* *per Annum*, shall be accounted to have a Plough-Land within the several Statutes for Repairing Highways.

Plough-Land what.
Ib. §. 5.

He who pulls up, cuts down, or removes any Post, Block or Stone, Bank of Earth, or other Security, set up for securing Horse and Foot Causesways from Carts, shall forfeit for every Offence 20 *s.* to the Surveyors; one Moiety for the Use, and to repair the Highways, the other Moiety to the Informer; the Conviction is to be by one Witness, before one Justice of the Peace or Division, &c. or upon his View, the Forfeiture is to be levied by Distress and Sale.

Removing Posts, &c. for securing Ways.
Ib. §. 6.

The Justices at their Quarter-Sessions, or the major Part of them, being at least five, shall have Power to enlarge or widen any Highways in their respective Limits, so that the Ground to be taken in do not exceed eight Yards in Breadth; and that they do not pull down any House, or take away the Ground of any Garden, Orchard, Court or Yard.

Sessions may enlarge Highways.
8 & 9 W. c. 16. §. 1.

The Sessions may impanel a Jury on Oath to assess Damages to the Owner of the Ground taken in, not exceeding twenty-five Years Purchase, and for making Satisfaction for any new Ditch or Fence, and to any Person that may be injured by enlarging the Highways.

And impanel a Jury to give Damages to the Owner of any Ground taken in. *Ibid.*

Upon Payment of the Money to the Owner of the Land, or leaving it with the Clerk of the Peace for his Use, he shall for ever be devested of the Land, and it shall be then taken to be a publick Highway.

Which shall afterwards be a Highway.
8 W. 3. c. 16. §. 1.

The Money to be paid for the Land, shall be raised by an Assessment on the Parishioners, who ought to repair the Highways by the Order of the Justices, and by the Overseers, &c. by Distress and Sale, &c. if not paid within ten Days after Demand. Such Assessment shall not exceed 6 *d.* *per* Pound in one Year.

The Purchase Money to be raised by an Assessment.
Ib. §. 2.

The Justices, at the Request of any Person for putting the Powers of this Act in Execution, may issue out their Precepts to the Owners of such Ground, or to others intrusted in the same, to appear at the next Quarter-Sessions, and shew Cause why the Highway should not be enlarged.

The Owners upon a Precept directed to them may appear at the next Sessions.
Ib. §. 3.

The Owner shall have Liberty within eight Months after the Ground is taken, to cut down the Wood or Timber growing thereon; and for Neglect thereof it shall be sold by the Justices, the Money to be paid to the Owner.

And may cut down any Wood or Timber.
Ib. §. 4.

There lies an Appeal to the Judges at the next Assises, who may affirm or reverse the Session's Order; and if affirmed, may award Costs against the Appellant for Vexation and Delay, to be levied by Distress and Sale, &c.

An Appeal lies to the Judges at the next Assises.

Where *Ib.* §. 5;

An Appeal from an Inclusion by Writ Ad quod damnum, lies to the next Sessions.

Ib. §. 6.

Surveyors may set up a Stone where two Cross-ways meet.

Ib. §. 7.

Neglecting to set up a Stone, &c. forfeits 10 s.

Ibid.

Surveyors to view the Roads.

1 Geo. 1. c. 52.

§. 1.

Ib. §. 2.

And give to the Justices an Account in Writing and on Oath of the Condition thereof, and of the Defect of Labourers and Teams.

The Special Sessions may order the Highways to be repaired. 1 Geo. 1. cap. 22. §. 3.

Surveyors must see the Ways repaired before Harvest.

Ib. §. 4.

Misapplying Fines or any Forfeitures, the Penalty is 5 l.

Ib. §. 5.

Quarter-Sessions may assess 6d. per Pound, tho' the six Days Work hath not been done.

Justices in Towns Corporate and Boroughs.

Ib. §. 7.

Neglecting to scour Ditches after 30 Days' Notice, forfeits for every Yard 2 s. 6 d.

Ib. §. 8.

Justices in Cities, &c. may appoint Scavengers.

Ib. §. 9.

Where a Highway shall be inclosed after a Writ *Ad quod damnum* issued, and Inquisition thereon taken, any Person agrieved may appeal to the next Quarter-Sessions after such Inquisition taken, whose Determination shall be final; and if no Appeal be made, then the Inquisition and Return, entered and recorded by the Clerk of the Peace at the Quarter-Sessions; shall be for ever binding.

Justices in their Special Sessions held every four Months, by Virtue of 3 & 4 W. & M. cap. 12. may direct their Precepts to Surveyors in any Parish, where two or more Cross-ways meet, requiring them to fix a Stone or Post where such Ways join, with an Inscription in large Letters of the next Market-Town to which each of the Ways lead, they to be reimbursed as by the Statute 3 & 4 Will. is directed.

Surveyor neglecting to erect such Post or Stone three Months after a Precept directed and delivered to him, forfeits 10 s. to be levied by Distress and Sale, by a Warrant of one Justice, which Sum shall be employed in erecting the same; and if there be any Overplus, then in mending the Cross-ways.

All Laws and Statutes concerning Highways, not hereby altered or repealed, shall be put in Execution.

Surveyors appointed according to the Statute 3 & 4 Will. shall, within fourteen Days after the Acceptance of their Office, view the Roads every four Months, or oftner, if required, by the Warrant of two Justices, together with all Nufances and Encroachments thereon in their respective Parishes, and give an Account in Writing on Oath of the State and Condition of the Highways, and the Neglect of Labourers or Teams, &c. to the Justices, at their next *Special Sessions* to be holden for the Amendment of the Highways, and for neglecting to give such Account shall forfeit 5 l. to be levied by Distress and Sale, &c. by Warrant of two Justices, which they are to grant on the Oath of one Witness; one Moiety to the Informer, the other to Repair the Highways.

Justices in their Special Sessions may, by Writing under their Hands and Seals, order the Reparation of such Roads as in their Division most want to be amended, and at what Time, and in what Manner it shall be done.

Surveyors must take the first and most convenient Time of the Year for Repairing, &c. and, if possible, perfect it before Harvest; and summon the Teams and Labourers to come in upon such early and seasonable Days as the Year shall afford to Repair, &c. as the Justices in their Special Sessions shall direct; and if they make no Direction or Order, then to repair such Highways as need it most.

Fines or Forfeitures laid upon any Surveyor, or other Person, for not doing his Duty, and being misapplied, upon Oath thereof made before the Justices at their Special Sessions, the Person misapplying them shall forfeit 5 l. to the Informer, to be levied by Distress and Sale; and Justices may examine upon Oath all Persons who can give an Account of any Money which ought to be applied to amend the Highways, and levy the Penalties and Forfeitures, and employ them as aforesaid.

The Quarter-Sessions may cause Assessments to be made, and Money raised, not exceeding 6 d. per Pound for one Year, for Repairing Highways, tho' the six Days Work hath not been performed.

Ibid. §. 6.

Justices in Cities, Corporations and Boroughs, are impowered to put this Act in Execution, and all former Acts relating to Highways within their respective Jurisdictions.

He who ought to scour Ditches and Water-courses near Highways, and neglecting to do it after thirty Days Notice given him by the Surveyors, or leaving the Earth of the Ditches scoured in the Highway for eight Days, and Oath being made thereof by the Surveyors at the Special Sessions for the Hundred, or Division, &c. shall forfeit for every eight Yards of Ditch not scoured 2 s. 6 d. and for each other Offence not exceeding 5 l. nor under 20 s. to be levied by Distress and Sale, and applied by the Surveyors to mend the Highways.

Justices in Cities and Market-Towns, may at their Quarter-Sessions appoint Scavengers for Cleansing the Streets, and Repairing them, &c. and order Assessments not exceeding

6 *d.* per Pound to defray the Charge, to be levied on the * Occupiers and Owners of Houses, Lands, &c. in such Cities, &c. and the Money thereby raised, shall be employed and accounted for according to the Order and Directions of the Justices; and the Assessments being allowed by them, may be levied by Warrant, &c. by Distress and Sale, if not paid within eight Days after Demand.

* *The Statute mentions Owners or Occupiers, yet if he will not use the Lands himself, nor let them, it shall*

be charged on them; for the Publick ought not to suffer for his Negligence. Palm 389. 2 Rol. Rep. 412. N. Abr. V. 3. p. 59.

Surveyor neglecting his Duty is to forfeit 40 *s.* to be levied and disposed as aforesaid. Surveyor neglecting, &c. Ib. §. 10.

Clerk or Servant of a Justice shall not take any Thing of a Surveyor for the Oath, or Accounts given in at such Special Sessions, on Pain of 10 *l.* to be recovered in any Court of Record. Justice's Clerk must take nothing of a Surveyor for his

Oath. 1 Geo. 1. cap. 52. §. 11.

He who is agrieved by any Thing done in Execution of this Act may apply to the Sessions, whose Order shall be final, except it be for a Neglect in Scouring Ditches, and carrying away the Earth, or for not carrying away Stone, Timber, Straw, or Dung left in the Highway, or for not removing Annoyances by Water-courses. Appeal to the Sessions. Ib. §. 12.

He who is sued for any Thing done in Pursuance of this Law, may plead the General Issue, and give the Act and the special Matter in Evidence; and if the Plaintiff is cast, the Defendant shall have double Costs. General Issue. Ib. §. 13.

Offenders must be presented within six Months, &c. and Persons punished by this Act shall not be punished by any former Law. Prosecution must be within six Months. Ib. §. 14.

Lord Mayor and Justices in London, may execute their Authority in paving and cleaning the Streets as before. Lord Mayor, &c. Ib. §. 15.

Note, That by 9 Geo. 2. cap. 18. sect. 3. the Clause in 1 Geo. 1. cap. 52. sect. 9. empowering Justices of Peace to make Assessments in Cities and Market-Towns, is extended to Towns Corporate. 9 G. 2. c. 18. §. 1.

By Statute of 7 Geo. 2. cap. 9. If the Surveyors of the Highways shall find any Highway deep and foundrous, and the Hedges adjoining to be so high, as to prevent the Benefit of the Sun and Winds; such Surveyors may make Presentment of such Hedges to the Justices of Peace, who live in or near the Division where the Highway is, at their Special Sessions; which Justices, or two of them, are empowered to summon the Occupiers of the Lands, whose Hedges are presented, to appear at the next Publick Meeting of the Justices, to shew Cause why such Hedges should not be new made or cut low; and if it appear that the Way is damaged by the Height of such Hedges, the Justices, or any two of them, are required to issue out a Precept to the Surveyors, to leave Notice in Writing at the Place of Abode of such Persons, that they are required to new make, or cut low the said Hedges, within thirty Days of such Notice (provided the Notice be given between the last of September and first of February) and in Case of their Neglect to do the same, the Surveyors are required to cause the Hedges to be new made, or cut low, so as such Hedges be left three Feet high above the Bank. And the Persons so neglecting shall repay the Surveyors their reasonable Expences, which if neglected for fourteen Days after the same shall have been demanded, the Justices, at their monthly Meeting, may issue a Precept to the Constable, to levy such Sums of Money for Repayment of the Surveyors, as their said Expences shall amount to, upon the Goods of the Persons who have neglected to pay the same. 7 Geo. 2. c. 9. §. 1. Ib. §. 2.

But nothing in this Act shall alter the Law in relation to Timber Trees in Hedges adjoining to Highways. Ib. §. 3.

See the Statutes 6 Ann. cap. 29. 9 Ann. cap. 18. 1 Geo. 1. cap. 11. sect. 2. 5 Geo. 1. cap. 12. 6 Geo. 1. cap. 6. about Waggons, &c. travelling for Hire, in Tit. Carriages, Chap. 21.

By the Statute of 14 Geo. 2. cap. 42. For the Preservation of the Publick Roads of England, It is enacted, That the Trustees appointed by the several Acts of Parliament for Repairing Highways, may cause Cranes, or weighing Engines to be erected at any Turnpike, and cause all Carriages passing the Turnpike to be weighed, and take over and above the Toll, 20 *s.* for every Hundred Weight, such Carriage with the Loading shall weigh 14 Geo. 2. c. 42.

weigh above 6000 Pounds weight; and the Money so raised shall go towards Mending the Highways.

Farmers or others may carry Goods in Wheel-Carriages, bound with Streaks or Tire of any Breadth.

The Collectors may levy the additional Duty by Distress and Sale of the Person's Goods refusing to pay the same.

And if any Person attempt to hinder the Weighing, or the Seizing or Carrying away any Distress, as aforesaid, or use any Violence to the Persons concerned, on Oath made thereof by one Witness before the next Justice, the Offender shall suffer three Months Imprisonment, and forfeit 10 *l.* to be levied by Distress of his Goods after three Days.

Carriages employed only about Husbandry, &c. (as in 5 *Geo.* 1. *cap.* 12. *supra* Tit. Carriages) shall not be weighed, and the Act of 5 *Geo.* 1. *cap.* 12. shall extend to all Waggon, &c. whether travelling for Hire or not; and all Offenders against these two Acts shall be liable for every Offence (being convicted on Oath, within three Days, before a Justice of the County, &c. where the Offence shall be committed, or the Offender shall be) to the respective Forfeitures and Seizures of 5 *Geo.* 1. for the Space of three Days after the Offence, as they would have been had they been seized in the Fact.

N. Abr. Vol. 3. P. 57. And as to Nuisances on the Highways, or any other Injuries, by digging Ditches, making Cross-hedges, laying Logs of Timber, or any other Thing, which in some Measure may obstruct the Passengers; any Person may remove them at Common Law, but cannot convert the Materials to his own Use: * But in such Cases no one Person can have an Action for obstructing the Highway, but the Remedy is by Presentment at the Leet, or by Indictment, unless any Man hath a particular Damage for them, he may have an Action on the Case, &c. 1 *Inst.* 56.

* But it is no Nuisance for an Inhabitant of a Town to unload Billets, &c. in the Street before his House, by Reason of the Necessity of the Case, unless he suffer them to continue an unreasonable Time. 2 *Roll. Abr.* 137.

Indictment. Now all *Indictments* relating to this Matter ought to be *certain*, both as to the Place from which the Way doth lead, and to the Place where it doth lead; but there is not any Necessity to shew that it leads to a Market-Town, because every Highway leads from one Market-Town to another.

Nuisance. But 'tis necessary to shew in what Place the Nuisance was done, and to what Parts of the Highway it did extend, shewing how many Foot in Length and Breadth it contained; because without such Certainty the Defendant cannot make a Defence, nor the Court judge of the Greatness of the Offence, that they may the better set a Fine; therefore an Indictment for stopping a great Part of the Highway at *C.* is not good, because 'tis uncertain, for the Place is not sufficiently set forth.

Common Highway. 'Tis likewise necessary to set forth, that the Way wherein the Nuisance was done, is a common Highway, or that it is a Footway to a Church; but then it must not set forth that 'tis a Footway for all the Parishioners of *H.* but a Foot-way generally leading to the Church of *H.*

Repairing. As to Repairing, &c. where one is indicted for not repairing a Highway, which he ought to do by Reason of his *Tenure*; 'tis not sufficient to set forth that he is to repair, &c. *ratione tenuræ terræ* generally, but the Word *suæ* must be added.

N. Abr. V. 3. P. 58. 1 *Mod.* 112. If a Parish is indicted for not repairing, upon Not guilty pleaded, this shall be intended that the Way is in Repair, but does not go to the Right of Reparation. And if a private Person be bound to repair, the Parish must plead it specially, and cannot take Advantage of it on the General Issue.

If a particular Person is indicted, he may give in Evidence that another is to repair, &c. *Quere.*

Presentment. A Presentment, that an Highway in such a Place is in Decay thro' the Default of the Parishioners of *H.* is good, tho' no particular Person is named; but in an Indictment all of them must be charged, and not *eorum uterque*.

Indictment quasi ed. An Indictment against the Inhabitants of *Mile-end* in the Parish of *S.* was quashed, because *Mile-end* is not a Parish, but an *Hamlet*; and of common Right, every * Parish where the Way lies unrepaired, is bound to repair, unless any particular Person is to do it, by Reason of *Tenure*, Enclosure or otherwise.

Indictment against several Defendants for not repairing a common Footway, they all confessed the Indictment, and submitted to a Fine: But that did not end here, for a *Distringas* shall issue against them, and so *in infinitum*, 'till 'tis certified that the Way is repaired as formerly it had been when at the best. 1 *Salk.* 358.

The Defendant was presented at the Sessions by a Justice of Peace, *upon his View*; for not repairing a Highway which he ought; for that he held some Lands inclosed which were Parcel of that Way, on which he had *incroached*, to judge that he ought not to be charged for both, *viz.* for holding Lands inclosed, and for *incroaching* but singly for each; because he is to be charged for incroaching, so long as the Incroachment continues, and no longer; for if he lays it open, he is no longer liable to repair; but where he is charged *ratione tenuræ*, *viz.* in Respect of his holding the Lands there, tho' he lay them open, the Charge still continues.

Presentment on a Justice on his View.
Encroachment.
2 Saund. 260.
Sid. 464.

The Parson is liable to the Charge of repairing the Highways, in Respect of the Lands and Tenements which he holds of the Church, as resolved by all the Judges; for he is liable to all publick Charges imposed by Statutes, unless particularly excepted.

Clergyman liable.
1 Lev. 159.

Justices ordering a Man to work towards Repairing the Highways, must not appoint the Time generally, as six Days between such a Time and such a Time, but must set forth the Days particularly. An Indictment for not working, &c. in such a Case, was held naught.

Salk. 357.

An Indictment for suffering a House on the Highway to be ruinous, and likely to fall down, will lie against a Tenant at Will, and the Words *ratione tenuræ* are Surplus. See also on this Subject of Highways, 1 *Hawk. P. C. chap. 76. p. 200. of Nuisances relating to Highways.*

Salk. ib.

Any Person who shall break down or destroy any Turnpike-gate, or any Post, Rail, Wall, or other Fence belonging to such Turnpike or Gate erected by Act of Parliament, shall, upon Conviction by the Oath of one Witness before two Justices of Peace (who may summarily determine the same) be sent to the Common Gaol or House of Correction for three Months; and on the first convenient Market-day such Offender shall be publickly whipt between the Hours of Eleven and Two, by the Keeper of such Gaol, &c. at the Market-place of the City or Town near which the Offence was committed.

1 Geo. 2. c. 19.
§. 1.

If any Person so convicted shall so offend a second Time, or if any Person shall pull down or demolish any House erected for the Use of a Turnpike-gate, or shall break down any Lock, Sluce or Floodgate erected by Authority of Parliament upon any navigable River, such Offenders being convicted, upon Indictment before the Justices of Assize, Oyer and Terminer, or Gaol-delivery, shall be guilty of Felony; and the Court may transport them for seven Years,

Ib. §. 2.

The Action must be commenced within six Months after the Fact. The Defendant may plead the General Issue, and if the Plaintiff be nonsuited, &c. shall recover treble Costs.

Ib. §. 3.

This Act shall be publickly read at every Quarter-Sessions, and at every Leet or Law-day.

Ib. §. 4.

Continued by 13 *Geo. 2. cap. 18. to 1st of June 1747.*

By the 5 *Geo. 2. cap. 33.* the first Offence of pulling down Turnpikes, &c. was made Felony, &c. and returning from Transportation Death without Benefit of Clergy. And by 8 *Geo. 2. cap. 20.* the first Offence of this Nature was Felony without Benefit of Clergy, but these two Acts were to continue only five Years, from the 12th of *May 1735*, and to the End of the next Sessions of Parliament.

Highwaymen.

HE who apprehends and prosecutes an Highwayman, so as he is convicted, shall within one Month after such Conviction, receive of the Sheriff of the County where the Robbery was committed 40 *l.* producing a * Certificate under the Hand of the Judge, before whom the Highwayman was convicted.

Taking a Highwayman 40 *l.*

* That the Highwayman was taken by the Person claiming it, &c. 4 & 5 *W. c. 8.*

If any Person is killed in taking or pursuing a Highwayman, he or they who have a Right to administer, shall have the * 40 *l.* and he who takes, prosecutes and convicts him, shall have his Horse, Furniture, Money and other Goods; the King's Title, or that of the Lord of the Manor, or other Person who lent the same to the Highwayman, in any wise notwithstanding, but the Right of the Person from whom they were feloniously taken is saved.

Ib. §. 2.
* Producing a Certificate from the Judge, or from the two next Justices,
and if not paid then, the Sheriff forfeits double the Sum, with treble Costs.

A Highwayman being not in Prison, and discovering two or more Robbers, so as they may be convicted, shall have the King's Pardon for all Robberies committed before that Time; which Pardon shall be a good Bar to any Appeal.

Ib. §. 8.

The Streets of *London* and *Westminster* shall be deemed Highways, and of all other Cities, Towns and Places: And all Certificates hereafter to be signed for Convictions of Robberies, shall be * signed without Deduction or Fee, except 5 *s.* for Writing thereof; the Person

6 *Geo. 1. c. 23. §. 8.*

* And the Money paid.

taking more shall forfeit 40 *l.* to be recovered by Action of Debt, to the Use of the Person intituled to the Certificate.

C H A P. LI.

There be also certain particular Statutes concerning Highways and Streets, as followeth.

One Justice.
59 El. 19. §. 3.
Wild.

THE Occupier of any Iron-works, for every three Loads of Coal or Mine, and also for every Tun of Iron that he shall cause to be carried in Winter-time by the Space of one Mile in the Highways within the Wilds of *Suffex*, *Surrey*, or *Kent*, shall pay to the Justices of Peace dwelling near to the Places in that County where the Highways shall be most annoyed, or to his Assigns, 3 *s.* in Money; the same, in Default of Payment, to be levied by Distress by such Justice, or his Assignee, of the Goods of the Party in the said County.

Ib. §. 4.

Also such Occupier, for every thirty Loads of Coal and Mine, and for every ten Tuns of Iron carried in the said Highways, &c. shall lay one Load of Cinder, Gravel, Stone or Chalk, in Places to be appointed by such Justice, or else within eight Days after Demand, shall pay 3 *s.* for every such Load to the Hand of such Justices, who, upon Default of Payment, shall levy the same by the Distress, &c.

The said Justice of Peace shall bestow all such Sums of Money upon the amending of the same Highways, at his Discretion.

Two Justices.
Ibid.

Two Justices of Peace, whereof one to be of the *Quorum*, which were present at the Sessions wherein any Person was convicted for any Offence against the Statute of 39 *Eliz.* may make Warrant for levying the Forfeits thereof to any Constable, or other Officer: And they may also appoint such Ways and Means as they shall think meet, to levy the double Sums for not paying those Forfeits within twenty Days next after lawful Demand of the same by such Officer.

New-ways.

14 & 15 H. 8.
c. 6.
25 H. 8. c. 7.
§. 3.

By the Assent of two Justices of the Peace, and twelve discreet Men of the Hundred and Hundreds adjoining, any Person may make and lay out, in and over his own Land in Fee-simple, in the Wild of *Kent*, as also in the County of *Suffex*, a new Highway more commodious than the old; and instead thereof may retain the Ground of the old Way in Severalty to him and his Heirs: And the same Justices and twelve Men shall within three Months certify under their Seals such new Way into the Chancery, *sc.* the Length and Breadth of the same new Way, and other Things adjoining or concerning the same, according to their Discretion. *

* *The Stat.* 13
& 14 *Car.* 2.

c. 2. for repairing the Highways, &c. and paving the Streets in and about London, inserted in former Editions of this Book, is expired.

London New-ways paved.
2 W. & M.
ft. 2. c. 8. §. 7.

(a) Where any new Streets shall be made in *London*, *Westminster*, or the Suburbs, &c. Justices of Peace may view the same: And if they judge them fit to be paved, may certify the same to the next Quarter-Sessions, to do therein as they shall think fit.

Scavengers.
Ib. §. 9.

Scavengers, &c. refusing or neglecting their Duty, incur a Penalty, to be levied by Distress and Sale of Goods, by Warrant from a Justice of Peace; and shall account to two or more Justices for what Money remains in their Hands, and be imprisoned for not accounting.

Dirt lodged.
Ib. §. 12.

Scavengers may by Order of the Justices at their Petit Sessions lodge their Dirt in convenient Places near the Street, giving Satisfaction to the Owners: And in Case of unreasonable Demand, the Justices may moderate the same. And Persons aggrieved by any Tax by Virtue of this Act, or by the Determination of the Justices, &c. may have Recourse to the General Quarter-Sessions, whose Determination herein shall be final.

Assessment.
Ib. §. 13.

If Common Highways in the said Parishes cannot be supported without the Help of this Act, then one or more Assessments shall be made on the Inhabitants, &c. to be allowed by such Persons as the Justices at their Quarter-Sessions shall direct; such Assessments in Case of Non-payment, to be levied by Distress, &c.

Lamps.
2 W. & M.
ft. 2. c. 8.
§. 15.

Housholders within the Weekly Bills of Mortality, from *Michaelmas* to *Lady-day*, to hang out Lights, or agree to make Use of *Lamps*, to be placed at such Distances as shall be approved by two or more Justices of the Peace.

Ib. §. 16.

Hay wanting Weight, to forfeit 18 *d.* per Truss: All Carts loaden with Hay, Straw, &c. within the Weekly Bills of Mortality, standing at irregular Hours, shall forfeit for

every

every Offence 5 s. Justice of Peace upon View, Confession, or Proof by one Witness, may convict such Offender, and grant his Warrant for levying the Penalty.

No Swine shall be kept on the Backside of any paved Street, where the Houses are contiguous, upon Pain of forfeiting the same. And the Churchwardens, Constables, &c. may in the Day-time, by Warrant from the Lord Mayor or any Justice, search for Swine, and drive them away to sell and distribute the Money to the Poor.

See Tit. London, Chap. 60.

C H A P. LII.

Horses.

EVERY Justice of Peace (after Sale in open Fair or Market of any stolen Horse, &c.) at any Time within six Months next after the said * Sale, (or rather next after the Felony done) may take and hear the Claim and Proof of the right Owner, (from whom the same was stolen, or of his Executors or Administrators, or other Persons by their Appointment;) which Proof must be by two sufficient Witnesses upon Oath, to be made within forty Days next ensuing such Claim.

Claim.
Stolen Horse.
31 Eliz. c. 12.
* Lamb. 205.
See the Stat.
§. 4.

Also the same Justice of Peace may minister an Oath to the Party who bought the said Horse, or who had the Possession and Interest thereof, what Money he paid for the same bona fide, so as the right Owner repaying it may have his said Horse again.

P. Fairs 8.
31 Eliz. c. 12.
§. 4.

(a) Note, that in every Fair or Market where any Horses, Geldings, Mares or Colts are to be sold, there ought yearly to be appointed out one certain and special open Place where the said Horses, &c. shall be sold; and one sufficient Person or more to take Toll, who shall continue in the said Place from the Hour of Ten before Noon until Sun-setting every Day of the aforesaid Fair.

Toll-taker.
2 & 3 P. & M.
c. 7.

(d) Also Note, every Sale, or other Putting away, in any Fair or Market, of any stolen Horse, &c. not being according to the Statute, in every of these Particulars following, is void, to take away the Property of the Owner from whom such Horse was stolen, scil.

Market.
2 & 3 P. & M.
c. 7.
31 El. 12.

1. If the Horse be not, in the Time of the said Fair or Market between Ten of the Clock and Sun-setting, one Hour together (at the least) in the open Place of the Fair, &c. where Horses are commonly sold, 2 P. & M. the Sale is void, &c.

Sale.

2. If all the Parties to the Bargain, being in the Fair, shall not come together with the Horse to the Book-keeper to the open Place appointed, 2 P. & M. the Sale is void, &c.

3. If the Book-keeper, Toll-taker, Bailiff, or other chief Officer of the same Fair or Market, shall not take perfect Knowledge of the Seller or of the Voucher, sc. of their true Christian Name, Surname, Mystery and Place of Dwelling, or shall not enter all the same into his Book, the Sale is void, &c. And one Voucher is enough, if he be a sufficient and credible Person.

Voucher.
31 Eliz.

4. But if the Voucher be not a sufficient and credible Person, or if the Voucher shall not know the Seller indeed, or shall not truly declare to the Book-keeper, &c. the Christian Name, Surname, Mystery and Place of Dwelling, as well of himself as of the Seller, the Sale is void, &c.

31 Eliz.

5. If the Book-keeper, &c. shall not make Entry into his Book of the true Price that the Horse is sold for, with the Colour, and one special Mark at the least of the same Horse, &c. 2 P. & M. & 31 Eliz. the Sale is void, &c.

Entry of the Price.

6. So if a true and perfect Note in Writing, of the Name of the Seller or Voucher, and of their Dwelling, &c. and of the Price, be not given to the Buyer by the Book-keeper, &c. and subscribed with his Hand.

Book-keeper must give a Note to the Buyer.
31 Eliz.

7. And lastly, if Toll be not paid where Toll is due, or the Book-keeper not paid for the Entry, &c.

2 P. & M.

(a) If the Thief which stealeth an Horse shall sell the same Horse in Market overt or Fair by a false Name, and it is so entred into the Toll-Book, such Misnaming of the Seller maketh the Sale void against the right Owner of the Horse. And this was the Opinion of Windbam and Rboads Justices, (upon this Statute 2 & 3 P. & M.) Anno 30 El. in a

Thief selling a Horse by a false Name.

Case between *Gibbs* Plaintiff against *Bastel*, the Case being thus: One *Potter* did steal the Horse of the Plaintiff, and sold him to the Defendant in Market overt, by the Name of *Lyfler*, and so it was entred into the Toll-Book, that *Lyfler* sold the Horse, whereas his Name was *Potter*; whereupon *Gibbs* the Plaintiff brought his Action of the Case *jur Trover* against the Defendant *Bastel*, &c. See *hic postea*.

(d) Note also, that every Contract for any stolen Horse, &c. made out of open Fair is void, though they be after book'd. *Dyer* 99.

Co. 3. 78, 83.
7 H. 7. 12. Also a Sale in a Fair or Market overt shall not take away the Owner's Property, where the Buyer doth know that the Property was to another Man, or where the Buyer knoweth that the Horse or other Goods were stolen.

Co. 5. 83. Also to alter the Property of a Stranger who hath Right, the Horses and all other Goods are to be sold in such a Place, or Shop, as is commonly used for the Selling of Goods of the same Kind or Nature.

Sunday. (a) Also a Sale upon a Sunday, though in a Fair or Market overt, shall not be a good Sale to alter the Property of the Goods, by *Brian* 12 E. 4. fol. 1. b.

And indeed Fairs and Markets kept upon the Sabbath Day are prohibited by the Statute of *Winch. cap. 6.* and of *27 H. 6. cap. 5.* And now by the Statutes *1 Eliz. cap. 2.* & *3 Jac. 1. cap. 4.* all Persons resorting upon the Sabbath Day to any Fair or Market, and by the Means thereof absenting themselves from the Church, or not abiding at the Church orderly during all the Time of Prayer, Preaching, and other Divine Service, are to be punished by any Justice of Peace, according to the Form of the said Statute *3 Jac.* (which see *hic postea* *Tit. Recusants*) or by the Ordinary, or Bishop of the Diocese, by the Statute *1 Eliz.* Or otherwise the Offender may be indicted (for such his Absence from Church) at the Quarter-Sessions of the Peace, or General Gaol-Delivery.

Also the Lord of such a Fair or Market kept upon the Sabbath Day, contrary to the Statute, may be therefore indicted, either at the Assises and General Gaol-delivery, or at the Quarter-Sessions of the Peace within that County.

But yet for that by *Nonuser* of a Franchise, Fair or Market, they may be forfeited and seised; therefore Fairs anciently holden upon Sundays, or upon other Principal Feast-Days, might be holden and kept within three Days before or after any of the said Feasts, after Proclamation first made, what Day the Fair shall be holden, though the Lord of the Fair hath otherways no Power to keep his Fair but upon such Day. Statute *27 H. 6. cap. 5.*

What Horses may be put into Commons. No Commoner in any Forest, Chase, Moor, Marsh, Common or waste Grounds; nor any Officer thereof in Norfolk, Cambridge, Buckingham, Huntington, Essex, Kent, South-Hampshire, North-Wiltshire, Oxfordshire, Barkshire, Worcester, Gloucester, Somersetshire, North-Wales, South-Wales, Bedford, Warwick, Northampton, Yorkshire, Cheshire, Staffordshire, County of the City of York, Town of Gloucester and Liberties, Kingston upon Hull, Lancaster, Salop, Leicester, Herefordshire and Lincolnshire, shall put to Pasture there any stoned Horse or Horses above the Age of two Years, and under the Height of fifteen Handfuls, to be measured from the lowest Part of the Hoof of the Forefoot unto the highest Part of the Wither, every Handful to contain four Inches by the Standard, to feed or depasture there, upon Pain of Forfeiture of the Horses found there. *32 H. 8. cap. 13.*

Seizure. These Persons finding such Horses therein, shall go to the Keeper of such Forest or Chase, his Deputy or Deputies, or to the Constable, Bailiff, Headborough, Borsholder or Tithingman of any Town next adjoining, and command them to go and bring such Horses to the Pound, there to be measured by such Officer or Officers, in the Presence of three honest Persons to be named and appointed by the Officer, and if he be once found contrary, such Person challenging him may take him to his own Use.

Neglect. If any of the said Officers or Persons to be appointed shall refuse to measure, or not measure justly, every of them shall forfeit for not doing, or refusing, *40 s.*

Drift of Commons. All Forests, Chases, Commons, Moors, Marshes, Heaths and Waste-Grounds in England and Wales, shall be driven yearly by the Owners or Officers of the same, and by the Constables, Headboroughs, Bailiffs, Borsholders and Tithingmen, within whose Limits they lie, upon Pain that every of the said Officers not so doing at *Michaelmas* every Year, or fifteen Days after, shall forfeit *40 s.* for every Time, and the Lords, Owners and Possessors may by the Officers aforesaid make such Drift at any other Time in the Year.

If upon such Drift there shall be found any Mare, Filly, Fole or Gelding, that shall not then be thought able or likely to grow to be profitable for Labour, in the Discretion of the Drivers, or the greatest Number of them, the Drivers shall cause the same Beast to be killed. *Killing fit.* Ib. §. 7.

The Justices of Peace and Stewards of Leets may inquire of all Defaults, Contempts, Omissions and Offences against this Act, and the Presentments in the Leet shall be certified to the next Sessions, or to the *Custos Rotulorum* within forty Days after it is made; and the Justices may determine the same by Examination, or otherwise; and if the Steward imbezil, conceal, or do not certify, he shall forfeit 40 s. for every Offence; a Moiety to the King, the other Moiety to the Prosecutor that sues for it in the Sessions by Bill or Information. *Who may determine it, and by w.* Ib. §. 8.

This act as to the Marshes, Fens, Seggy Ground in *Ely, Cambridgeshire, Huntingdonshire, Northampton, Lincoln, Norfolk and Suffolk*, shall be repealed; but none shall put into these Grounds any stoned Horse above two Years old not of the Height of 13 Handfuls, to be measured as aforesaid. 8 El. c. 8. §. 2 & 3.

Nor shall this Act extend to the County of *Cornwall*, by 21 *Jac.* 1. *cap.* 28. 21 Jac. 1. c. 28. §. 12.

Concerning Transporting of Horses, Geldings and Mares, *vide Tit. Transportation, Chap. 100. &c.*

Clergy is taken from Accessaries in Horse-stealing both before and after the Fact.

Selling a Horse in Fair or Market by a wrong Name, tho' all the Circumstances in the Statute are pursued, makes the Sale void: As for Instance,

A Horse was lost and sold by *T. S.* in *Smithfield* by the Name of *W. H.* when there was no such Man: Adjudged that the Property was not altered, because it did not appear that the Horse was stole, and probably the Owner could not prove that it was stole. Palm. 486. W. Jones 163. S. C.

C H A P. LIII. (a)

House of Correction.

EVERY Person seized of an Estate in Fee-simple, may by Deed enrolled in Chancery erect, found and establish one or more Hospitals, abiding Places or Houses of Correction, as well for Sustainment of Poor, as to set Poor on Work, &c. See this Statute well explained, 2 *Inst.* 720. And that Act is made perpetual by 21 *Jac.* 1. * Charities. 39 El. 5. * The 39 El. c. 4. inserted in former Editions, is repealed by 12 Ann. st. 2. c. 23.

By 7 *Jac.* 1. *cap.* 4. it was enacted, that a convenient House or Houses should be provided, with a Backside adjoining, with Mills, Turns, Cards, and necessary Implements to set idle Persons on Work in some convenient Place or Town of the County, which shall be purchased, conveyed and assured to such Persons as the Justices of Peace in Sessions shall think fit in Trust to be employed, &c. or else every Justice of Peace was to forfeit 5 l. to be employed for the Erecting, Procuring, &c. such House. Erection. 7 Jac. 1. 4.

The Justices of Peace in their Sessions may elect and appoint one or more Persons to be Governor or Master of the House of Correction, who shall have Power to set Rogues, Vagabonds, and idle and disorderly Persons to Work and Labour, being able; and to punish them by putting Fetters or Gives on them, and by moderate Whipping of them; which Persons shall not be chargeable to the County, but shall have such Allowance as they deserve by their Labour. Governor. Ib. §. 4.

The Justices of their Sessions may appoint a yearly Allowance to the Master of the House of Correction, to be paid Quarterly beforehand by the Treasurer appointed by 43 *El.* 2. The Master giving Security for Continuance and Performance of the Service, which if the Treasurer shall not do, the Master may levy it, as the Treasurer might have done by that Statute. Allowance. Ib. §. 6.

If the Governor shall not every Quarter-Sessions yield a true and lawful Account to the Justices of all Persons committed to their Custody, or if the Persons committed be troublesome to the Country by going abroad, or shall escape away before they be lawfully delivered, the Justices may in Sessions set down such Fines and Penalties on the Master as they shall think fit, which shall be paid to the Treasurer. Governor's Duty. Ib. §. 9.

Mittimus. The Justices Mittimus to the House of Correction may be most safely made upon this Statute, *Quia otiosa & inordinata persona*, for that he is an idle and disorderly Person, or for that he is an idle Person, or that he is a disorderly *. *Vide postea* in *Mittimus*, Chap. 178.
 * See this Statute well explained and explained by my Lord Coke. 2 Inst. 728.

See also Chap. 83. Rogues and Vagabonds.

C H A P. LIV.

Hue and Cry.

When, and how to be made.

(a) **HUE and Cry** signifieth a Pursuit of one or more that have committed Felony, and fly for the same.

(d) Every Justice of Peace may cause Hue and Cry, fresh Suit and Search to be made, upon any *Murder, Robbery, Theft*, or other Felony committed: And this he may do by Force of the Commission, the first *Assignavimus*.

(a) The Party robbed, or some one of the Company of one murdered or robbed, must speedily come to the Constable of the next Town, or to some other Habitant dwelling near the Place where the Felony was committed, and must give Notice of the said Felony, and will him to raise Hue and Cry, or to make Pursuit after the Felon: And the Constable must forthwith make Search in his Town; and if the Felon be not there found, then to give Notice to the next Towns, &c.

28 Ed. 3. cap. 11.
27 Eliz. 17.
§. 10 & 11.

(d) Note, That all *Hues and Cries* ought to be made *immediately* after Notice given of the Felony done, from Town to Town, and from County to County, and by Horsemen and Footmen; otherwise it is no lawful Pursuit.

Note also, When *Hue and Cry* is levied upon any Robbery or other Felony, the Officer of the Town where the Felony was done (as also the Officer whence Hue and Cry shall be after levied) ought to send to every other Town round about him, and not to one next Town only: And in such Cases it is needful to give Notice in Writing (to the Pursuers) of the Things stolen, and of the Colour and Marks thereof; as also to describe the Person of the Felon, his Apparel and Horse, &c. and shew which Way he is gone, if it may be.

(a) Sir *Nicholas Hide*, in his Charge at *Cambridge Assises* in Lent, 1622. delivered, That Hue and Cry must be made or pursued with Horsemen and Footmen; and that not only a private Search is to be made in every Town, but that they must raise the Country as they go, and all still to follow the Hue and Cry, as against a common Enemy.

Also the Officers of every Town to which Hue and Cry shall come, ought to search in all suspected Houses and Places within their Limits: And as well the Officers, as all other Persons which shall pursue the Hue and Cry, may attach and stay all such Persons, as in their Search or Pursuit they shall find to be suspicious; and thereupon shall carry them before some Justice of the Peace of the County where they are taken, to be examined where they were at the Time when the Felony was committed, &c.

1 Leon. 323.

Where a Person is robbed, and the Justice refuseth to take his Examination, an Action on the Case lieth against him, because in this Case he doth not act as a Judge of Record, but as a Minister appointed by the Statute; for which Reason he may take the Examination of a Person robbed, though the Justice is not in the County where the Robbery was done, because he taketh the Oath, not by Virtue of his Office, but by Virtue of the Statute, as aforesaid.

Cro. Car. 211.
W Jones
239. S. C.

Owen 7.
Goldf. 58. S.P.

'Tis not material in what Parish the Robbery was done, but there must be a Certainty of the Hundred.

Goldf. 86.

Goods delivered to a Carrier were seised in one Hundred, and the Horse and Goods were led into another Hundred, and there they were taken away; adjudged, that the Hundred shall be charged where the Horse and Goods were seised, because at that Instant of Time they were in the Possession of the Offenders; but it was no Robbery till he came into the second Hundred, if the Carrier himself had led his Horse thither, for then it had been still in his Possession.

But if a Man is assaulted in one Hundred, and he escapes into another Hundred, and is pursued and robbed there, in such Case the second Hundred is liable. Hutt. 125.

The Servant was robbed, and he ought to take the Oath, and not the Master, because the Servant might know some of the Robbers, but the Master could not, because he was not at the Time in Company of his Servant. Cro. Eliz. 142. 1 Leon. 323 S. C.

So where a Servant was robbed of his Master's Goods, and brought an Action against the Hundred, in which he declared, that he was possess'd, &c. *ut de bonis suis propriis*, &c. and the Jury found, that he was robbed of 20*l.* of his Master's Money, and 20*s.* of his own Money; adjudged, that this Action was maintainable by the Servant; for by the bare Possession he is intitled to the Money as his own against all Persons but the right Owner. 4 Mod. 505. 2 Salk. 614.

There is another Case where the Servant was robbed, and the Master brought the Action against the Hundred; the Jury found that the Master was a Quaker, and would not take an Oath to answer whether he did know any of the Robbers; adjudged, that the Master might bring the Action, and that the Oath of his Servant was sufficient, especially if he was not robbed in the Company of his Master, but if robbed in his Presence, then the Master must make the Oath; which the Quaker refusing, he could not recover against the Hundred, because the Statute 27 Eliz. was made in Favour of the Inhabitants, to prevent Combination amongst Robbers and those who were robbed. 2 Salk. 613.

See the Stat. 8 Geo. 2. of Hue and Cry in the Title Robbery, Chap. 84.

See also 2 Hal. Hist. P. C. p. 98, &c. and the New Abrid. under this Title.

C H A P. LV.

Hunting.

UPON Information given to any Justice of Peace of the County where any unlawful Hunting of Deer or Conies (by Night, or with painted Faces, or other Disguising) in any Forest, Park, or Warren shall be had, of any Person suspected thereof; such Justice may make a Warrant to the Sheriff, Constable, Bailiff, or other Officers, to take the Party, and to bring him before him, or before any other Justice of Peace of the same County, who may examine him of that Hunting, and of the Doers thereof: And if he conceal that Hunting, or any Offender with him therein, then the said Concealment shall be * Felony in such Concealer. But if he then confesses the Truth of all that he shall be examined of and knoweth in that Behalf; then his Offence of Hunting shall be but Trespass, and fineable: The Fine to be assessed at the next General Sessions of the Peace, by the Justices there. See *postea* Tit. Felony by Statute, Chap. 160. Hunting in Vizards. 1 H. 7. c. 7. P. Just. 16. * Quere, If they kill nothing. Dy. fo. 50. pl. 5.

Also to disobey such a Warrant, or to make Rescous thereupon; so that the Execution thereof cannot be had, is Felony. *Vide ut supra.*

(a) If any shall by Night or Day, unlawfully break or enter into any Park impaled, or several Grounds closed with Wall, Pale, or Hedge, and used for the keeping, breeding, and cherishing of Deer; and being thereof convicted at the Suit of the Queen, or Party, shall be imprisoned three Months, and pay the Party treble Damages; and be bound with Sureties to the Good Behaviour for seven Years, or else continue in Prison seven Years. In Parks. 5 El. 21.

This Act extends not to Parks, or inclosed Grounds, then after to be made and used for Deer, without the Grant or License of the Queen, her Heirs, Successors or Progenitors.

The Justices of Peace in their Sessions, may hear and determine the Offences of Taking, Hawking, Fishing and Hunting against that Statute; and the Party may have his Remedy before them there, and may make out Process as well upon Indictments, as by Bill of Complaint, Information, or any other Action.

The Party grieved, upon Satisfaction to him made of his Damages; and upon Confession by the Offenders in open Sessions, may release the Suretiship for the Good Behaviour, at any Time, within the seven Years: And if the Party be bound, if he shall come in open Sessions, and confess the Offence, and be sorry for it, and pay the Party his treble Damages, may in the same, or any other Sessions, release the Recognizance. 5 El. 21. But it seems, that no other Justices, but those before whom such Confession is made,

can in the same, or any other Sessions, release or discharge the Recognizance. And it seemeth also, if the Party lie in Prison for Want of Sureties for the Good Behaviour, after the three Months; neither the Party grieved, nor Justices, upon Confession, can discharge him.

And forasmuch as many Grounds used for the Keeping of Deer, were altered or inclosed since 5 *El.* 21. a Statute was made 3 *Jac.* 1. 13. with the same Provisions touching Deer, but extended to the Killing of Conies also; but this Statute of 3 *Jac.* 1. 13. extends only to the Killing, Hunting, and Chasing of Conies in the Night, and not in the Day-time; nor to any Park, or inclosed Grounds, after to be used for keeping Deer and Conies, without Grant.

*Hunting in
Corn.*
23 *Eliz.* c. 10.

No Person shall Hawk, or with his Spaniels hunt in any Ground, where Corn or other Grain shall then grow (except in his own Ground) at such Time as any eared or coddled Corn or Grain, shall be standing; nor before it be cocked, shocked, &c. upon Pain to forfeit for every Time he shall so hawk or hunt, without the Consent of the Owner, forty Shillings to the Owner: Which, if he pay not within ten Days after Conviction, he may be imprisoned a Month, without Bail, or may be recorded by Action; and the Justices of Peace may hear and determine the same in their Sessions: And every Justice of Peace may examine the Offender, and bind him to the Sessions to answer the Offence, and to pay the Penalties, and receive the Punishment.

(d) The Justice of Peace that shall take the Examination of an Offender for unlawful Hunting in Parks, &c. as aforesaid, may after such Examination bind the Offender to his Good Behaviour, that he may be forth-coming, till the Offence and Residue of the Offenders be fully examined: Otherwise, if it shall after appear, that the Offender hath concealed any Thing whereby the Offence becomes Felony, then the Offender perhaps will not be found.

1 *Jac.* 1. c. 27.
P. Pheasant 7.
Greyhound.

Also all such unlawful Hunting, if it be by Three or more, will prove a *Riot*.

Hare.

Whosoever shall have or keep any Greyhound or Setting-dog, (not having sufficient Living according to this Statute;) or shall trace or course any Hare in the Snow, or otherwise destroy, kill, or take any Hare; the said Offences being proved, &c. before two Justices of Peace, the said Offenders shall be by them committed to the Gaol, &c. *Vide Tit. Partridges* more fully hereof.

Co. 11. 86, 87.

And yet Hunting and Hawking, and such other Pastimes, every Man may use upon his own Lands at his Pleasure, so far as they be not restrained by Act of Parliament. But no Man may make a Park or Warren within his own Ground, without the King's Grant or License; and therefore such a Park or Warren (made without License) is not within the Stat. of 1 *H.* 7. 7. See *Br. Warren* 1. *Co. Lit.* 233.

What a Park is, and the Difference between a Park, a Forest, and a Chase, and what be Beasts or Fowls of Park, Chase and Warren, *vide Co. L.* 233.

There be divers other Statutes made against *Hunting*, &c. which be very Penal, but not to be dealt withal by Justices of Peace, except at their General Sessions. See more of them *hic postea*, *Tit. Bailment*, & *Stat.* 3 *Jac.* 1. *hic antea Tit. Guns*.

*This Stat. ex-
tends to all
Persons of
whatever
Estate.*

If any shall hunt, destroy, and kill a *Hare* in the *Snow*, and being thereof convicted, shall forfeit six Shillings eight Pence for every one. 14 *H.* 8. 10.

Search.

22 & 23 *Car.* 2.
c. 25. §. 2.

One Justice of Peace, by Warrant under his Hand and Seal, may authorize any Game-keeper (which any Lord of a Manor, of the Degree of an Esquire, may appoint under his Hand and Seal) or any other Person or Persons, to search in the Day-time the Houses, Outhouses, and other Places of Persons thereby prohibited, as upon good Ground shall be suspected to keep Guns, Bows, Greyhounds, Setting-dogs, Ferrets, Coney-dogs, or other Dogs, to destroy Hares or Conies, Hayes, Trampels, and other Nets, Lowbels, Hare-pipes, Snares, and other Engines; and them to seize and keep for the Lord of the Manor, or to destroy them.

Ib. §. 3.

All Persons are thereby prohibited, except such as have Lands and Tenements, or some other Estate of Inheritance in his own or his Wife's Right, of One hundred Pounds *per Annum*; or for Term of Life, or have Lease or Leases for ninety-nine Years, or a longer Term of One hundred and fifty Pounds *per Annum*, the Son and Heir of an Esquire, or other Person of higher Degree. The Owners and Keepers of Forests, Parks, Chases and Warrens, being stocked with Deer and Conies for their necessary Use in respect thereof.

Warren.

Ib. §. 4.

Any Person that shall enter any Warren, or Ground used for the Breeding and Keeping of Conies (although the same be not inclosed) and there shall chase, take, or kill any Conies, being convicted thereof by his Confession, or by the Oath of one sufficient

Witness,

Witness, before any Justice of Peace, within one Month after the Offence, shall pay to the Party grieved treble Damages and Costs, and be imprisoned for three Months, and after, till he find Sureties for the Good Behaviour.

If any Persons in the Night-time shall kill or take any Conies upon the Borders of any Warrens, or other Grounds, lawfully used for the breeding or keeping of Conies, except the Owner or Occupier of the Soil, or other Persons employed by them, whereupon they are killed or taken, and be thereof convicted as last aforesaid, they shall give the Party such Satisfaction, and within such Time as shall be appointed by the Justice before whom such Conviction is, and shall pay to the Overseers for the Poor's Use, such Sums of Money, not exceeding ten Shillings, as the Justice shall think fit: And in Default of such Payment, such Justice may commit the Party to the House of Correction for such Time as he shall think fit, not exceeding one Month. Ib. §. 5

Any Person that shall be found or apprehended, setting, or using any Snares, Hare-pipes, or like Engines, and shall be thereof convicted as aforesaid, shall be punished as in the said last Clause is mentioned. Ib. §. 6.

Any Person grieved by any such Judgment, may appeal to the next General Quarter-Sessions, who shall give such Relief as is agreeable to that Act: Which Judgment shall be final, if no Title to any Land or Royalty be concerned. Ib. §. 9.

If any Person having no Chase, Park or Forest of their own, keep, or cause to be kept any Nets, called Deer-Hayes, or Buck-stalls, by the Space of a Month after Proclamation made of that Statute, he shall forfeit forty Pounds a Month for keeping of them. 19H. 7. c. 11.

No Person shall stalk, or cause to be stalked, with Bush or Beasts to any Deer in any Park, Chase, or Forest, but in his own Ground, Park, Chase or Forest, without Licence of the Owner, Master, or Keeper, on Pain of Forfeiture of ten Pounds.

Two Justices of Peace in their Sessions may call the Person suspected before them, and examine him; and if upon Examination the Party be found in Default, then to commit him to Prison, till he find Sureties to pay the Fine; and these Justices that examine him, shall have the tenth Part of the Forfeiture.

Any one that shall unlawfully course, hunt, &c. any Red or Fallow-Deer in any Forest, Chase, &c. or other Ground inclosed, where Deer are or shall be usually kept, or shall be aiding therein, and shall be convicted by Confession, or the Oath of one Witness, before a Justice of Peace of the County where the Offence shall be committed, or the Party apprehended, within twelve Months after the Offence done, he shall forfeit for every such Offence twenty Pounds, and for every Deer wounded, taken or killed thirty Pounds, to be levied by Distress and Sale of Goods, by Warrant from the Justice before whom the Conviction shall be made; one third Part to the Informer, another third Part to the Poor of the Parish where the Offence shall be committed, and the other third Part to the Owner of the Deer. And for Want of Distress shall be imprisoned a Year, and set in the Pillory an Hour, on some Market-day in the Town next adjoining to the Place where the Offence was committed. Deer-stealers. 3 & 4 W. & M. c. 10. §. 2. Penalty.

Constables, &c. by a Justice's Warrant, may enter and search for stolen Goods, the Houses or other Places of suspected Persons; and if any Venison or Skins of Deer or Toils be found, shall carry such Offender before a Justice of Peace; and if he do not give a good Account how he came by them, or produce the Party of whom he bought them, or prove such Sale upon Oath, he shall be convicted of such Offence, and be subject to the Penalties inflicted for killing of Deer. Search. Ib. §. 3.

No *Certiorari* shall be allowed to remove any Conviction, or other Proceeding upon this Act, unless the Party convicted shall before it be allowed, become bound to the Professors in fifty Pounds, with Sureties to be approved by the said Justice, to pay within a Month after Conviction confirm'd, or a *Procedendo* granted, their full Costs to be ascertain'd upon Oath. Certiorari. Ib. §. 6.

Any Person that shall in the Night-time pull down or destroy any Pails or Walls of any Park or Forest, where Red or Fallow-Deer shall be kept, such Person being convicted by Oath of one Witness before a Justice of Peace, shall by such Justice's Warrant suffer three Months Imprisonment. Destruction of Pails. Ib. §. 9.

By 5 *Geo. 1. cap. 15.* such Offender shall be subject to the Forfeitures by the Act 3 & 5 *Geo. 1. c. 15. §. 6.*

Any Prosecution for any Offence against the Statute 3 & 4 *W. & M. cap. 10.* may be commenced within three Years from the Offence committed, 9 *G. 1. c. 22. §. 13.*

- 5 G. 1. c. 15. §. 1. No *Certiorari* shall be allowed to remove the Proceedings concerning any Matter in the Act 3 & 4 *W. & M. cap.* 10. unless the Party convicted shall before Allowance of such *Certiorari*, and at the same Time that Security is given for Payment of Costs, become bound to the Justice before whom such Conviction was made, with Sureties to be approved of by the Justice, in the Penalty of 60 *l.* for each Offence, with Condition to prosecute such *Certiorari* with Effect, and to pay such Justice the Forfeiture due by such Conviction, to be distributed as the Statute directs, or to render the Person convicted to such Justice in one Month after the Conviction shall be confirmed, or a *Procedendo* granted; and in Default the Justice may proceed to Execution, as if no *Certiorari* had been awarded.
- Ib. §. 2. After delivering the Rule to the Justice, whereby such Conviction has been confirmed by a Superior Court, the Justice may proceed as if a *Procedendo* had been granted.
- Ib. §. 4. Every Person convicted by Virtue of the said Statute, shall, before he be discharged out of Custody, become bound to the Person against whom the Offence was committed, in 50 *l.* with Condition for his good Behaviour, and not to offend in like Manner; and on Refusal to enter into such Bond, he shall be committed to the County Gaol till such Bond be given: And if such Person after his becoming bound, be convicted for any Matter in the said Statute, the Bond shall be forfeited, and the Penalty recovered with Costs in any Court at *Westminster*, which Penalties shall be distributed in the same Manner that the Forfeitures are to be by the said Statute; and the Party convicted shall be likewise liable to the Penalties therein.
- Ib. §. 5. If the Keeper or other Officer of any Forest, &c. where Deer are usually kept, shall be convicted on the Statute of 3 & 4 *W. & M. c.* 10. for killing or taking away any Deer, or being aiding therein, without Consent of the Owner or Person chiefly intrusted with the Custody of such Forest, &c. he shall forfeit 50 *l.* for each Deer so killed, &c. to be levied by Distress, and distributed as the Forfeitures of the said Act are to be; and for Want of Distress he shall be imprisoned three Years, and be set in the Pillory two Hours on some Market-day in the Town next the Place where the Offence was committed, by the Chief or Under-Officers of such Town.
- 5 G. 1. c. 28. §. 1. By 5 *Geo. 1. cap.* 28. Persons entering any Park, &c. and wilfully wounding or killing Deer, being convicted thereof on Indictment before any Judge of Gaol-delivery of the County wherein such Park, &c. lies, shall be transported to the Plantations for seven Years.
- 9 G. 1. c. 22. §. 13. By 9 *Geo. 1. cap.* 22. *sect.* 13. if any Venison or Skin of a Deer be found in the Custody of any Person, and it shall appear that he bought it of one that might justly be suspected to have unlawfully come by the same, and does not produce the Party of whom he bought it, or prove upon Oath the Name and Place of Abode of such Party, then the Person who bought the same shall be convicted of such Offence by any one Justice of Peace, and shall be subject to the Penalties for killing a Deer by *Stat.* 3 & 4 *W. & M. cap.* 10.

See more in *Chap.* 160. *Felony by Statute.*

Husband and Wife. See *Chap.* 157.

Indictments. See *Chap.* 184.

Informer and Informations. See *Chap.* 191.

C H A P. LVI. (a)

Innholder.

Horfe-bread.

21 Jac. 1.

c. 21. §. 2.

NO Hostler or Innholder shall make his Horfe-bread within his Hoftery, but Bakers shall make it; and the Affize shall be kept, and the Weight be reasonable, after the Price of Corn in the Market adjoining; and they shall sell their Horfe-bread, Hay, Oats, Beans, Pease, Provender, and all Kind of Victuals, both for Man and Beast, at reasonable Gain, having respect to what the same shall be sold for in the Market adjoining, without taking any Thing for Litter.

If an Innholder live in a Town or Village, which is no City, Town Corporate, or Market-Town; yet being a Thorow-fare and common Passage, and no Baker dwelling there, he may make Horfe-bread in his House of lawful Assise and Price. Ib. §. 3.

Justices of Peace (amongst others) may hear and determine Offences against this Act; and the Party offending shall be fined according to his Offence, and being once convicted, for the second Offence he shall suffer Imprisonment for a Month, and for the third Offence shall be set upon the Pillory without being redeemed for Money. And if after such Judgment of Pillory, he shall offend again, he shall be forejudged of keeping an Inn any more. Where Innholders are within the Statutes of Alehouses and Tipling, see Tit. *Alehouses*. Penalty. Ib. §. 4.

Every Man may erect an Inn, that can and will; for it is not a Franchise, as was resolved in Parliament, 20 Jac. *Roll's Abridgment, Part 2. p. 84.*

It was resolved by all the Judges, that any Person might erect an Inn to lodge Travel-lers, without any License or Allowance so to do. Hutt. 99.

But if an Inn useth the Trade of an Alehouse, as almost all Inkeepers do, it shall be within the Statutes made about Alehouses. 1 Ball. 109.

An Inkeeper shall not be liable to make any Satisfaction for a Robbery done in his Inn and in the Chamber of any of his Guests hired for some Time; but if he leaves Goods in his Chamber, and returns again the same Night, the Inkeeper shall be liable for such Goods stolen. Moor 876.
2 Brownl.
254. S. C.
Latch 88. S.P.
Bendloe 173.
S. C.

Noy 126. 2 Cro. 188. S. C.

If an Inkeeper bids his Guest take the Key of his Chamber and lock the Door, and that he will not take the Charge of the Goods, yet if they are stolen, he shall be answerable, because he is charged by Law for all Things which come to his Inn, and he cannot discharge himself by such or the like Words. Moor 78.

Inkeepers are bound by the Law to receive Guests, and for that Reason they may detain their Goods till they are paid; but *Holt* Chief Justice doubted, whether a Man is a Guest by setting up his Horse at an Inn, because the Horse must be fed, by which the Inkeeper hath some Gain, tho' the Owner never lay in the Inn; but if he had left a Trunk or a Box there, he is a Guest. 1 Salk. 388.

The Question was, whether Houses kept for Lodgings in *Tunbridge* or *Epsom*, and dressing Meat for Lodgers, and finding Hay and Oats for their Horses, were properly Inns for quartering Soldiers, according to the Statute 4 & 5 W. 3. cap. 13. it was insisted that they were, being common and publick Houses kept for Gain, and therefore within the equitable Construction of that Statute; but adjudged that they were not, because the Soldiers are quartered against a Man's Will; but in Inns Persons are quartered willingly and upon Acccess; and an Inkeeper is indictable if he refuse a Guest, but the Owner of one of those Houses is not, if he refuse a Lodger; nor a Livery-stable is not properly an Inn, because the Accommodation is for Horses only.

C H A P. LVII.

Inrolment.

ANY one Justice of Peace may join with the Clerk of the Peace, in taking the Inrolment of any Indenture of Burgain and Sale of Lands, &c. lying in that County where he is a Justice, and it is good. 27 H. 8. 16.

(a) Now the said Justice of Peace, and the Clerk of the Peace, are to take for the inrolling of the same Deed indented in Parchment, &c. these Fees following, viz. where the Lands exceed not the yearly Value of forty Shillings, they are to take two Shillings, *scil.* twelve Pence for the Justice, and twelve Pence for the Clerk. And where the Lands exceed the yearly Value of forty Shillings, there they are to take five Shillings, *scil.* two Shillings six Pence for the Justice, and two Shillings six Pence for the Clerk. *Ibid.* Fees.

(d) But such Deed (and all other Deeds, to be inrolled according to this Statute) must be indented *revera*, and must be inrolled within six Months after the Date of the same Indenture: And if it have no Date, then within six Months after the Delivery of the Deed; or if it be inrolled the very Day of the Date of the Deed, or the very last Day of the six Months, it is sufficient. Co. 5. 29. b.
Co. 5. 1. b.
Dalison.
4 Eliz.
Dyer 218;

Computation, Note; Herein you must account twenty-eight Days to every Month, and not above, (*scil.*) Four Weeks to the Month.

Co. 6. 62. Note also the Difference when a Statute accounteth by the Year, Half-Year, or Quarter, and when by the Month; for a Year, Half a Year, or a Quarter of a Year, shall be accounted according to the Kalendar, and by the Days in the Kalendar, and not after twenty-eight Days to the Month. And a Year, or a Twelve-month (in the singular Number) includes the whole Year according to the Kalendar. But twelve Months (in the plural Number) or eight Months, or six * Months, &c. shall be accounted after twenty-eight Days to every Month: For the Month, by the Common Law of *England*, is but eight and twenty Days. And fo

Co. 5. 135.
* Except in a
Quare Imp.
See Co. ib.

Whereas { Three Months
Six Months
Twelve Months } hath but { 84
168
336 } Days.

The { Quarter of a Year
Half-Year
Year } hath { 91
182
365 } Days.

Dyer 345.

*Ter centum, ter viginti, cum quinque diebus,
Sex horas, neque plus integer annus habet.*

And as to these six Hours, the Law giveth no Regard to them; and yet these six Hours every fourth Year make a Day, and so make the Leap-Year, and this Leap-year containeth in it Three hundred sixty and six Days.

Note also for the Year, That the *Julian* Year, (instituted by *Julius Cæsar*) beginneth the first Day of *January*, and so doth the Empire begin; the *Hebrews*, the First of *April*; the Church of *Rome* on the twenty-fifth of *December*: But in all Matters legal with us, the Year beginneth not till the twenty-fifth Day of *March*. And therefore when in an Indictment, or other Writing or Deed, it shall be set down, (or the Writing shall be dated *Anno Dom.* 1617.) it must be accounted according to the Computation of the Church of *England*, which beginneth the Year upon the twenty-fifth Day of *March*; upon which Day our Saviour *Jesús Christ* arose from Death, as it is holden, *Dr. White's Def.* 151. and upon which Day *Christ* was conceived in the *Virgin's Womb*, (as some write) and so was born in *December*; and then the Year of Our Lord must be accounted rather from his Conception and Incarnation, than his Nativity; and upon which Day the World, *Adam* our first Father, was created, as it is holden by others: But I leave these Things to Antiquaries. See the History of *Venice*, pag. 4 & 5.

Bible impref.
1611.

Journey-men Taylors. See *Labourers*.

Judgment. See Chap. 188.

Jury. See Chap. 186.

The Form of the Precept to return a Jury. See Chap. 115.

Justice of Peace. See Chap. 173, 189.

C H A P. LVIII.

Labourers.

One Just.
El. c. 4.
§. 22.

EVERY Justice of Peace, upon Request, may cause all such Artificers and other Persons fit to labour, to work by the Day in Hay-time, and Harvest-time, for the Saving of Corn and Hay, and may, upon their Refusal, imprison them in the Stocks, by the Space of two Days and one Night.

(a) And the Constable upon Complaint shall have Authority to set the Offender in the Stocks, and neglecting so to do, shall forfeit 40 s.

(d) Any one Justice of Peace may license under his Hand and Seal such Labourers as pass in Hay-harvest and Corn-harvest from one County to another to work. *Ib. §. 23.*

Any one Justice of Peace (upon Complaint to him made) may compel any fit Person (in his Discretion) to be bound as an Apprentice with any one that shall require him to Husbandry, or any other Art, &c. And upon their Refusal may commit them to Ward, there to remain until they will be bound to serve as an Apprentice, according to the Statute. *Apprentice. Ib. §. 35.*

(a) No Person shall be compelled to be an Apprentice, unless he be under twenty-one Years of Age. *Ib. §. 36.*

Apprentice signifieth one that is bound, by Covenant in Writing indented, to serve another Man for certain Years, and that his Master shall in the mean Time endeavour to instruct him in his Art or Trade. The usual Covenants for Apprentices, see *Chap. 181.* And note, that in such and all other Covenants, *Conventio legem vincit.*

Every Person being a Houfholder, and using Half a Plough-land, at least, may take an Apprentice above ten Years of Age, and under eighteen, to serve in Husbandry. *5 El. 4. §. 25.*

Every Houfholder, twenty-four Years old, dwelling in any City, Borough, or Town Corporate, and exercising any Art, Mystery, or manual Occupation, may retain the Son of a Freeman not occupying Husbandry; nor being a Labourer, and inhabiting in the same, or in any other City, &c. to serve and be bound as an Apprentice for seven Years, at least, so as the Term expire not before the Apprentice be twenty-four Years old. In Market-Towns not Corporate, they may take the Child of an Artificer. *Ib. §. 26. Ib. §. 28.*

No Merchant, Mercer, Draper, Goldsmith, Ironmonger, Imbroiderer, or Clothier, dwelling in a Corporate Town, may take any Apprentice, except the Apprentice or Father have Freehold Lands to the Value of forty Shillings *per Annum*, &c. But if such Master live in a Market-Town not Corporate, his Apprentice, or his Friends, must have 3 *l. per Ann.* in Freehold. *Ib. §. 27. Ib. §. 29.*

But these Artificers, *viz.* Smiths, Wheel-wrights, &c. may take the Children of any Parents as Apprentices. *Ib. §. 30.*

Every Cloth-worker, Fuller, Shearman, Weaver, Taylor, and Shoemaker, that keep three Apprentices, shall keep one Journeyman; and for every Apprentice above Three, shall keep one Journeyman, upon Pain of ten Pounds for every Default. *Ib. §. 33.*

(d) If any Master shall misuse his Apprentice, or that he shall have just Cause to complain, or if the Apprentice do not his Duty to his Master, upon Complaint thereof made by the Master, or Apprentice being grieved, to any one Justice of Peace of the County where such Master dwelleth, the said Justice shall take order between them, and for want of Conformity in the Master, may bind him to appear at the next Sessions to be holden in the said County, where the Justices of Peace, or *four of them*, whereof one of them to be of the *Quorum*, if they shall think meet, may discharge the said Apprentice of his Apprenticeship and Indentures; but if there shall be Default in the Apprentice, the said Justices (at their said Sessions) may cause due Correction to be ministered to him. Also it seems, that if the first Justice of Peace, to whom Complaint was made, shall find the Default to be in the Apprentice, then he may send him to the House of Correction, as an idle or disorderly Person, by the Statute of 7 *Jac. cap. 4.* and needeth not to trouble the Sessions with him, *tamen quere.* *Misuser. Ib. 35.*

(a) It seemeth by this Clause, that for ill Usage of the Master towards the Apprentice, upon Complaint by the Apprentice in the Manner directed by the Act, the Justices may discharge the Apprentice from the Master's Service, and not *à converso*, but for Miscarriage of the Apprentice he may be corporally punished: And this I remember came in Question in the King's Bench, when *Hale* was Lord Chief Justice there; and he and the Court seemed to hold accordingly, but said, some Things and Questions were better sleep than be stirred: By which he discovered his Opinion; but nothing more came thereof.

If an Apprentice shall steal or purloin any Thing not delivered him to keep, above the Value of twelve Pence from his Master, the Apprentice, together with those that inticed or persuaded him thereto, or shall receive any of the same Goods, knowing they were purloined, after due Examination and Confession or Proof thereof made before any Justice of Peace, he may send the Apprentice, as also the Inticers, Procurers and Receivers of those Goods, to the common Gaol, &c. But if the Goods be not above the Value *Purloining.*

Value of twelve Pence, the Apprentice, with the Procurers and Receivers, may be sent to the House of Correction by the Justices of Peace, or rather by the Justices at their General Sessions.

Discharges. No Master, Mistres, or Dame, shall put away any Servant before the End of their Term, unless it be for some reasonable Cause, to be allowed by a Justice of Peace, &c. nor shall put away any Servant at the End of the Term without one Quarter's Warning given before two sufficient Witnesses, &c. *ut postea*. And the Proof of the Sufficiency or Insufficiency of the Cause of putting away of a Servant shall be made at the Quarter-Sessions, &c. *ut postea*. Nor may the Servant depart before the End of his Term, nor at the End of his Term without a Quarter's Warning.

Servant put away. (d) Any one Justice of Peace may allow the Cause of putting away a Servant, or of the Departure of a Servant within his Term.

But otherwise it is of an *Apprentice*, who cannot be discharged but by four Justices of Peace at the least, and in open Sessions as aforesaid; or else by the *Agreement of the Master and the Apprentice*, and under his Master's Hand in Writing: And yet one that is retained as an Apprentice, may be seized by his Lord as a Ward, by Reason the Lord's Title is more antient.

Two Justices. Any two Justices of Peace upon Complaint to them made, that any Servant (who is retained according to the Statute of 5 Eliz.) hath departed before the End of this Term, (unless it be for sufficient Cause to be allowed by one Justice of Peace at the least) or at the End of his Term, without one Quarter's Warning given before two Witnesses; or that any Person compellable by the Statute to serve in Husbandry, or in any other Sciences in the said Statute named, upon Request made, hath refused to serve for the Wages appointed (by Proclamation in that County, &c. according to this Statute; or hath promised or covenanted to serve, and doth not according to the Tenor of the same, the said Justices may examine the Matter; and if they shall find such Servant or Person faulty therein, they may commit him to remain without Bail until he shall be bound to the Party offended, to serve and continue with him for the Wages limited according to this Statute, and then to be discharged without paying any Fee to the Gaoler.

And yet any one Justice of Peace may make his Warrant to attach a Servant departed out of Service, or refusing to serve, to be before the Justices at their Sessions, there to answer their Defaults. See *postea* Tit. Warrants.

Who compellable to serve. Now by the Statute 5 Eliz. every Person unmarried, and every other Person (married) being under the Age of thirty Years, having been brought up in any of the Arts, Sciences, or Trades in the Statute mentioned, is compellable to serve in any the said Trades, upon Request made by any Person using the same Trades, except such Persons be lawfully retained with some other; or have 40 s. in Land, &c. or 10 l. in Goods, and so allowed by two Justices of Peace under their Hands and Seals; or have some Farm in Tillage, whereupon to employ themselves.

Ib. §. 7. Also every Person between the Age of twelve Years and threecore (not being lawfully retained according to the Statute, nor being a Gentleman born, nor a Scholar, nor having Means of 40 s. per Annum, or in Goods 10 l. as aforesaid, nor Parents living, having 10 l. yearly in Lands, or 40 l. in Goods, and being their Heir apparent) shall be compellable to serve in Husbandry by the Year, upon Request, &c. See *hic postea*.

(a) As for Servants Wages generally, they are grown so excessive at this Day (in many Countries) that the poor Farmers are thereby much disabled; for Remedy wherein, the Justice of Peace shall do well to take it into better Consideration, and give Remedy.

P. Just. 66. & Lamb. 4. (d) Any two Justices of Peace may imprison without Bail the Master for ten Days, and the Servant, Workman, or Labourer, for twenty-one Days, that shall give, or shall take or receive excessive Wages, *scil.* Any greater Wages, or other Commodity, contrary to the Rates or Wages assessed by the Justices of Peace at their *Easter* General Sessions, and Proclamation thereof made in that County.

Ib. §. 15. (a) Now concerning the Wages of Servants, &c. the Justices of Peace (at every *Easter* Quarter-Sessions) shall do well to call some discreet Persons of that County, and they together respecting the Plenty or Scarcity of the Time, and other necessary Circumstances, to assess the Wages as well of Servants, as of all Artificers, Handicraftsmen, and Labourers, &c. according to the Statute, at their Discretions, and yet in such Manner, as that Servants, &c. may reasonably maintain themselves therewith; and that their Masters should in no wise exceed or give above such Wages by Way of Contract.

But yet Masters may reward a well-deserving Servant, &c. (over and above his Wages) according as he shall deserve; so that 'tis not by Way of Promise or Agreement upon his Retainer. See the Preamble of the Statute 5 *Eliz.* 4. that considering the Advancement of Prices of all Things belonging to Servants and Labourers, if more reasonable Wages and Allowances be not given than is limited by former Statutes, it would be too great a Grief and Burden to the poor hired Servants and Labourers.

Of which Rates Proclamations shall be made, and the Justices may every Year alter and reform the same, as in their Discretions shall seem meet. And every Justice of Peace shall be present at the Taxing such Wages, unless reasonable Cause of his Absence upon Oath, to be allowed by the said Justices, or forfeit 10*l.* Ib. §. 15, 17.

By the Law of God, *Thou shalt not oppress an hired Servant, that is needy and poor; but thou shalt give him his hire speedily, for therewith he sustaineth his Life.* Deut. 24. 14, 15.

Two Justices made an Order for the Defendant to pay 40*s.* Wages generally: Adjudged this shall be intended Wages in Husbandry. 2 *Salk.* 484, 442.

And the hire of Labourer kept back, crieth and entreth into the Ears of the Lord. Jam. 5. 4.

(d) Note, That every Retainer, Promise or Payment of Wages, or other Thing whatsoever, contrary to the true Meaning of this Statute, and every Writing or Bond made for that Purpose, shall be utterly void. Ib. §. 20.

Also any two Justices of Peace may imprison without Bail the Master who shall retain or keep any Servant, Workman, or Labourer, contrary to the Statute, *sc.* In any the Particulars following: 1. Either in giving Wages contrary to the Statute, *ut supra.* 2. Or retaining or hiring a Servant for less Time than *one whole Year*; but this seems to extend to Artificers or Tradesmen, and not to Husbandry. *Quære.* 3. Or that shall retain any Servant that is departed out of Service, without shewing before his Retainer, a Testimonial of his lawful Departure. *Quære.* Retainer for one Year. 5 El. c. 4.

(a) The Arts and Trades mentioned in the Statute 5 *Eliz.* are these following: *Arrow-head-makers, Bakers, Brewers, Butchers, Bowyers, Coppers, Clothiers, Cloth-workers, Cooks, Cutlers, Carriers, Dyers, Ferrers, Felt-makers, Fletchers, Fullers, Glovers, Hat-makers, Hofiers, Millers, Pewterers, Sadlers, Shearmen, Shoe-makers, Smiths, Spurriers, Taylors, Tanners, Tuckers, Turners, and Woollen-cloth Weavers.* The Trades mentioned in the Stat. 5 El.

And yet no Retainer of any Servant for less Time than for *one whole Year* is good, or according to Law. See *Fitz.* 168. *b. Co. L.* 42. *b.*

(d) Any two Justices of Peace of the County where the Offence hereunder mentioned shall be committed, may imprison by the Space of one Year or less, by their Discretion, any such *Servant, Workman, or Labourer*, as shall wilfully make any *Affault or Affray* upon his Master, or upon any other having the Charge or Oversight of him, or of his Work, the said Offence being proved before the said Justices by Confession of the said Servant, &c. or by the Oath of two honest Men. Affault his Master. Ib. §. 21.

(a) And yet upon Complaint thereof made to any one Justice of Peace, he may bind the Offender to his Good Behaviour, and so to the next Sessions, and there he may be convicted and punished according to the Statute.

(d) Any two Justices of Peace may compel any Woman (being of the Age of *twelve Years*, and under *Forty, and unmarried*) and whom they shall think meet to serve, to be retained in Service by the Year, Week, or Day, for such Wages, and in such Sort as they shall think meet. And if such a Woman shall refuse, they may commit her, until she shall be bound to serve as aforesaid. Woman. Ib. §. 24.

For Clothiers which will not pay their Workmen such Wages as shall be assessed by the Justices at their Sessions, see the Title of *Cloth, &c.* Clothiers.

The Certificate which is to be made to the Head Officer of any City or Town Corporate, where a Child is to be bound Apprentice, That the Father and Mother of such Apprentice have Lands of Freehold of the Value of 40*s.* yearly, must be under the Hands and Seals of three Justices of the Peace of the Shire where the Land lieth. Three Justices Certificate. Ib. §. 27.

(a) The Reason of this Law seemeth to be, for that such as are to be bound Apprentices in Corporate Towns, &c. if their Parents be of a competent Livelihood, then their Masters shall not only be the better secured, &c. but such Apprentices also in Likelihood shall have the better Means to set up their Trades after their Time expired. And concerning such whose Parents have not forty Shillings *per Annum*, they are fitter to be bound Apprentices to Husbandry, &c. in the County.

But concerning this Certificate, 'tis not much in Use at this Day; neither is it material, that for Want thereof, the Indentures for the Binding of such an Apprentice shall be void, (for the Justices of Peace cannot be compelled to certify,) &c. but if the Parents have forty Shillings *per Annum*, it sufficeth: And so were the Opinions of Sir *Humphry Winch* and Sir *William Jones*, in the Court of *Common Pleas*, *Termino Pasch.* 21 *Jac. Regis.* But Sir *Henry Hobart* Lord Chief Justice of the *Common Pleas*, did not then deliver his Opinion directly; yet he seemed to me to hold, That the Parents of such an Apprentice ought to have forty Shillings *per Annum*, and also ought to procure such a Certificate from the Justices of Peace.

(d) Here I think it not amiss to set down certain Cases, some of them being by Way of Exposition of this Statute 5 *Eliz. cap. 4.* And other some at the Common Law, or grounded upon former Statutes; yet such as may give Light and Help to our Justices of Peace in this Business.

Trades, what
lawful.

Co. 11. 53.

Co. 11. 86.

First, By the *Common Law*, no Man may be prohibited to work in any *lawful Trade*, for the Law abhorreth Idleness, as the Mother of all Evil.

A Man cannot be restrained to use the *Trade of making Dice, Cards, Bowls*, or the like, (except it be by Parliament) for all *Trades*, which do avoid Idleness, and exercise Men in Labour for the Maintenance of them and their Families, and to increase their Substance, and to serve the King, when Need shall be, are profitable for the Commonwealth; and therefore the Restraining of them is against the Law, &c.

(a) So necessary are Trades to a Kingdom, That if a Man be bound not to use a Trade that he hath been brought up in, that Bond is void: But a Man may bind himself not to use a Trade in a particular Place. 3 *Mod.* 128.

Co. 11. 54.

(d) Also by the *Common Law* no Man is prohibited to use *divers Mysteries or Trades* at his Pleasure: And although this was prohibited by the Statute 37 *Ed. 3. cap. 6.* yet at the next Parliament (that Restraint of free Trade being found prejudicial to the Commonwealth) it was enacted, That all Persons should be as free as they were at any Time before the said Statute. Co. 11. 54. See the Statute of 38 *Ed. 3. cap. 2.*

Ibid.

So that without an Act of Parliament, no Man may be restrained, either to work in any lawful Trade, or to use *divers Mysteries or Trades*; therefore Ordinances made to restrain any Person therein are against the Law: And yet Ordinances made for the good Order and Government of Tradesmen, &c. are good. Co. *ibid.*

Apprentice se-
ven Years.

5 El. c. 4.
§. 31.

Co. 11. 54.

(a) None shall use any Art, Mystery, Craft, Trade, or Occupation, except he hath been brought up therein *seven Years as Apprentice.* By 15 *Car. 2. cap. 15.* *Hempdressers*, and Makers of *Cloth of Hemp or Flax, Nets, and Tapestry* are excepted.

(d) And it is lawful for any Person to use privately any Trade (as of a *Cook, Brewer, Baker, or Taylor, &c.*) in his own House, or in the House of any other, for the private Use of the Family, although such Person were never *Apprentice* to the Trade. Co. *ibid.*

(a) If a Man use the Trade of *Tallow-Chandler, Baker, Brewer*, or any other lawful Trade or manual Occupation, for his own Use, or for the Use of his Family, without selling any for Lucre and Gain, he may lawfully do it. Co. 8. 129, 130.

But yet he which useth any Trade, or other *manual Occupation*, for the Use of himself, or of his Family only, (without Selling) cannot retain any Apprentice within the Statute of 5 *Eliz.* Co. 8. 129. But he may hire one to be his Servant, who is skilful in that Trade or Occupation.

Not an Ap-
prentice.

One purchased a *Mill*, and hired a *Miller* to be his Servant, who ground the Grists of his Neighbours, and the Wife of the Owner of the Mill took Money of the Neighbours for their Grist so ground; and for this the Husband (who was Owner of the Mill) was indicted at *Cambridge Summer Assises*, *An. Dom.* 1619. by reason that he was never himself Apprentice to the Trade. It was the Case of *T. P. Yeoman.*

The Intent of this Statute 5 *Eliz. cap. 4.* was, that no Person should take upon them any *Art, Mystery, or Trade, &c.* but such wherein they had *Skill and Knowledge*, according to the Rule, *Quod quisque norit, in hoc se exerccat.* Co. 8. 130.

And therefore none may keep a *Common Brewhouse, Bakehouse, Cook's Shop, &c.* to sell to others, except they have been Apprentice thereto by the Space of seven Years, &c. *ibid.*

Note, That these Words *Mystery, Trade, and Craft*, do all bear one Sense or Signification. See *Plow. 537. b.* Co. 11. 54.

(d) Note next, That this Statute, 5 Eliz. cap. 4. extended not to *Serving Men*, but to *Cromp. 185.*
Servants in Husbandry, and *Handicrafts*: And yet where the Words of any Statute be
Servant in general, there it seems to extend to all.

(a) Any Employment which requireth no extraordinary Skill to exercise is not within this
 Statute; and it hath been adjudged and affirmed in a Writ of Error, that a Pippinmonger
 is not within this Statute, for it requireth no Skill to use it; so *Ploughing* or *Digging*
 is not within it; for in those Trades Strength is more required than Skill. *Quære, Of*
Upholsters. Roll's 2d Part. Rep. p. 10. *The King against Tollin.*

Every one bound an Apprentice according to that Statute, although under Age, yet is *Apprentice be-*
 compellable to serve his Time out, as if he were of Age when he was bound, 5 Eliz. 4. *ing an Infant.*
 But that is to be understood of a Compulsion, by the Means prescribed by that Statute;
 for the *Covenant* is not good, so as to inable the Master to bring an Action upon it, as
 was resolved, *H. 5 Car. 1. Cro. p. 129. Gilbert vers. Fletcher.*

(d) An Apprentice must be retained by *Indenture*, and by the Name of an Apprentice *Who be compell-*
 expressly; or else he is no Apprentice, though he be bound. *able to serve.*

Who are compellable to serve, see in this Title before and after.

Every Justice of Peace may command vagrant Persons to Prison, if they will not *Crom. 185.*
 serve. *P. 15.*

Every Person who hath not sufficient Lands to occupy, or live upon, nor other Art, *Fitz. 168. b.*
 is compellable to serve. *Fitz. 178. a.*

If an Infant, Man or Woman, of twelve Years of Age, or Gentleman, Chaplain, or *168. 1.*
 other Person, who is not compellable to serve; yet if they shall make a *Covenant* to *Fitz. 167. d. e.*
 serve in Husbandry, they shall be bound by their *Covenant*, and are punishable, if they *Br. Ley 67.*
 then shall depart, &c. *P. 3. 14.*

Yet by the Common Law such a *Covenant* or *Retainer* of an Infant under twelve *Infant.*
 Years of Age was void, they neither having Ability of Body nor Years to consent: For an *7 H. 4. 5.*
 Infant (by the Common Law) is not of Age to bind itself by *Covenant, ante annos nu-* *2 H. 4. 18.*
biles, which is twelve Years in a Woman, and fourteen Years in a Man Child. *Co. 7.*
43. & 9. 72. Neither before that Age are they accounted *Potens in corpore*, which are *Br. 19, 20.*
 the Words used in the Statute 23 *Ed. 3.* though these Words are now left out of the
 Statute of 5 *El.* and thereupon *Markbam* in 21 *H. 6.* and *Brooke* abridging that Case, *21 H. 6. 32.*
 seem to hold fourteen Years to be the Age for *Retainer* of an Infant, but there the Case *Br. 30.*
 was of a Man Child that was retained.

But now by the Statute of 5 *Eliz. cap. 4.* any Person above the Age of ten Years, by
 their own *Consent and Agreement*, may by *Indenture* be bound as an *Apprentice to Hus-*
bandry, or any other Trade or Art.

Also some of twelve Years of Age by the same Statute, are compellable by the Justice
 to serve in Husbandry: So also it seemeth of other Trades, Arts, or Occupations.

Such Children, whose Parents are not able to maintain them, though they be under
 Twelve, may be bound Apprentices by the Overseers of the Poor, with the Assent of any
 two Justices of Peace, by the Statute of 43 *Eliz. cap. 2.* See *postea* Tit. *Poor.*

(a) All Persons to whom the Overseers of the Poor shall, according to *Stat. 43 Eliz. 1 Jac. 1. c. 25.*
cap. 2. bind any Children Apprentices, may keep them as Apprentices. *§. 23. re enacted by 21 Jac.*

(d) If a Woman who is a Servant, shall marry, yet she must serve out her Time, and *1. c. 28. §. 1.*
 her Husband cannot take her out of her Master's Service. *Married Per-*

(a) A married Man and his Wife do bind themselves to serve, they shall be compelled *sons.*
 to serve according to their *Covenant* or *Agreement.* *Fitz. 168.* *2 H. 4. f. 13.*

One under the Age of thirty Years, and brought up in Husbandry; or a Maid-servant
 brought up in any of the Trades mentioned in the Statute of 5 *Eliz. 4.* and not inabled
 to live (according to that Statute) at his or her own Hands, such Persons living out of
 Service; and not having visible Means of their own to maintain themselves without their
 Labour, and refusing to serve as an hired Servant by the Year, may be bound over to the
 next Sessions, or Assises, and to be of Good Behaviour in the mean Time; or may be
 sent to the House of Correction. *Dyer 17.*

But a Man that holdeth Land of his Lord, to do certain Days Works yearly shall not
 be compelled to serve. *40 E. 3. 39. Cromp. 185.*

(d) If a Man who is not able nor sufficient to keep a Servant, shall retain one, such *Fitz. 168. b.*
Retainer is void.

(a) If a Man retaineth a Labourer or Servant, to serve him according to the Statute, tho' *What Retain-*
 no Wages be spoken of upon the *Retainer*, yet 'tis good, and they shall have such Wa- *er is good.*

ges as are assessed and appointed by Proclamation, for that Wages are certain. See to this Purpose the Book 3 *H. 6. fol. 23.*

If a Man retaineth another, except the Retainer be according to the Statute, 'tis void; without it be by Indenture, and then being by Deed, he is bound by his *Covenant*. See *Fitz. N. B. fol. 168.*

If a Man retaineth upon Condition, 'tis a good Retainer. See 11 *H. 4. 42.*

A Man retaineth a Servant to serve him generally, not expressing in what Office, or in what Business, (as to serve him in Husbandry or in the Office of a *Book, Butler, Horse-keeper, &c.*) yet such Retainer is good. 21 *H. 6. 9. Br. Labor 29.*

A Man is retained to serve during his Life, 'tis a good Retainer. *Br. 44. 2 H. 4. fol. 15.* And so for three Years or more. *Fitz. 168.*

A Man is retained for one Year, to serve at any Time when he shall be thereto required; this is no good Retainer. See 23 *H. 6. 30. Br. 31.*

Fitz. 169. h. P. 1. C. L. 42. b. (d) Retainer of a Servant generally, without expressing *any certain Term*, shall be for one Year (in Construction of Law) for that Retainer is according to Law. And this is now by 5 *Eliz. cap. 4.* made void, unless it be for a Year, to certain Trades therein named.

Fitz. 169. f. A. retaineth a Servant for forty Days, and after B. retaineth the same Servant for one Year; the first Retainer by A. is become void. *Br. 51. See 11 H. 6. 1. Br. 46.*

Departure. Fitz. 168. If a Servant, who is retained, shall depart out of his Service, and wander, he may be compelled to serve another Man; but yet the first Master may take him again. But it is safe to get the Consent of his first Master; for now by the Statute, 5 *Eliz. cap. 4.* the Master retaining a Servant that is departed out of Service, without shewing (before his Retainer) a Testimonial, shall forfeit five Pounds.

§ 11. (e) A Man that retaineth a Servant, ought to take Notice of every former Retainer within the same County; otherwise it is of a Retainer in another County. 17 *E. 4. fol. 7. Br. Notice 20.*

Fitz. 168. b. Br. 7, 29, 33. Dr. St. 149. (d) And yet Mr. *Fitzb.* Opinion was, that if one retaineth another Man's Servant (generally) not knowing that he was another Man's hired Servant, he was not punishable, except he should detain him after Notice thereof, but now the Master may and must take Notice whether he hath a Testimonial or no.

Departure of a Servant. Fitz. 168. d. Fitz. 143, 1. Flo. 259. If one taketh an *Infant*, or other Servant out of another Man's Service, this is punishable, though the Infant or Servant was not retained; but if an Infant, being retained as an Apprentice or Servant, fall to be a Ward, the Lord may take him from his Master, for the Lord's Title is more ancient; yet here the Lord ought first to give Notice thereof to his Master. 50 *E. 3. 22. Br. Labor 17. See Br. Notice 24.*

§ El. c. 4. § 47. (a) If a Servant or Apprentice depart into another County, the Justices of Peace may issue out a *Capias* against him into the County or Place whither he is fled; and being taken thereon, shall be imprisoned till he give Surety to serve as he ought.

Testimonial. Ib. § 11. If a Servant depart, and be retained without a Testimonial, he shall be imprisoned until he procure it; and if he procure it not, within twenty Days, he shall be used as a Vagabond; and the Person that Retains him without such Testimonial shewed, shall forfeit five Pounds. And if any Person be taken with a counterfeit Testimonial, he shall be whipped as a Vagabond.

Note, That by the Retainer, the Servant is in Service presently by Law, although he cometh not into his Master's Service indeed. 41 *E. 3. 20. 46 E. 3. 4. 47 E. 3. 14 Br. 9. 11.*

Fitz. 168. (d) If a Servant depart from his Master, he may take him again, and keep him whether he will, or no. See the Title *Surety for the Peace.* (a) And the Constable may take and bring such Servant to his Master again. *Fitz. Labor 56.*

Task Work. § El. c. 4. § 13. Any Artificer or Labourer that shall take any Piece of Work *in Great, in Task, or in Gross*, or that shall take on him to make or finish such Work, shall not depart from the same (unless it be for Non-payment of his Wages, or Hire, or otherwise taken to serve the King, or for other lawful Cause) without License, upon Pain of Imprisonment for one Month without Bail, and five Pounds; for which the Party may have his Action and Costs.

Putting away a Servant, vide antea. Ib. § 8. 16 H. 6. 30. Br. 27. (d) The Master cannot discharge his Servant, during his Term, &c. without the *Agreement of his Servant*. And now by the Statute 5 *El. 4.* it must be for some reasonable Cause to be allowed by one Justice, at least, &c. otherwise the Master shall forfeit forty Shillings. (a) *Tamen quare.* For where the Departure or putting away the Servant, is by the joint Consent of both, 'tis not within the Statute of 5 *Eliz.* neither is the Allowance of the Justice of Peace requisite therein.

(d) Before 5 *El. cap. 4.* the Master might have discharged his Servant by Word; but an *Apprentice* cannot be discharged, except it be by *Writing*; for that an *Apprentice* cannot be but by *Writing*. 6 E. 4. 2.
2 E. 6. 35.
Br. 30, 38.

If a Servant shall be put away by his Master, he shall have his *Wages* for the Time he served. And yet in this Case, if the Servant agree thereto, the Servant shall have no Action to recover any Part of his Wages, but must crave the Help of the Justice of Peace herein. But if such Servant be within Age, it seemeth such Agreement shall not prejudice the Servant. 6 E. 4. 33.
Br. 30, 38.
Br. 48.
10 H. 6. 5.

But if a Servant of his own Accord shall depart from his Master before his Time expired, he shall lose all his Wages.

(a) If a Servant be retained according to the Statute, and the Master dieth, his Executors shall be chargeable to pay such Servant his Wages; otherwise it is where the Retainer was not according to the Statute, except it were by Indenture. See 2 *H. 4. 15.* *Br. Labor* 49. and *Fitz. Nat. Br. 168. f.* Executor.
10 Ed. 4. 2.
49 H. 6. 19.
Br. 40.
Appr. 26.

An Infant of five Years of Age, or other Person which is not *Potens in corpore*; yet if they shall be retained, and shall serve indeed, their Master must pay them their Wages. See 38 *H. 4. 22.* *Br. Labor* 46. and *Ley Gager* 67. Infant.

If a Servant retained for a Year, happen within the Time of his Service to fall sick, or to be hurt or lamed, or otherwise to become *Non potens in corpore*, by the Act of God, or in doing his Master's Business; yet the Master must not therefore put such Servant away, nor abate any Part of his Wages for such Time. Sickness.

If a Servant shall refuse to do his Service, that is a Departure in Law, although he stay still with his Master. 3 H. 6. 37.

If the Master shall detain from his Servant his *Wages, Meat* or *Drink*; this is a good Cause of Departure: But yet this Cause is now by the Statute of 5 *Eliz.* to be allowed of by the Justices of Peace, before the Servant may lawfully or safely depart. Fitz. 1. 68.
Br. 51.
P. 6.

So if the Master shall *licenſe* his Servant to depart, or if the Master, or Wife of the Master shall *beat the Servant*; these were good Causes for the Servant to depart, before the Statute 5 *Eliz. 4.* But now the Allowance of the Justice of Peace, is requisite as aforeſaid. And yet Note, That the Master by Law is allowed with Moderation to chastise his Servant or *Apprentice*. See 33 *H. 8. 12.* and in the Title, *Surety for the Peace*. Fitz. 169.
Br. 51.

But now that by the Statute of 5 *Eliz.* the Causes of putting away and departing of Servants, are referred to the Consideration and Allowance of the Justices of Peace: It becometh them to have good Care, lest by their giving too much way therein, either to the Master or Servant, many, which might by due ordering have proved good Servants, turn Rogues and Vagabonds.

(a) Now for the better rating of Servants Wages, and for the better Placing, Bestowing, Settling, and Ordering not only of Servants, but also of all such idle People (Men and Women) as being fit and able to labour and serve, do nevertheless refuse to labour, or seek to get themselves Services, or (rather living idle at home with their Parents) perhaps cannot get themselves any Services, the Statute made 5 *Eliz. cap. 4. sect. 48.* hath enabled the High Constable of Hundreds in every Shire, to hold, keep and continue their Petit or Statute Sessions in all Shires wherein such Sessions have been used to be kept, and after the ancient Manner: And as to these Sessions, both Householders, Servants, and others fit for Service, do or ought to come; so if one or two of the next Justices of Peace in every Division, would take the Pains to be there also to assist the High Constables, it would both add Force to their Proceedings, as well for the Placing of Servants, as also for Assessing the Wages: And also for the preventing many other the Abuses and Disorders both in Masters and Servants. Wages.
Constables Sessions.

Justices of Peace shall meet twice in the Year to inquire of the Breaches of the Statute of 5 *Eliz. 4.* And shall have five Shillings *per Diem* for their Wages. 5 El. c. 4.
§. 38.

A Moiety of all Forfeitures to the King, the other Moiety to the Informer. And the Justices may hear and determine the Offence, as well by Indictment and Information, as Action of Debt or Bill; and may make Process according to Law; and in *Michaelmas* Term shall certify the *Estreats*. But in Cities and Corporate Towns, all Forfeitures shall be levied to the Use of the same City, &c. as other Forfeitures have been. Ib. §. 39.
Ib. §. 45.

By the Statute 5 *Eliz.* one Justice may reconcile any Difference between the Master and his *Apprentice* if he can, and if he cannot, and the Fault be in the Master, he may bind him over to the *Quarter-Sessions*, and then four Justices under their Hands and Seals may discharge the *Apprentice*; and if the Fault be in him, then to send him to the Apprentices to Trades.
5 Eliz. c. 4.
§. 35.

House of Correction, if he will not give Security to appear at the next Sessions; and if he doth, then four Justices may make such Order as they shall think just.

But the Master and Apprentice may, by Agreement between themselves, leave each other; and if so, then the Master may give Leave under his Hand for the Apprentice to depart; and then one Justice out of Sessions may discharge him, allowing the Cause of his Departure.

Mod. Ca. 70. Where the Master gives Leave under his Hand for his Apprentice to depart, he cannot afterwards recal it: Therefore where an Action of Covenant was brought by the Master, for that the Apprentice left his Service at such a Time, the Defendant may justify by Virtue of a *Licence* from the Plaintiff at such a Time; and at the Trial the Master shall not give Evidence of his Apprentice leaving him at any other Time, because the Time is not transitory, as in an Action of Trespass, but very material upon such a Declaration.

2 Salk. 471. A *Mountebank* took an Apprentice in *Yorkshire* where he had a Stage, and covenanted in the Indenture to teach him the Art of Surgery; afterwards being in *Middlesex*, the Apprentice complained to the Justices, that his Master did not teach him the said Art, and obtained an Order to be discharged, but it was quashed: 'Tis true, the Words in the Statute 5 *Eliz.* which relate to the *Service* of an Apprentice, are very General, *viz. Arts and Sciences*, under which Words a *Surgeon* may be comprehended; but the other Words, which relate to the *discharging Apprentices*, extend only to the *Trades* mentioned in that Statute, but neither a *Surgeon* or *Mountebank* are therein mentioned.

Apprentices to Trades.

After one Justice hath endeavoured to compose the Matter between the Master and his Apprentice, four Justices, upon the Appearance of the Master, may discharge the Apprentice; such an Order was made, but it did not set forth that the Master appeared, which is required by the Statute; but adjudged that the Statute must have a reasonable Construction; for admitting the Master run away, yet the Apprentice shall be discharged: But in the principal Case the Master was a *Collar-Maker*, which is not a Trade mentioned in that Part of the Statute which relates to the *discharging Apprentices*.

1 Rol. Rep. 1.
2 Bull. 186,
187. Sid. 361.
1 Lev. 243.
It was the Opinion of my Lord *Coke*, that an *Upholster* is not a Trade within the Statute, but the later Opinions are otherwise.

Noy 133.

Information against the Defendant for exercising the Trade of a *Dyer*, not having served seven Years Apprenticeship to that Trade; it appeared at the Trial that the Defendant was a *Felt-maker* and *dyed Hats*, which being Part of his Trade, he was acquitted.

Raim. 385.

Indictment against the Defendant for using the Trade of a *Barber*, and against another for using the Trade of a *Salesman*, not having serv'd an Apprenticeship for seven Years: Adjudged that both these Trades are within the Statute; this was upon a Demurrer to the Indictment.

Indictment against the Defendant for exercising the Trade of a *Merchant-Taylor* is not within the Statute, because not used here before that Statute 5 *Eliz.* was made, for which Reason it was quashed.

2 Cro. 178.

A *Brewer* is a Trade within the Statute, so adjudged upon a Writ of Error.

8 Red. 129.

1 Sand. 311.

Sid. 427.

S. P.

Indictment against the Defendant for exercising the Trade of a *Woollen-Draper*, who pleaded that he was a Freeman of *London*; and upon Demurrer to this Plea there was Judgment against him.

Of Indentures of Apprenticeship, and Covenants therein.

* Yet neither at Common Law, nor by any Words of the Stat. 5 *El.* a Covenant or Obligation of an Infant for his Apprenticeship shall bind him. Cro. Car. 179. † 1 Lutw. 474.

An *Infant* may bind himself Apprentice, *Cro. Car.* 179. *Hutt.* 63. and by the Statute 5 *Eliz. cap.* 4. *par.* 43. he shall be bound by his Indenture notwithstanding his Non-age. * Owners of Ships or Vessels, or any Householder using the *Fishing Trade*, may take Apprentices for 10 *Years* or under; but this must be by Indenture *inrolled* in the Town Corporate where the Apprentice lives; or if he doth not live in such Towns then in the next Corporation: † Therefore where a *Mariner* took an Apprentice by Indenture, with a Bond for Performance of Covenants, and after he ran away, the Bond was put in Suit, and the Defendant pleaded this Statute, and that the Indenture was not *inrolled*, &c. the Court inclined against the Plaintiff.

2 Roll. Rep. 305.

The Indentures of an Apprentice in *London* must be *inrolled* within a Year, &c. and if the Default is in the Master, then the Apprentice may sue them out, and shall be discharged;

charged; but if the Fault is in the Apprentice for not coming before the *Chamberlain*, he shall not be discharged.

A Bond given by an Apprentice to deliver up a just and true Account, is good, because 'tis for a collateral Matter, and not within the Words of the Statute 5 *Eliz. cap. 4.* which makes all Covenants and Bargains, for having, taking or keeping an Apprentice, void. 3 Bull. 179.

An Order of two Justices confirmed at Sessions for putting a poor Boy Apprentice in Husbandry was quashed, because by the Statute he is to be put out by the Churchwardens and Overseers of the Poor, with the Approbation of two Justices; and the Churchwardens were not named in the original Order. Poor Apprentices in Husbandry. 3 Mod. 269.

The *Churchwardens*, &c. have Power to place out poor Children, therefore they are proper Judges of Persons who are fit to be their Masters; and those are all Persons who by their Profession or Manner of Living have Occasion to keep Servants: And it was usual formerly, that if a Master refused to take such Apprentice, he was bound over to the Assizes, &c. but now by the * Statute, upon the Oath of one Churchwarden, before two Justices, that the Master refused, he is to forfeit 10 *l.* to be levied by Virtue of a Warrant of those Justices, to the Use of the Poor, &c. but an Appeal lies to the Sessions, whose Order is final. * 8 & 9 W. c. 30.

Therefore where a poor Girl was put out to a *Merchant* by the Order of two Justices, who appealed, that Order was discharged, because the Sessions did not think it proper to place out such a Girl to a Merchant; and these Orders being removed into *B. R.* the Court confirmed the Order of Sessions, because an Appeal being given to them from the Order of the two Justices, they are now the proper Court to determine who is fit to receive, or not to receive Apprentices. 2 Salk. 241.

It has been held that there is no express Authority given by any Law to send a bad Apprentice to the *House of Correction*, nor to discharge him from his Master, if the Fault is in him (the Apprentice), as there is, if the Fault is in the Master; but the sending a bad Apprentice to the House of Correction, seems to be warranted by the Statute 7 *Jac. 1. cap. 4.* made for the erecting such Houses to set idle People to work, which is rather an Enlargement than a Restraint of the Power of the Justices, for they cannot punish a bad Master; 'tis true, they may discharge the Apprentice from him, but they may either punish or discharge a bad Apprentice; and the Sessions have originally discharged many bad Apprentices, without any previous Application to one Justice.

An Apprentice being chargeable to a Parish, and his Master being dead, two Justices made an Order to send him to the *Administrator*, charging him to provide for him; and upon an Appeal that Order was confirmed, and both the said Orders being removed into *B. R.* it was objected that the Power of the Justices extended only to the Master, and not to his *Administrator*; for the Justices cannot try whether the Administrator hath Assets or not, neither can they send the Apprentice to the Administrator, if he lives in another County; and if the Administrator should happen afterwards to be poor himself, the Parish must be charged with this Apprentice, if sent to him by such Order: 'Tis true, if there were Covenants in this Indenture to oblige the Administrator, it might be otherwise, but there being no such, the Order was quashed. Show. Rep. 105.

Adjudged that the Master * assigning, and the Apprentice himself consenting, will not make him an Apprentice to the *Assignee* within the Statute 5 *Eliz. cap. 4.* * But by the Custom of London he may be turned over to another.

A *Turkey Merchant* trading in Cloth thither, employed Cloathworkers in his House who had been Apprentices to that Trade for seven Years, and he provided Materials for them to make Cloth, and constantly paid their Wages every Week, but was never Apprentice to that Trade; the Chief Justice *Holt*, and two more Judges against the Opinion of the fourth, held this was Exercising a Trade within the Statute: 'Tis true, the private Exercising a Trade is not within that Law, but where 'tis used for Profit and Gain, and not confined to a particular Family, that is an Exercising a Trade within the Statute. What shall be exercising a Trade. 3 Mod. 315.

The Defendant was found Guilty upon an *Indictment* for enticing an Apprentice to leave his Master's Service; but the Judgment was set aside, because this is a private Injury, for which an Indictment will not lie, but an Action of the Case, *per quod servitium amisit*. Enticing Apprentices.

'Tis true, an Indictment will lie for enticing a Servant or Apprentice to *embezel* his Master's Goods, but a Conviction for that Offence was set aside, because it was not set forth in the Indictment that the Apprentice did *embezel* any of the Goods, for there must be some Fact done in Pursuance of the Enticing. Mod. Ca. 98.

Felony in Servants to go away with their Masters Goods. By the Statute 21 H. 8. 'tis Felony in a Servant to go away with his Master's Goods, to the Value of 40 s. with an *Intention to imbezil, or to steal them*; this Statute extends only to Servants above 18 Years old, and not to *Apprentices*.

21 H. 8. c. 7. But in such Case the Goods must be delivered to him to keep by the actual Delivery of the Master; therefore if the Master delivers to him a Bond to keep, and the Servant afterwards receives the Money, this is not Felony, because he did not receive the Money by the actual Delivery of the Master.

3 Inst. 105. The Law is the same if the Master delivers Cattle to his Servant to look after, and he sells them, &c. and runneth away with the Money; this is not Felony, for he had not the Money by the Delivery of the Master.

12 Ann. c. 7. But now by a late Statute, 'tis Felony in a Servant to imbezil or make away his Master's Goods above the Value of 40 s. and this without Benefit of Clergy; but this Statute doth not extend to Apprentices under the Age of fifteen Years.

Salk. 68. Adjudged that what an Apprentice gains is for the Use of his Master, tho' he is only an Apprentice *de facto*, and not actually bound by any Writing.

Journeyman Taylors. All Contracts by or between any Persons who shall exercise the Art of a Taylor, or Journeyman Taylor, within the Bills of Mortality, for advancing their Wages, or for lessening their usual Hours of Work, are declared void; and if they enter into, or knowingly are concerned in any such Contract, the Offender being convicted thereof, upon the Oath of one Witness before two Justices, they may commit him to the House of Correction, there to be kept at hard Labour not exceeding two Months, or to the common Gaol, as they shall see Cause, there to remain, without Bail, for two Months.

The Information must be exhibited, or the Prosecution must be within three Months after the Offence.

Ib. §. 2. * *The Words of the Statute are,* One Penny Halfpenny a Day for Breakfast. The Hours of Working shall be from Six in the Morning till Eight at Night, except that there shall be allowed Half an Hour for Breakfast, * and an Hour for Dinner; and the Wages shall be from the 25th of March till the 24th of June 2 s. per Diem, and for the rest of the Year 1 s. 8 d.

Ib. §. 4. Two Justices, upon Complaint, &c. for Wages, may summon the Plaintiff offending, &c. and by their Warrant may levy it by Distress, &c. and for Want thereof may commit, &c. to the Common Gaol without Bail, till he shall pay.

Ib. §. 6. Journeyman Taylors within the Limits aforesaid being retained to work, and departing before the End of the Term for which they are retained, or before the Work is finished; or who shall refuse to work after Request by any Master Taylor, for the Wages and Hours before mentioned (without some reasonable Cause to be allowed by two Justices) and being lawfully convicted thereof, shall be sent to the House of Correction, there to be kept to hard Labour for any Time not exceeding two Months.

Ib. §. 7. A Taylor, or any Person professing that Trade, giving greater Wages than as aforesaid, and being lawfully convicted, as aforesaid, of the said Offence, shall forfeit 5 l. one Moiety to the Informer, the other to the Poor, &c. And the Servant or Journeyman taking greater Wages, and being thereof convicted as aforesaid, shall be sent to the House of Correction, there to be kept to hard Labour for any Time not exceeding two Months; all Retainers, Promises or Securities for greater Wages shall be void.

Ib. §. 8. But where an Agreement is made for more Wages, to work before or after the said Hours limited, or to be limited, in such Case more Wages may be paid and received.

Ib. §. 9. An Appeal lies to the next Quarter-Sessions from the Order of the two Justices, giving six Days Notice, whose Determination shall be final, and they may give Costs to either Party.

Shoemakers. Journeyman Shoemaker, or any Person hired as such within the Bills of Mortality, being accused by his Master employing him of having fraudulently purloined, sold, pawned or exchanged any Boots, Shoes, Slippers, Leather cut, Lace, Lasts, or other Materials for making Boots, &c. not being the proper Goods of the Person accused, shall by a Justice of the County where the Offence shall be done, or where the Party accused doth reside, be * summoned, or by Warrant commanded to be brought before him; and on his Appearance, or Default to appear, the Justice may examine the Fact with which the Party is charged, and upon Confession, &c. or Proof on Oath by one Witness, he may convict the Offender, and award the Party griev'd reasonable Damages for his Loss and Charges, which if not immediately paid, then it may be levied by Warrant by Distress and Sale, &c. and for

Want

Want of sufficient Distress, then to cause the Offender to be whipp'd in the Parish where the Offence was committed; and if afterwards he shall be convicted of a second Offence, then to be sent to the House of Correction, there to be kept to hard Labour for any Time not exceeding a Month, nor under 14 Days. *Justice may award Satisfaction to the Party.*

He who buys, receives, or takes in Pawn any Boots, &c. or Materials for making them, not being the proper Goods of the Seller or Pawner; or he who offers to sell or pawn them, shall for every Offence, being convicted thereof in Manner as aforesaid, make Satisfaction within two Days after it shall be awarded, otherwise his Goods shall be subject to a Distress; and for Want of Distress, to the like Punishment as aforesaid. *He who buys or takes Boots, Shoes, &c. at Pawn, shall make Satisfaction.*

Two Justices within the Bills of Mortality, may upon Complaint on Oath, issue out their Warrant to search the Houses of suspected Persons in the Day-time who have bought or taken such Goods at Pawn, and on Refusal may break open the House, &c. opposing such Search forfeits 10*l.* to the Informer suing for it by Action of Debt, in the Courts in *Westminster-Hall* within two Months; and if upon the Search, or the Oath of one Witness, it shall appear that such Person hath the Goods, the Justice shall cause them to be restored, and Satisfaction to be made to the Owner for detaining and getting them; the Party refusing shall be subject to the like Punishment as aforesaid. *Justices may grant Warrants to search, &c.*

Any Person employed by one Shoemaker, and retained by another before he hath finished his Work, being convicted on Oath before one Justice, shall be sent to labour in the House of Correction, not exceeding one Month. *Ib. §. 4.*

There lies an Appeal to the next Sessions, giving eight Days Notice, whose Determination shall be final. *Ib. §. 5.*

C H A P. LIX. (a)

Leather.

NO Person, by himself or other, shall gash or cut the Hide of any Ox, Bull, Steer, or Cow, upon Pain to forfeit twenty Pence for every Hide. *Gashing. 1 Jac. 22. §. 3.*

No Butcher shall water any Hide, but in *June, July, or August*, nor offer to Sale any Hide putrified or rotten, on Pain to forfeit three Shillings and four Pence for every such Hide. *Watering. Ibid.*

No Butcher shall by himself, or any other, use the Trade of a Tanner, while he useth the Trade of a Butcher, upon Pain to forfeit 6*s.* 8*d.* per Diem. *Butcher. Ibid. §. 4.*

No Person shall tan any Leather, nor take any Benefit or Advantage by that Craft, except he have been brought up and instructed therein as an Apprentice, or Covenant, or hired Servant, by seven Years; and except the Wife, and such Person as shall marry the Wife or Daughter to whom he shall leave a Tan-house and Fats; and except such Son or Sons as have used the Trade four Years, upon Pain to lose the Leather, or the just Value thereof. *Who may be a Tanner. Ibid.*

No Person using the Trade of a Tanner shall use any Trade exercised in the Cutting of Leather, upon Pain to forfeit the Leather, or just Value. *Trades. Ibid. §. 6.*

No Person shall buy, contract for, bespeak any rough Hide, or Calve-skin, except such Person as may use the Trade of a Tanner, and shall tan the same; or such Persons as shall tan the same, except salt Hides for Ships, upon Pain to forfeit the Leather, or just Value. *Buying. Ibid. §. 7.*

No Person shall forestal Hides, or buy them, but in Fair or Market, except of the Owner that killed for his own Use, upon Pain to forfeit for every Hide 6*s.* 8*d.* *Forestalling. Ibid.*

No Person may buy, contract for, or bespeak any unwrought Leather, but he that will and shall work out the same into Wares, upon Pain to forfeit the Leather, or Value thereof. *Buying Leather. Ibid. §. 8.*

Upon which Clause a Case was *M. 16 Car. 1. inter Lodge & Holkvel*, where a Currier bought Hides, and curried them with Oil and Tallow, and Things necessary; and after shaved and died them, and sold them to a Shoemaker; and it was adjudged this was an Offence against this Clause of the Statute, and is against the Meaning of 5 & 6 *E. 15, & 27 El. 16, & 1 Jac. cap. 22.* For a Currier may not buy and sell by Wholesale. *Currier. Cro. Car. 588.*

Persons using to convert Leather into Wares, may buy at *Leadenball*, and Sadlers and Girdlers may sell their Necks and Shreds of tanned Leather. *Ib. §. 9. 10*

No Person using Tanning, shall suffer a Hide or Skin to lie until it be over limed. *Lime. Ibid. §. 11.*

- Tanner.* Nor shall put any Hide or Skin in Tanfats, before the Lime be well fokened and wrought out of them.
- Material.* Nor put or use any Stuff about the tanning of Leather, but Ash-Bark, Oak-Bark, Tapwort, Malt, Meal, Lime, Culver-dung, or Hen-dung.
- Parching.* Nor suffer Leather to lie or hang wet until it be frozen.
Nor dry or parch the Leather with Heat of Fire, or the Summer Sun.
Nor shall tan a putrefied or rotten Hide.
- Woozes.* Nor suffer the Hides for outer Sole-Seather to lie in the Woozes any less than twelve Months.
Nor the Hides for upper Leather, to lie in the Woozes less than nine Months.
- Forfeits.* Nor shall negligently work the Hides in the Woozes, but shall renew and strengthen their Woozes as often as is requisite, upon Pain to forfeit every Hide of Ox, Steer, Bull, or Cow, otherwise wrought and put to Sale, or the Value.
- Raising with Mixtures.* No Persons shall raise with any Mixtures any Hide for Backs, Bend Leather, Clouting Leather, or other Sole-Leather, except the Hide be fit for that Use, for State, Largeness, or Growth, upon Pain to forfeit it.
- Searching.* None shall put to Sale any tanned Leather, red, and unwrought, before it be searched and sealed, in some open Fair or Market; nor until it be searched and sealed according to that Statute, upon Pain to forfeit for every Hide or Piece of Leather 6 s. 8 d. And for every Dozen of Calves Skins, and Sheeps Skins, 3 s. 4 d. and of the same Hide, Skins, and Leather, or the Value. But this Clause touching Search and Sealing of such Skins, is repealed by 4 Jac. 1. cap. 6. so as the same be made into Wares in England.
- Skins.* If any Tanner put to Sale any Leather, not sufficiently tanned or dried, and the same be found so by the Triers, he shall forfeit the whole Hide, Back, or Skin, if it be wholly defective, or if Part defective, that Part to be cut by the Triers.
- Not well tanned, or dried.* 1 Jac. 1. c. 22. §. 15.
Undue Tanning. No Persons shall set their Fats in Tan-hills, or other Places where the Woozes or Leather may take any unkind Heat.
Nor put any Leather in hot or warm Woozes.
Nor tan any Hide, Calves Skin, or Sheeps Skin, with warm or hot Woozes; or if he do, shall forfeit for every such Offence 10 l. and shall stand in the Pillory three Market Days, in a Market-Town next the Place of the Offence.
- Forestalling.* The Penalty of forestalling of Oaken Bark, is the Forfeiture of such Bark, or the Value.
None using the Trade of a Currier, shall use the Trade of a Butcher, Tanner, Cordwainer, or other Trade using cutting of Leather, upon Pain to forfeit 6 s. 8 d. for every Hide or Skin he shall curry.
- Currier's Place.* No Currier shall curry any Leather in any other than his own House, situate in a Corporate or Market Town.
Nor shall curry any Leather, not sufficiently tanned and dried, after its wet Season: Nor in its wet Season, he shall not use any stale or deceitful Mixture to corrupt or hurt it.
- Materials.* Nor curry any Leather meet for outer Sole-Leather, but with hard Tallow, and of that as much as the Leather will receive.
Nor curry any Leather meet for upper Leather, but with good Stuff, fresh and not salt, thoroughly liquored till it will receive no more.
Nor burn or scald any Hide or Leather in the Currying.
- Gash.* Nor shave any Leather too thin, nor gash or hurt in the Shaving, or by other Means, but shall work it sufficiently in all Respects.
- Forfeits.* Upon Pain to forfeit for every Offence (except in Gashing, or hurting in Shaving) 6 s. 8 d. And the Value of every Hide and Skin so marred, by his evil Workmanship; and for every Offence in Gashing, or hurting by Shaving, double so much to the Party grieved as the Leather shall be impaired by the Judgment of the Wardens of the Curriers, and Wardens of the Company whereof the Party grieved shall be.
- London Cordwainers.* No Cordwainer or other dwelling in London, or within three Miles, using wet Leather, shall put any Leather to be curried, but to one free of the Company of Curriers of London, upon Pain to forfeit the Leather, or the Value, nor use any curried Leather before the same be searched and allowed by the Wardens of the Curriers, or such Persons as they shall assign, and sealed, upon Pain to forfeit for every Hide or Skin 6 s. 8 d. and the Value of such Hide or Skin.
- Ib. §. 26.* Every Currier shall curry Leather, brought to him, within eight Days in Summer, and sixteen Days in Winter, the Party bringing good Stuff for liquoring it, and that in the Presence of the Party bringing it, if he or his Servant will be present, and shall not refuse to curry

curry it, upon Pain of 10*s.* for every Hide or Piece not well and speedily curried, to the Party grieved.

The Wardens of the Curriers, or such as they shall appoint, shall try and seal all *Ib.* §. 27. curried Leather, within a Day after Currying, by any of their Company, and Request; taking a Penny for a Dicker, and a Penny for six Dozen of Calves-skins, or forfeit for every Hide 6*s.* 8*d.*

Cordwainers, &c. shall make no Shoes, Boots, Buskins, Startups, Slippers, or Pantofles of *English* Leather wet curried (other than Deer-skins, Calves-skins, Goat-skins, *Ib.* §. 28. made and dressed like *Spanish* Leather) but of Leather well tanned and curried, or well tanned and well sewed with good Thread well twisted and waxed, and Wax well refined, and Stitches hard drawn with Hand-Leathers, without mixing the over Leather, *i. e.* Part Neat, Part Calve.

Nor put into any Shoes, &c. Leather made of Sheep-skin, Bull-hide, or Horse-hide.

Nor into the Upper Leather of any Shoes, &c. nor into the neather Part of any Boots (the inner Part of the Shoe excepted) any Leather called Wombs, Neck, Shank, Flank, Powle, or Cheek.

Nor put into the utter Sole, any other Leather than the best of Ox, or Steer-hide.

Nor into the inner Sole, any other than Wombs, Neck, Powle or Cheek.

Nor into the Trefwels of any double soled Shoes, other than the Flanks of the Hide.

Nor shall make or put to Sale in any Year, between the last Day of *September* and the twentieth Day of *April*, any Shoes fit for one above four Years old, any Boots, &c. wherein shall be any dry *English* Leather, other than Calve and Goat-Skins dressed like *Spanish* Leather.

Nor shall shew with Intent to put to Sale any Shoes, &c. upon *Sunday*, upon Pain to forfeit for every Pair of Shoes, &c. 3*s.* 4*d.* with the full Value thereof.

The Master and Wardens of the Companies of Cordwainers, Curriers, Girdlers, and *Companies* Sadlers in *London*, upon Pain of 40*l.* shall every Quarter of the Year at the least in *searching.* *London*, and within three Miles thereof, where any Artificers cutting Leather dwell, *Ib.* §. 29. enter, search and seise, if Wares be not made of tanned Leather; and according to that Act, each Company to search those of their own Trade only.

The Coach-makers of *London*, or three Miles from the same, shall be under the Survey *Ib.* §. 30. of the Master and Wardens of the Company of Sadlers.

The Mayor and Alderman, upon Pain of 40*l.* shall yearly appoint eight out of those *London.* four Companies, whereof one shall keep the Seal, to search and seal in *London*, or three *Ib.* §. 31. Miles next it.

All Mayors, Bailiffs, and Head-Officers of all Cities, Boroughs and Towns, Lords of *Searchers.* Liberties, Fairs and Markets, upon Pain of 40*l.* (a Moiety to the King, and the other *Ib.* §. 32. Moiety to the Profecutor) shall chuse and sweare two or more Persons yearly, to search and view Leather, who shall search and have a Mark, and therewith mark Leather that is sufficient; who if they find any Leather not well tanned or curried, or Shoes, Boots, &c. not well made, may seise the same, and retain them until tried by the Triers.

The Lord Mayor of *London* shall within six Days after Seifure choose six; two Cord- *London,* wainers, two Curriers, and two of the better Sort of Tanners, using *Leaden-hall* Market, *Triers.* who shall be no kin to the Owners, who upon Oath shall the second or third Market- *Ib.* §. 33. Day, upon the *Monday* * for Leather, next after the Seifure, in the Afternoon, try * *By 13 &* whether the Leather so seised shall be sufficient or not. *13 Car. 2. c. 7.* *§. 9. the Mar-*

ket for Leather in Leaden-hall in London shall be kept on the Tuesday.

Other Mayors, Bailiffs, Head-Officers, and Lords, with convenient Speed shall elect *Mayors.* six Triers, who upon Oath, upon some Market-Day within fifteen Days after Seifure, *Ib.* §. 34. shall try, &c.

The Lord Mayor, Mayors, &c. not electing Triers, shall for every Default forfeit 5*l.* *Forfeits.* and the Persons elected for Trial of the said Leather, &c. shall proceed without Delay, *Ib.* §. 35. on Pain to forfeit 5*l.*

Four of the Searchers and Sealers of Leather in *London* shall be every Year changed, *Searchers.* and no Person shall continue above two Years in that Office, and shall not be chosen *Ib.* §. 36. again within three Years, upon Pain to forfeit 10*l.* for every Month using that Office.

If any Searcher or Sealer shall refuse with convenient Speed to seal any Leather suffi- *Ib.* §. 37. ciently tanned, wrought and used, or allow that which shall be insufficient, he shall forfeit 40*s.* And if any Searcher shall receive any Bribe, or exact any other Fee than is

by this Statute limited, for the Searching, Sealing and Registering of Leather, he shall forfeit 20 *l.* And if any Person elected to the Office of Searching or Sealing of Leather refuse to execute the said Office, he shall forfeit 10 *l.*

Leaden-hall.
Ib. §. 38.

All Leather to be brought into *London*, or within three Miles, shall be brought to *Leaden-hall* before it be perused, and there searched and registred, paying half Fees for such tanned Leather as shall be bought out of *London*: But it extends not to Leather brought to *Bartholomew* or *Southwark* Fair.

London.
Ibid. §. 39.

No tanned Leather shall be sold in *London* before searched and sealed, upon Pain of Forfeiture thereof, or the full Value.

Opposition.
Ib. §. 40.

If any withstand or deny any Entry and Search to be made in their Houses, or of their Goods made of Leather, or will not suffer a Seifure, he shall forfeit 5 *l.* every Time.

Registry.
Ib. §. 41.

The Searchers and Sealers appointed shall register all Leather bought and sold, with the Names of Parties, Prices, and Particulars, taking of the Seller for every ten Hides, &c. two Pence, and two Pence for every six Dozen of Calves-skins or Sheep-skins.

Ib. §. 42.

None shall sell, exchange, or put away any tanned Leather, nor buy or carry the same out of the Fair before it be registered, upon Pain of Forfeiture of the Value.

London Curriers.
Ib. §. 44.

If any Currier in *London*, or within three Miles of it, curry any Leather insufficiently tanned, or do not curry Leather sufficiently, he shall forfeit the Wares, and the just Value thereof.

London Artificers.

If any Shoemaker, Cordwainer, or Cobbler in *London*, or within three Miles of it, put any tanned Leather in any Shoes, &c. or other Things made of tanned Leather, that is not sufficiently tanned.

Or put in any curried Leather into any Shoes, &c. not sufficiently curried, tanned and sealed.

Or make any Boots, &c. or other Things made of *English* tanned Leather, in other Manner than as above said.

Or if any Shoemaker, Sadler, or Artificer, using, cutting, or working of Leather, make Wares of tanned Leather not sufficiently tanned; or of tanned and curried Leather not sufficiently tanned and curried as aforesaid.

Or do not make their Ware substantially and sufficiently. Every Person so offending shall forfeit the Wares and the Value.

London Market.
Ib. §. 45.

No Person shall in *London*, or within three Miles of it, sell any Wares appertaining to any Artificer, using cutting of Leather, but in open Shop, Fair or Market, upon Pain of forfeiting the Wares sold, and 10 *s.* for every Time.

Ib. §. 46.

All Persons using cutting of Leather in *London*, or within three Miles, shall be under the Search of the Master, &c. as Freemen of *London* be.

Penalty.
Money.

All Penalties of Money (except what is otherwise disposed) shall be divided in three Parts; one Part to the King, another to the Prosecutor, in any Court of Record, a third Part to the City, &c. where, &c.

London.

All Wares of tanned and curried Leather in *London*, or within three Miles, forfeited, &c. to be brought into the *Guildhall* of *London*, and paid one Part to the Seifor, the second Part to the Chamber, and the third Part to the Poor, as the Mayor and Aldermen shall think fit.

All Shoes, &c. and other Things made of Leather, in any Place above three Miles from *London*; if in a City, &c. shall be brought to the Common Hall; if no Hall, to an open Place and prized: One Part to the Poor, and to Works of Charity, the second Part to the City, &c. or Lord, the third Part to the Seifor.

Ib. §. 47.

Forfeited Wares shall not be sold to any that will sell the same again; or the Seller shall forfeit for every Part thereof 3 *s.* 4 *d.*

Leather.

Ib. §. 49.

The Hides and Skins of Ox, Steer, Bull, Cow, Calf, Deer Red and Fallow, Goats and Sheep, being tanned or tawed, and every Salt Hide, shall be reputed Leather.

Judges.

Ib. §. 50.

Justice of Peace, Mayor, &c. and Head-Officers in their Sessions, Leet, or Law-Day, shall hear and determine all these Offences, and by their Discretions examine the Persons suspected.

Dry Currying.

Ib. §. 52.

Dry currying and frizing shall be construed to be dressing and currying after the Manner of *Spanish* Leather; and all Artificers (other than Shoemakers, between the last Day of *September* and the twentieth Day of *April*) may use it as before the making of that Act, so as it be well and sufficiently curried and dressed.

Officers.

Transport.

Ib. §. 54.

Every Controller, Customer, Surveyor, or Collector of Tonnage, Poundage, or their Deputies, or any other Persons hearing or knowing of any Leather to be transported from any Place within his Office, and do not endeavour to seize it; or being transported,

do

do not disclose it within forty Days after their Knowledge or Hearing, in some Court of Record, shall for the first Offence lose 100 l. and for the second his Office.

Every Officer that shall make a false Certificate of the Arrival of any Leather in any Port, Creek or Place, shall forfeit 100 l. Certificate. Ib. §. 55.

The Statute 5 & 6 Edw. 6. cap. 15. sect. 1. which enacts, that no Persons shall buy or ingross tanned Leather, to sell the same again, upon Pain to forfeit the Leather or the Price thereof, was repealed by 1 Mar. Stat. 3. cap. 8. sect. 2. But this Statute of 1 Mar. was repealed, and the Statute 5 & 6 Edw. 6. cap. 15. revived by 1 Eliz. cap. 8. which is repealed by 5 Eliz. cap. 8. and 1 Jac. 1. c. 22. So *Quere* which is in Force, and see *Cro. Car.* 588.

None shall carry or transport, or cause, &c. out of England the Skins or Hides tanned or untanned of any Ox, Steer, Bull, Cow or Calf, otherwise than is by this Act directed. Transportation. 13 & 14 C. 2. c. 7. §. 2.

No such Hide taken from the Body of such Beast in any Island belonging to England, except Ireland, shall be carried out of that Island into any Place but into England, upon Pain to forfeit for every such Offence double the Value thereof. Importing. Ib. §. 3.

Every Person so transporting any Hides or Leather, except Calves-skins and Sheeps-skins dressed in the Wool, and found guilty thereof, shall be disabled to trade in Leather, and for every Offence forfeits 500 l. Penalty of Transportation. Ib. §. 5.

All red tanned Leather made of any Hides or Skins of the Beasts aforesaid, shall be bought only in open Market for Leather, upon Pain for every Offence to forfeit the Leather, or Value thereof, and the Contract to be void. Sale in Market. Ib. §. 4.

All such Leather shall be searched and sealed before it be put to Sale, and upon Sale registred, and a true Entry thereof made by the Buyer and Seller, both to be present; and their Names and Places of Abode to be entred, upon Pain that the Buyer or Seller not doing the same, shall for every such Offence forfeit the Value thereof. Searched. Boots, &c. Ib. §. 6.

Boots, Shoes and Slippers, may be transported.

All Justices of Peace, Mayors, and Chief Officers of Corporations, may as well by Land as by Water search for and seize all Leather and raw Hides, wrought or unwrought, cut or uncut, packed or unpacked, intended to be transported beyond Sea, or into Scotland, except Calves-skins and Sheeps-skins as aforesaid. Searching and Seizing. Ib. §. 7.

Every Tanner who shall shave, cut, and rake their Upper Leather Hides all over, and the Necks of the Backs and Buts, shall forfeit the same; and Searchers and Sealers may search it. Tanners shaving. Ib. §. 8.

The Penalties shall be recovered by Action of Debt, Bill, Plaint or Information (amongst others) in any Court or Courts of Record in the City, Town, County or Place, where the Offence is committed, wherein no Wager, &c. and shall not be removed out of the same; the Moiety to the King, the other Moiety to the Informer. Penalties. Ib. §. 10.

All Exportation and Transportation contrary to the Act, is declared a common Nuisance. Nuisance. Ib. §. 11:

By the Statute 1 Jac. cap. 22. 'tis enacted, That no Man shall buy Leather unwrought, but he who shall make it into Wares: An * Information was brought on this Paragraph against a Currier, for buying and selling Leather tanned and not made into Wares; and it appeared upon the Evidence at the Trial, that he bought Hides tanned, which he shaved, coloured and glazed, and then sold them; and this was adjudged to be an Offence within the Statute, because this Operation was not Making it into Wares. * Jones W. 463.

By the Statute 9 Ann. cap. 11. the aforesaid Act 1 Jac. is enjoined to be observed in every Thing not altered by this Statute. 9 Ann. c. 11.

Now the Alterations made by this last Act relate to raw Hides and Calves-skins, the first must not be *gashed*, under the Penalty of 2 s. 6 d. per Hide, and 1 s. per Calf-skin to the Poor, and to the Seisor or Informer. One Justice may give an Oath to a subordinate

Officer of Duty on Hides who shall receive any Salary in respect of his Office, before he acts, for the faithful Execution thereof.

Shaving such Hides or Skins, by which they are impaired, or the Duty diminished, Forfeiture of the Hides and Skins to the King and the Informer.

Those who dress Hides and make *Fellum*, must give Notice in Writing to a proper Officer of their Names and Places of Abode, and of their *Tankouses*, *Warehouses*, *Yards*, *Mills*, *Pits*, *Fats*, and they must if they change their Tan-yards, &c. Penalty is 50 l. one Third to the King, and two Thirds to the Informer.

10 Ann. c. 26. Several additional Duties are laid on Hides, &c. See both the said Statutes at large, for the Justices may hear and determine Offences against both, by Summoning the Offender and Witnesses on either Side, and examining them on Oath: The Prosecution must be within three Months after the Seizure or Offence, and an Appeal lies to the Quarter-Sessions, and no *Certiorari* shall be allowed, but the Justices may mitigate the Forfeitures, so as the Penalty is not reduced to less than a fourth Part, and so as the Charges of the Prosecution be allowed over and above such Mitigation.

9 Ann. c. 11. §. 47. No Information shall be brought in the Courts of *Westminster* for any of the Offences in 9 Ann. cap. 11. in Cases where such Offences are cognizable by the Justices, &c.

By the said Stat. 9 *Annæ*, one Justice may give an Oath to Tanners and Dressers of Hides, that they did within two Days after the Taking the Hide out of the Liquor, &c. make a true Entry with the proper Officer, of the Number and Quality of the Hides, &c. so taken out to be dried, and that they gave Notice to the proper Officer two Days before the Removal of the Hides.

Ib. §. 17. Owners or Occupiers of Tan-yards refusing a proper Officer to enter, forfeit 10 *l.* to the King and the Informer.

Tanners, &c. using any private Tan-yard, or not giving timely Notice of taking the Hides out of the Liquor, or carrying them away, or concealing, or causing them to be concealed, forfeit 20 *l.* and the Hides, &c. or the Value thereof, &c. to be mitigated, *ut supra*: Prosecution must be within three Months, and an Appeal lies to the next Quarter-Sessions.

Tanners, &c. not paying the Duties with which Hides are charged, forfeit double the Duty; and sending, delivering, or carrying away Hides, &c. before the Duty is paid, forfeit likewise double the Value.

Tanners not keeping just Scales and Weights, or not permitting Hides, &c. to be weighed, or removing them before the Duty is charged and the Skins marked forfeit 50 *l.*

Collar-makers, Bridle-cutters, Glovers, and others who dress Skins in Oil, Allom, Salt or Meal, and make them into Wares, are Tanners and Dressers within this Act.

Officer taking Fee or Reward for any Entry, Permissions, Certificates or Marks, forfeits 5 *l.* to the Party grieved for every Offence.

Ib. §. 36. The Judgment of the Justices at their Quarter-Sessions is final.

There was an Act made 1 *W. & M. cap. 33.* for explaining the Statute 1 *Jac. 1. cap. 22.* Some Doubts having arisen upon the Construction of this Act of *W. & M.* it was farther enacted by 12 *Geo. 2.* That all Persons whatsoever who deal or work in Leather, may freely buy all Sorts of tanned Leather in any Fair or Market, whether curried or uncurried, being first searched and sealed according to Law; and may cut, and sell the same in small Pieces, in their Shops, to any Person whatsoever.

12 Geo. 2. c. 25.

Provided, That this Act shall not extend to give Liberty to any Person to exercise the Shoe-makers Trade; other than Cordwainers or Cobblers.

Nor, to give a Right to any Person to exercise his Trade in any Place, where by Law he cannot now exercise the same.

If any Currier shall not curry any Leather brought or sent to him by a Dealer in Leather, within sixteen Days, between 28 *September* and 25 *March*, and within eight Days the remaining Part of the Year, after the Leather is delivered to him; he shall, upon Conviction before a Justice, by Oath of a credible Witness, forfeit 5 *l.* to be recovered by Distress and Sale, &c. to go Half to the Informer, and Half to the Poor of the Parish.

The Trustees may mitigate Penalties at their Discretion. If any Person think himself aggrieved by the Determination of the Justice, he may appeal to the next Quarter-Sessions, whose Determination shall be final, and not removeable by *Certiorari*.

The two Clauses in the Act 1 *Jac. 1.* which prohibit any Persons dwelling in *London*, or the Liberties thereof, or within three Miles of the City, occupying wet curried Leather in their Business, to put forth such Leather to be curried, but to Freemen of the City; and to put into any made Wares any curried Leather before searched and sealed by the Wardens of the *Curriers* of *London*, shall be repealed.

This Act shall not extend to lessen the Privileges of the said Curriers Company.

C H A P. LX.

London *.

* *The 35 Eliz. c. 6. (inserted by Dalton) enacting that no new Building shall be erected within three Miles of London and Westminster is expired.*
19 Car. 2. c. 3. §. 3.

(a) **N**O Building shall be erected within the City and Liberties, but such as shall be appointed, and according to such Scantlings as are set down in a Table in this Act specified. And if any Person shall build contrary, and be convicted by the Oaths of two Witnesses, before the Lord Mayor, or any Two Justices for the City, the House so irregularly built shall be deemed a common Nufance, and the Builder shall enter into a Recognizance for demolishing the same, or otherwise to amend the same; and in Default of entering into such Recognizance, the Offender shall be committed to Gaol till he have demolished, or otherwise amended the same; or else such irregular House shall be demolished by Order of the Court of Aldermen.

See the Statute at large; as also the 22 Car. 2. cap. 11. For other Matters relating to Building, see the *Appendix*, Tit. *Fire*.

If any Person shall wilfully break or extinguish any Lamps (set up in pursuance of this Act) to light the Streets, or damage the Posts or Furniture thereof, every Person so offending, and convicted by Oath of one Witness before a Justice of Peace for *London*, shall for the first Offence forfeit 40 s. for each Lamp, and for the second Offence 50 s. and for the third Offence 3 l.

9 Geo. 2. c. 20. §. 17.

It shall be lawful for the Lord Mayor, or any two Justices for the City, to hear and determine the Offences punishable by pecuniary Penalties by this Act; and such Justices are required within ten Days after such Offence committed, to summon the Parties and Witnesses, and after Oath of the Facts by one Witness, to issue Warrants for apprehending the Party offending in *London*, and upon Appearance or Contempt of the Party, to proceed to the Examination of the Witness, and to give such Sentence as shall be just. And where the Party shall be convicted, it shall be lawful for such Justices to issue Warrants for levying the Penalties on the Goods of the Offender, and to cause Sale to be made in case they be not redeemed in five Days; and if no Goods of any Person convicted of breaking or extinguishing a Lamp can be found, the Justice before whom he was convicted may commit him to the House of Correction to hard Labour, not exceeding three Months, or until such Penalty be paid.

Ib. §. 22.

The Justices may mitigate Penalties, so as not to remit above one Moiety.

Ib. §. 23.

An Appeal lies to the next Quarter-Sessions.

Ib. §. 24.

One Moiety of the Penalties by this Act, goes to the Informer, the other Moiety to the Alderman of the Ward, to be paid over into the Chamber, as Part of the Fund for maintaining such Lights.

Ib. §. 25.

Actions must be brought within six Months after the Fact, and laid in *London*. Defendants may plead the General Issue, and shall have treble Costs if Judgment be against the Plaintiff.

Ib. §. 26.

The other pecuniary Penalties in the Act, besides the abovementioned are, that Collectors chosen at the Wardmote according to the Act, refusing to serve, forfeit 10 l. and continue liable to be chosen the Year following, *toties quoties*. And a Collector retaining more than 50 l. in his Hands for ten Days, forfeits 5 l. Also if any Collector shall neglect to bring in his Accounts to the Alderman at the Wardmote on *St. Thomas's Day*, he shall forfeit 5 l. and in like Manner 5 l. for every twenty Days.

Ib. §. 9.

Ib. §. 12.

Ib. §. 20.

For Repairing and Enlarging Streets in and about London, see Tit. Private Highways.

C H A P. LXI.

Malt.

One Justice. **T**HE Constables or Bailiff of any Town, where any deceitful Malts shall be made or mingled, to be sold contrary to the Statute 2 *Ed.* 6. may from Time to Time view and search all such Malt, as shall be made or put to Sale within any of their Towns; and if thereupon they shall find any Malt put to Sale, being evil made, or mingled with evil Malt contrary to this Statute; then the said Constable or Bailiff, so finding any such deceitful Malt, with the Advice of any one Justice of Peace, may cause the same to be sold to such Persons, and at such reasonable Prices, as to the Discretion of the same Justice shall seem expedient.

2 *Ed.* 6. c. 10.
§. 4. continued
indef. by 3 *Car.*
1. c. 4.
16 *Car.* 1. c. 4.

(a) These deceitful Malts be of three Sorts, *scil.* such as be not well made, or not well dressed or mixed. As,

1. First, If any Barley-Malt shall be made (in the Months of *June*, *July* and *August*, only excepted) if the same Malt shall not have in the Making thereof (*scil.* in the Fat, Floor, Steeping and Drying thereof) three Weeks at the least; and in the Months of *June*, *July* and *August*, seventeen Days at the least. For under such Times the Malt cannot be well made, nor wholesome for any Man's Body; and Malt not sufficiently dried, cannot be kept long, but will be musty, and full of Wevils.

2. Secondly, If any Malts shall be put to Sale which be not well trodden, rubbed, and well fanned.

3. Thirdly, if any Malts be mingled, *scil.* Malt not well made as aforesaid, or made Mow-burnt, or spired Barley, and mixed with good Malt, and so put to Sale*.

* *The Stat.*
39 *Eliz.* c. 16.

to restrain the excessive Making of Malt, inserted by Dalton, is repealed by 9 & 10 *W.* 3. cap. 22.

Malt damaged
after the Du-
ty paid.

9 *Geo.* 1. c. 3.
§. 35.

Certificate of
the Amount of
the Duty.

Justices may
settle the
Quantum of
the Damage.

Notice must be
given to the
Collector to
what Quarter-
Sessions the
Party will
apply.

Ib. §. 36.

Ib. §. 37.

11 *Geo.* 2. c. 1.
Ib. §. 12.

Ib. §. 15.

If any Quantity of Malt shall be destroyed or damaged by Fire after the *Duties* are paid, or shall be damaged by the Casting away, or any inevitable Accident happening to any Vessel or Barge carrying Malt from Port to Port, or put on board for that Purpose, the Proprietors proving the same by the Oath of one or more credible Witnesses, before the *Justices in Sessions*, and by the Oath of the Maltsters or Owners, that the *Duty was paid*, they may grant a Certificate of the Amount of the Duty, and upon producing the same the Collector of the Duty shall repay the Proprietor so much Money as the Sum certified to be paid for the Duty of the Malt so lost shall amount unto; and where the Malt shall not be totally lost, but damaged only, the Justices, &c. on Proof of the Damage and Payment of the Duty, may settle the *Quantum* of the Damage, and give a Certificate under their Hands and Seals of the Sum by them allowed for such Damage; which Allowance where the Malt is *damaged* only, shall bear Proportion to the whole Duty of the Malt so damaged, as it shall bear to the Value of the Malt before it was damaged; and upon producing such Certificate, the Collector shall repay so much Money as the Sum certified will amount to.

The Person sustaining such Loss, or his Agent, must give Notice thereof in Writing to the Collector of the Division next to the Place where the Quarter-Sessions is held (to which he intends to apply himself for such Allowance) of such Loss and Damages, and his Intentions to apply *six Days* at least before the Sessions, and shall make his Application for Relief within *one Month* after the Loss or Damage happened.

Where the Justices have once ascertained the Damages or Loss, the same shall never be ascertained by any other Justices.

For the 12 *Geo.* 1. cap. 4. and 2 *Geo.* 2. cap. 1. see the *Appendix*, Tit. *Malt*.

Every Distiller, that shall receive any Cyder or Perry into his Custody, shall give Notice in Writing to the proper Officer, forty-eight Hours before he shall begin to put any of the same into any Still to be drawn into low Wines; and if any Distiller neglect to give such Notice; or if any of such Cyder or Perry be made use of by such Distiller in any other Way but in Distillation, he shall forfeit 5 *l.* which Sum shall be levied and mitigated, as any Penalty by any Laws of Excise, or by Action of Debt, &c.

Makers of Malt for Exportation shall keep the whole Quantity of their Corn making into Malt for Exportation of one Steeping, when the same shall be on the Kiln, separate

rate from any former Steeping, until the same shall have been measured by such Maltsters in the Presence of some Officer, on Pain of forfeiting 50 *l*.

Makers of Malt for Exportation, shall give Notice in Writing to some Officer of the Duties, or leave Notice at the next Office of Excise where the Journal is kept, of the Hour when they intend to take the Malt off the Kiln; and after such Malt has been measured, the same shall be carried on Shipboard, or else immediately locked up in some Store-house belonging to such Maltsters, in Presence of the Officer, on Pain of 50 *l*. Ib. §. 16.

If any such Maltster, after any Steeping shall have been locked up, shall open the Locks, or make any Entrance into such Storehouse or other Place, or shall remove any Part of the Partition between any such Storehouse, or any other Place adjoining, or shall remove out of the Storehouse any of the Malt so locked up, without the Consent of, or without having given Notice to some Officer for the said Duties, he shall forfeit 100 *l*. Ib. §. 17.

All Persons that shall become Makers of Malt for Exportation, shall within nine Months after the Beginning to make Use of any such Storehouse, clear out to be exported all Malt that shall have been put into such Place within nine Months after they shall have begun to make Use of such Place, and shall always clear out of such Storehouse to be exported, all Malt that within every nine Months after the last Clearing shall be locked up for Exportation, on Pain of 50 *l*. Ib. §. 19.

All Penalties for any Offences against this Act, shall be levied or mitigated as any Penalty by any of the Laws of Excise, or by Action of Debt, &c. and one Moiety shall be to his Majesty, and the other Moiety to him that shall discover or sue for the same. Ib. §. 20.

See *Manufactures*, 13 *Geo. 2. cap. 21. infra. Chap. 196.*

C H A P. LXII. (a)

Markets and Fairs.

FAIR seemeth to be derived from the Latin, *Ferice, Nundinæ enim semper instar Festi Nuntiant*, saith *Skinner's Lexicon*.

Market seems to be derived from the Latin, *Merces* or *Mercari*, saith *Skinner's Lexicon*. *Privilege.*

Fairs were antiently Places of great Resort and Privilege; for by the Civil Law, *Nundinæ habent publicam securitatem, ut nemo privati debiti causa ibidem possit interpellari, non delicti*; which must be understood of Debts and Offences preceding the Fair; for as to Contracts there made the Law hath provided a Court of *Piepowders*, which is incident to a Fair; and is a Court of Record for the speedy determining of Differences there arising upon Contracts.

Fairs are accounted Things of Franchise and Privilege, as well as of Profit; and whether they be held and claimed by Charter of the King, or by Prescription, which supposes a former Charter, they ought to be holden for no longer Time, than such Grant or Use will warrant: And after such Time, what is done there, is not warranted or justifiable, nor amounts to more than a private Transaction, and the Sheriff ought to make Proclamation, That those that have Fairs keep them no longer than they ought to do; and every Lord of a Fair, shall at the Beginning thereof make Proclamation how long the same is to continue, upon Pain to be grievously amerced to the King: And if they hold them longer than they ought, they shall be seized into the King's Hands, until they make Fine for the Offence; and if a Merchant sell Ware after the Time the Fair ought to end, he shall forfeit to the King double the Value of what is sold, and the Prosecutor shall have the fourth Part. *Time of Continuance.*

Fairs and Markets on the principal Feasts, *viz. Ascension-day, Corpus Christi-day, Whitsunday, Trinity Sunday*, and all other Sundays, the *Assumption* of our Lady, *All-Saints* and *Good-Friday*, shall cease from all shewing of Goods and Merchandises, necessary Victuals only excepted, upon Pain of Forfeiture of their Goods shewed, the four *Sundays* in Harvest excepted, and the Fairs or Markets which are granted to be holden on those Festivals, may be holden within three Days, before or after. *Festival.*

No Fairs or Markets shall be kept in Church-yards, for the Honour of the Church. *Place.*

Buying and Selling again in the same Fair or Market of Cattle forbidden. See 3 & 4 *Cattle*, *Ed. 6. 19. Tit. Cattle.* *13 E. 1. c. 5. Winch.*

Horses. Touching Sale of Horses in Fairs and Markets, and the Duty of the Lord or Owner of the Fair thereabouts, see 1 *P. & M.* 7. and Tit. *Horses*, and 31 *El.* 12.

Country. That such as live in the Country, shall not sell divers Merchandises there named in Towns, except in open Fairs. See 1 & 2 *P. & M.* 7. But the Justice of Peace hath nothing to do therein.

For the Office of Clerk of the Market, see afterwards Tit. *Weights and Measures.*

Rules. And because Justices of Peace have often to do with Property, and how far it may be devested by Sale in a Market-Overt, it will be necessary to add some few Cases touching the same.

London. 1. That in *London*, every Day in the Week is a Market-day, except Sunday, and a Sale *bona fide* in a Shop therein any Day of the Week, is good.

2. The Sale in such a Shop must be of Things proper to the Trade of the Shop-keeper; and so a Sale of Plate in a Scrivener's Shop, is not good; and so of every other Trade.

3. If a Sale be of Plate in a Goldsmith's Shop (where it is properly to be sold) it must be publickly and open: For if a Sale be there of Plate in an inner Shop, or behind a Curtain, or a Cup-board, or the Windows be shut, or any Thing else hides it; so that he that passeth by cannot see what is done there, it will not alter the Property. All this was resolved *H. 38 El. Co. 5. 83. Moor's Rep. p. 360. Evesq; de Worcester's Case. Moor's Rep. p. 624.*

4. If a Sale in a Market Overt be covinous, or the Party that buys the Goods knows they were stoln, this Sale alters no Property. 33 *H. 6. 5. Co. 3. 78.*

5. The King cannot grant to one, that his Shop shall be a Market to alter the Property of a Stranger's Goods, for it is against Law.

6. In a Market or Town where several Things are sold in distinct Places, the Sale ought to be in every Part of the Town, of what is there saleable, as Horses in *Smithfield. Moor's Rep. 360.*

7. He that pleads a Sale in Markets, must plead it to be done *Pleno Mercatu*, else it is not good. *Moor's Rep. p. 360.*

Kelynge 50. Sale to a Pawn-broker, tho' in his Shop, alters no Property, for 'tis not a Market Overt.

C H A P. LXIII.

Marriage. (a)

12 *Car. 2. c. 33.* ALL Mariages made since One thousand six hundred forty and two before any Justice of Peace, or otherwise confirmed and made good; and Issues upon Bastardies, or otherwise touching the same, to be tried by Juries.

See *Felony by Statute*, Chap. 160.

C H A P. LXIV.

Mariners.

5 *El. 5. §. 43.* NO Fisherman using the Sea, shall be taken to serve as a Mariner by the King's Commission, but by the Choice of two Justices of Peace next adjoining to the Place where he is taken.

2 *Ann. c. 6. §. 1.* (a) Two Justices, or the Chief Magistrate of any City or Town corporate, with the Consent of two Justices, and the Church-wardens and Overseers of the Poor may put Boys

* *To Masters or Owners of Ships till the Age of 21 Years.* Apprentices to the * Sea Service, who are above † ten Years old, and likely to be chargeable to the Parish, and whose Parents are already chargeable, and those who beg.

† *By Stat. 4 & 5 Ann. c. 19. §. 16. the Master shall not be obliged to take him under the Age of 13 Years.*

The Age must be inserted in the Indenture. The Church-wardens, &c. must pay the Master 2 *l.* 10 *s.* when the Boy is bound, for Clothing, &c. which the Parish must allow in their Accounts.

Ib. §. 2. Church-wardens, &c. must send the Counterpart of the Indenture to the Collector of the Customs of the Port to which such Master shall belong, who shall enter it, and indorse the

Ib. §. 5.

the Registry without Fee; the Collector neglecting forfeits 5*l.* to the Poor of the Parish from whence the Boy was bound.

The Collector shall send Certificates to the Admiralty of the Names and Ages of such Apprentices, and the Ships to which they belong; and they shall not be pressed or listed in the King's Service till Eighteen. Ib. §. 4.

† Masters of Apprentices, according to 43 *Eliz. cap. 2.* may, with the Consent of two Justices, or chief Officer of the Place where such Boy was bound Apprentice, turn over the Apprentice to a Master of a Ship or Owner, during the Remainder of his Apprenticeship; which Indenture shall be registred and certified as aforesaid, and Protection given till Eighteen. † Or their Executors or Administrators may assign the Apprentices. Ib. §. 6.

Every Apprentice so bound shall be conducted to the said Port by the Church-wardens and Overseers, the Charge thereof to be provided as the Charges for sending Vagrants. Ib. §. 10.

Two Justices, and all Mayors and chief Officers, &c. adjoining to such Port to which such Vessel shall arrive, shall have Power to determine Complaints of hard Usage of Apprentices to Sea-Service. Ib. §. 12.

All Registers of Seamen, before their Entrance into such Office, shall take an Oath before the Judge of the Admiralty, or two Justices of the Peace, for their true and faithful Execution of the said Office. And at the Time of his Registering shall bring a Certificate of the Place of his Abode, under the Hands of two Justices of the Peace of that County, and so often as he changes the Places of his Abode, under the Penalty of losing the Benefit of his being registred. 7 & 8 W. 3. c. 21. See the Act at large.

See more for Mariners Tit. *Counterfeiting*, Chap. 32. *Rogues and Vagabonds*, Chap. 83. *Soldiers*, Chap. 94,

Disturbances often happening in the King's Yards by the Turbulency of Seamen, &c. the Treasurer, Comptroller, Surveyor, Clerk of the Acts, and the Commissioners of the Navy, may punish the Offenders by Fine not exceeding 20*s.* or by Imprisonment not exceeding one Week, and for Nonpayment of such Fine may send the Offenders to the House of Correction for two Months. And where greater Punishments are needful, the said Officers may bind the Offenders to their good Behaviour, and to answer at the next Assises or *Quarter-Sessions*; and in Default of such Security may commit to the County Gaol, in order to their being prosecuted. 1 Geo. 1. c. 25. made perpet. 9 G. 1. c. 8. Ib. §. 2.

Convictions and Judgments in Pursuance of this Act shall be final, and not subject to any Appeal or *Certiorari*. Ib. §. 15.

It shall not be lawful for any Master of a Ship bound beyond the Seas, to carry any Mariner, except his Apprentices, from the Port where he was shipt, to proceed on any Voyage beyond the Seas, without first coming to an Agreement with such Mariners for their Wages, which Agreement shall be made in Writing, declaring what Wages each Seaman is to have for so long Time as they shall ship themselves for, and also to express in the Agreement the Voyage for which such Seaman was shipt: And if any such Master shall carry out any Mariner, except his Apprentice, upon any Voyage beyond the Seas, without first entering into such Agreement, and he and they signing the same, he shall forfeit 5*l.* for every such Mariner, to the Use of *Greenwich* Hospital, to be recovered on Information on the Oath of one Witness, before one Justice of Peace, who is required to issue his Warrant to bring before him such Master; and in case he refuses to pay the Forfeiture, to grant his Warrant to levy it by Distress and Sale of Goods; and if no Distress can be found, to commit him to the common Gaol till he pay the same. 2 Geo. 1. c. 36. §. 1.

If any such Seaman shall desert, or absent himself from such Ship, after he hath sign'd such Contract, upon Application made to any Justice of Peace by the Master or other Person having Charge of the Ship, it shall be lawful for such Justice to issue his Warrant to apprehend such Seamen; and if he shall refuse to proceed on the Voyage, and shall not give a sufficient Reason for such Refusal, to the Satisfaction of the Justice, to commit him to the House of Correction, to be kept to hard Labour not exceeding thirty Days, nor less than fourteen. Ib. §. 4.

C H A P. LXV.

Night-walkers.

Lam. 46, 122.
13 H. 7. 10.
See Tit. Watch.

EVERY Justice of Peace (*Ex officio*, and by the Commission, the first *Assignavimus*) may cause to be arrested all Night-walkers, be they Strangers or other Persons that be suspected, or that be of Evil Behaviour, or of Evil Fame; and more particularly all such suspected Persons as shall sleep in the Day-time, and go abroad in the Nights: And all such as shall in the Night-season haunt any House that is suspected for Bawdery, or shall in the Night-time use other suspicious Company; or shall commit any other Outrages or Misdemeanors; and may force them to find Surety for their Good Behaviour. See the Title *Surety for the Good Behaviour*.

Pfal. 104.

For as one saith, Such Night-walkers (or Night-birds) are ominous, like the Whistler, &c. And such Night-walkings are unfit for honest Men, and more suiting to the Thief (the right Whistler) and to Beasts of the Prey, which come forth of their Dens when Man goes to his Rest.

C H A P. LXVI.

Nuances. (a)

Hemp.
33 H. 8. c. 17.

FOR Nuances in Highways, *vide Tit. Highways*.
If any Person shall water any Hemp or Flax, in any River, running Water, Stream, Brook, or common Pond, where Beasts be usually watered, he shall forfeit twenty Shillings; a Moiety to the Party grieved, or any that will sue; the other Moiety to the King, to be sued for in any Court of Record.

Leather.
14 Car. 2. c. 7.

Cattle.
18 Car. 2. c. 2.

Transporting of Leather contrary to 14 Car. 2. cap. 7. is declared a common Nuance.
Importing Cattle from *Ireland*, declared to be a common Nuance.

What are common Nuances.

Alehouses disorderly kept,
Bawdy-houses,
Brew-houses,
Bridges, Annoyances in them,
Cottages unlawful,
Eves-droppers,
Gaming-houses,

Highways, Annoyances in them,
Inmates,
Melting-houses for Candles,
Rivers, Annoyances in them,
Scolds, common,
Stages for Mountebanks or Rope-dancers.

* *Indictment, it must conclude ad commune nocumentum omnium ligeorum, &c.*

All these are publick Nuances, for which an Action on the Case will not lie, but an * Indictment against the Offender, who being convicted, shall be fined and committed till he pay it.

What are private Nuances.

Stopping another Man's *Lights*, or building an House so near to another that the Water falls on it when it rains; but this is justifiable by the Custom of *London*, if upon an old Foundation; setting up a Brick-kiln or Hogsty so near the House of another as to offend with the ill Smell, &c.

These and the like are *private Nuances*, for which an Action on the Case will lie, but no Indictment; and both for common and private Nuances the Party grieved may enter on the Ground of the Offender, and with proper Instruments remove them; and if he is indicted, either for a Trespass or a Riot, he will only be fined in a small Sum, if convicted.

Where a Man is indicted for a Nuance, the Court never admits him to a small Fine till the Nuance is removed, which must be proved by Oath, or by the Certificate of two *Justices*; and the Defendant shall never be allowed to make any Objections against the Indictment till he hath *pleaded to it*.

19 Car. 2.
c. 3. §. 3.

Buildings erected contrary to 19 Car. 2. cap. 3. shall be deemed common Nuances. See Tit. *London*, Chap. 60.

10 & 11 W. 3.
c. 17. §. 1.

All Lotteries are publick Nuances.

Making, Selling, Throwing or Firing Squibs, or other Fireworks, in any Street, Highway or Passage, or into any House or Shop, shall be adjudged a common Nufance. See Chap. 95. Tit. Squibs. 9 & 10 W. 3. c. 7. §. 1.

Undertakings by publick Subscriptions, relating to Fisheries and other Affairs of Trade contrary to the 6 Geo. 1. cap. 18. are declared publick Nufances. And the Offenders being convicted in the King's Courts of Record at *Westminster*, *Edinburgh* or *Dublin*, are liable to the Pains of *Præmunire*, 16 Ric. 2. cap. 5. besides the Punishments to which Persons convicted of publick Nufances are liable. 6 Geo. 1. c. 18. §. 18 & 19.

C H A P. LXVII.

Oaths.

(a) NO Judge, Commissioner or Subject, is compellable to take any Oath but what is warranted by the Common Law, or directed by Statutes: And therefore you shall always find Clauses in the Statutes, directing Oaths, and inabling Justices of Peace to administer them. 2 Inst. p. 479.

(d) Any one Justice of Peace may compel such as are between the Age of fifteen Years and Threescore, to be sworn to keep the Peace. Peace. Lamb. 190.

If any Person of the Age of eighteen Years, and under the Degree of a Baron, shall stand and be presented, indicted or convicted, for not coming to Church, or not receiving the Communion before the Ordinary, or any other having Power to take such Presentment or Indictment; or if the Minister, Petty Constable and Church-wardens, or any two of them, shall complain to any Justice of Peace, near adjoining to the Place where the Offender dwells, and he shall find Cause of Suspicion; any Justice of Peace of that County, &c. or to whom Complaint shall be made, shall require him to take the Oath; and if the Party refuse, the Party authorized to give the Oath may commit the Party refusing to Prison without Bail, until the next Sessions or Assises, where the Oath shall be again tendred him, and the Party refusing shall incur a *Præmunire*, except *Femes Coverts*, who shall be committed until they take the Oath. 7 Jac. 1. 6. §. 26.

Two such Justices, &c. may take the Oaths of the Under-Sheriffs, and their Officers, &c. See the Title *Sheriffs*.

(a) Swearing prophanely. See more Chap. 98.

No Person may maintain, That the Taking of an Oath in any Case whatsoever (though before a lawful Magistrate) is unlawful, and contrary to the Word of God; nor may wilfully refuse to take an Oath, by the Laws of the Land being duly tendred, nor may persuade any other to refuse and forbear the Taking the same so tendred; nor go about by Printing, Writing, or otherwise, to maintain, That the Taking of an Oath in any Case whatsoever, is unlawful, upon the Penalties in the said Act, as upon Quakers. For which, see *Quakers*, who by a late Statute are exempted from the Penalties of the said Act 13 & 14 Car. 13 & 14 C. 2. c. 1. §. 2.

By 1 Will. & Mar. Stat. 1. cap. 8. The Oath of Supremacy required by Stat. 1 Eliz. cap. 1. and the Oath of Allegiance required by Stat. 3 Jac. 1. cap. 4. & 7 Jac. 1. cap. 7. are repealed. 1 W. & M. St. 1. c. 8. §. 2.

See the Stat. 1 Geo. 1. cap. 13. * For the Oaths to be taken by all Persons bearing any Office Civil or Military, &c. 1 Geo. 1. St. 2. c. 13. * Et suprac. 4.

By Statute 2 Geo. 2. cap. 31. so much of the Act of 1 Geo. 1. cap. 13. as requires Persons to take the Oaths within three Months, &c. shall be repealed. 2 Geo. 2. c. 31. §. 3.

And by Stat. 9 Geo. 2. cap. 26. Persons that shall be admitted into Offices Civil or Military, shall take the Oaths appointed by 1 Geo. 1. cap. 13. within six Kalendar Months after their Admission. 9 Geo. 2. c. 26. §. 3.

Serjeants at Law, Barristers, Attornies, Proctors, &c. practising in any Court in England, shall take the Oaths appointed by 1 Geo. 1. cap. 13. in the Chancery, King's Bench, Common Pleas or Exchequer, at any Time before the End of the next Term after their Admission, or before the End of the next Quarter-Sessions, where such Persons shall reside. Ib. §. 4.

Orchard. See *Trespass*.

Papists. See *Recusants*.

Partition of Lands. (a)

8 & 9 W. 3.
c. 31. §. 4.
Made perpetual 3 & 4
Ann. c. 18.

WHEN the High-Sheriff, by reason of Distance, Infirmity, or other Hindrance, cannot conveniently be present at the Execution of any Judgment in Partition, the Under-Sheriff, in Presence of two Justices of Peace, may proceed to Execution by Inquisition; and the High-Sheriff thereupon shall make the same Return as if he were personally present; and the Tenants of the Lands shall be Tenants for such Part set out severally to the respective Owners, under the same Rents and Reservations; and the Owners of the several Purparts shall make good under their respective Tenants the said Parts severally, as they were bound to do before Partition made.

Ib. §. 5.

The Sheriff, their Under-Sheriffs and Deputies, and in Case of Disability in the High-Sheriff, all Justices of Peace, shall give due Attendance to the executing such Writ of Partition (unless reasonable Cause be shewn to the Court upon Oath) or otherwise be liable to pay unto the Demandant such Costs and Damages as shall be awarded by the Court, not exceeding 5 *l.* for which the Demandant may bring his Action in any of his Majesty's Courts at *Westminster*; and in Case the Demandant doth not agree to pay unto the Sheriffs or Under-Sheriffs, Justices and Jurors, such Fees as they shall demand, the Court shall award what each Person shall receive, having Respect to the Distance of the Place from their Habitations, for which they may severally bring their Actions.

Parliament. See the *Appendix* under this Title.

C H A P. LXVIII.

Partridges.

11 H. 7. 17.
With Nets.

(a) **I**F any Person (shall out of his own Warren, and upon the Freehold of another, without the Consent and Licence of the Owner or Possessor) take Pheasants or Partridges by Nets, Snares, or other Engines, he shall forfeit 10 *l.* a Moiety to the Prosecutor, and the other Moiety to the Owner or Possessor. And the Justices of Peace have Authority to hear and determine it, as well by Inquisition as by Information and Proof.

In the Night.
23 Eliz. 10.
P. Pheasants 2.
P. Jult. 38.

(d) Every Justice of Peace (by the Statute of 23 *Eliz.*) may examine all Offenders, for the destroying or taking of Partridges or Pheasants in the Night-time; and for Hawking or Hunting with Spaniels, in any eared or codded Corn; and may bind by Recognizance the Offenders with good Sureties to appear at the next General Sessions of the Peace to answer their said Offences, &c. (a) Which Justices in Sessions have Power thereby to hear and determine the same: The Forfeiture for a Pheasant is 20 *s.* and for a Partridge * 10 *s.* And if not paid within ten Days after Conviction, then to have one Month's Imprisonment without Bail; the one Moiety of the Forfeitures to the Lord of the Liberty, the other Moiety to the Prosecutor by Action, &c. But if the Lord of the Liberty shall license, dispense with, or procure such Taking, the whole Forfeiture shall go to the Poor, to be recovered by one Church-warden, &c.

Forfeits. —
* By 1 Jac. 1.
c. 27. *lis* 20s.

(d) But now by the Statute made 1 *Jac.* 1. 27. and 7 *Jac.* 1. 11. the Offences of Destroying, &c. of Partridges and Pheasants (generally) is referred to two Justices of Peace, to examine, hear and determine out of Sessions. *Vide hic infra.*

23 Eliz. 10.

Also after the Conviction of any such Offender (according to the Statute of 23 *Eliz.*) for taking and destroying any Partridges or Pheasants in the Night-time, any one Justice of Peace of that County, may bind such Offenders with good Sureties, that for the Space of two Years, they shall not take or destroy any Partridges or Pheasants contrary to that Statute.

1 Jac. 1. 27.
P. Pheasants
6, 7.
21 Jac. 1. 28.
3 Car. 4.

1. By the Statute made 1 *Jac.* 1. every Person which shall shoot at, kill or destroy (with any Gun or Bow) any Partridge, Pheasant, House-Dove or Pigeon, Hearn, Mallard, Duck, Teal, Widgeon, Heathcock, or any House-Dove, or any such Fowl, or any Hare.

2. Or shall take, kill or destroy any Partridge, Pheasant, House-Dove, or Pigeon, with Setting-Dogs and Nets, or with any Manner of Nets, Snare, Engines, or Instruments.

3. Or

3. Or shall take out of their Nests, or willingly destroy, or break in the Nest, the Eggs of any Pheasant, Partridge, or Swan.

4. Or shall trace or course a Hare in the Snow.

5. Or shall at any Time take or destroy any Hare with Cords, or any such Instruments.

6. Or shall have or keep any Greyhound for Deer, or Hare; or Setting-Dog or Net, to take Pheasants or Partridges, except they have Land, &c. of Inheritance of the clear Yearly Value of 10 *l.* or 30 *l. per Annum* for Life, or Goods worth 200 *l.* or be the Son of a Knight, or Baron of Parliament, or of some Person of higher Degree, or the Son and Heir Apparent of an Esquire.

The said Offences being proved by the Confession of the Party, or by the Oath of two sufficient Witnesses, before any two Justices of Peace of the County where the Offence shall be committed, or the Offenders apprehended, every of the Offenders shall by the said Justices, for every such Offence, be committed to the common Gaol for three Months without Bail, unless the said Offenders shall forthwith, upon the said Conviction, pay to the Church-wardens for the Use of the Poor there, 20 *s.* for every Hare, Fowl, and Egg, so taken or destroyed; and 40 *s.* for having such Greyhound, Setting-Dog, or Net. Or after one Month after his Commitment, become bound by Recognizance with two sufficient Sureties in 20 *l.* a-piece, with Condition not to offend hereafter in any the Particulars afore said; which said Recognizance shall be taken by two Justices of Peace of the County where the Offender is imprisoned, and by them shall be returned to their next Quarter-Sessions *. So that any two Justices of Peace may examine, hear and determine all Offences against this Statute made 1 *Jac. Regis*, and may perform every other Thing requisite for the due Execution thereof.

1 *Jac. 1. 27.*
§. 2.

* *This Clause relates only to killing of Hare, Fowl, or Egg, and not to setting Dogs and Nets.*

(a) If any shall sell, or buy to sell again, any Deer, Hare, Partridge or Pheasant, except Partridges and Pheasants brought up in Houses, or brought from beyond Seas, he shall forfeit for every Deer 40 *s.* for every Hare 10 *s.* Partridge 10 *s.* Pheasant 20 *s.* the one Moiety to the Prosecutor, the other to the Poor.

1 *Jac. 1. c. 27.*
§. 4.

(d) By the Statute made 7 *Jac. Regis*, every Person which shall take, kill or destroy any Pheasant or Partridge with Setting-Dogs and Nets, or with any Manner of Nets, Snares, or Engines, (it being proved by the Confession of the Party, or by the Oath of one sufficient Witness before any two Justices of Peace) shall by the said Justices be committed for three Months without Bail, unless the said Offender shall forthwith pay to the Use of the Poor there 20 *s.* for every such Pheasant or Partridge. And further, to become bound by Recognizance in the Sum of 20 *l.* before any one Justice of Peace, never to take, kill or destroy any Pheasant or Partridge any more; which Recognizance shall be taken by any one Justice of Peace of the County where the Offence shall be committed, and shall be returned to the next Quarter-Sessions.

7 *Jac. 1. c. 11.*
§. 8.

Every Person which shall hawk at, kill or destroy any Pheasant or Partridge, with any kind of Hawk, or Dog, (by Colour of Hawking) between the first of *July* and the last Day of *August*, (the same being proved by the Confession of the Party, or by the Oath of two sufficient Witnesses, before any two Justices of Peace of the County where the Offence was committed, or the Offender apprehended) shall by the said Justices be committed to the common Gaol, there to remain for one Month without Bail; unless the said Offender shall forthwith upon the said Conviction pay to the Use of the Poor there (where the Offence shall be committed, or the Party apprehended) 40 *s.* for every such Hawking at Pheasant or Partridge, and † 20 *s.* for every Pheasant or Partridge, which any and every such Offender by himself, his Hawk or Dog, shall take, kill or destroy, contrary to the Intent of this Statute.

7 *Jac. 1. c. 11.*
§. 2.

† *By the Statute 8 Geo. 1. c. 19. §. 1. the Party may*

bring an Action of Debt for this pecuniary Punishment, and if he recover shall have double Costs.

But no Offender punished by Virtue of this Law, shall be punished by Virtue of any other Law for the same Offence: Also such Offences must be complained of to the Justices of Peace within six Months after the Offence.

7 *Jac. 1. c. 11.*

Any two Justices of Peace may make their Warrant under their Hands to any Constable or Headborough, to enter into and search the Houses of any Person (other than such as have free Warren, or are Lords of any Manor, or have Freehold of 40 *l.* by the Year, or more, of Estate of Inheritance, or have 80 *l.* by the Year for Term of Life, or be worth in Goods 400 *l.*) being suspected to have any Setting-Dogs, or any manner of Nets

7 *Jac. 1. c. 11.*
§. 9.

Nets

Nets, for the Taking of Pheafants and Partridges: And wheresoever they shall find any such Dog or Nets, the same to take, carry away, detain, kill, destroy, and cut in Pieces.

Qualifications.

Ib. §. 7.

By the same Statute 7 *Jac.* 1. *cap.* 11. every such Person as hath Free Warren, or is Lord of a Manor, or hath other Estate as aforesaid, is allowed (on their own Freehold) to take Pheafants and Partridges in the Day-time only, and between *Michaelmas* and *Christmas*.

4 & 5 *W. & M.*

c. 23. §. 3.

(a) One Justice may grant a Warrant to search the Houses of Persons suspected to have Partridge or other Game, and if any are found, and the Person doth not give a good Account how he came by it, or of whom he bought it, he shall forfeit not under 5 *s.* nor above 20 *s.* to be levied by Distress and Sale, to the Informer and the Poor, and in Default of Distress, to be committed to the House of Correction not exceeding a Month, or less than ten Days, to be whipp'd and kept to hard Labour.

5 *Ann.* c. 14.

§ 2. made per-

pet. by 9 *Ann.*

cap. 25.

Higlers, Chapmen, Carriers, Innkeepers, Victuallers, or Alehouse-keepers, having in their Possession any Pheasant, Partridge, Hare, &c. or who shall buy or offer to sell the same, shall forfeit 5 *l.* to be levied by Warrant, by Distress and Sale, to the Poor and the Informer; and if no Distress, then to be sent to the House of Correction for three Months without Bail for the first Offence, and four Months for the next Offence; Conviction may be upon View or Oath of one Witness within three Months.

The Laws in Force for the Preservation of the Game, are continued and enforced by the Statute 3 *Geo.* 1. *cap.* 11. *sect.* 2.

See also *Tit. Game, Chap. 46. Hunting, Chap. 55.*

C H A P. LXIX. (a)

Pasture Lands.

2 & 3 *P. & M.*
cap. 3. §. 2.

HE that shall keep or feed above 120 Shear-sheep, for the most Part of the Year, upon his several Pastures, Lands, Feedings, or Farms, apt for Milch Kine, where in no other hath Common, shall, so long as he shall keep these 120 Sheep, for every 60 Sheep, keep a Milch Cow; and for every 120 Sheep, rear up one Calf, or forfeit 20 *s.* for every Month's not keeping a Cow, and 20 *s.* for not rearing a Calf.

2 & 3 *P. & M.*
cap. 3. §. 3.

Every Person that shall upon such his Pastures, keep or feed above the Number of twenty Oxen, Rounts, Schrubbs, Steers, Heifers, or Kine, shall for every ten Beasts, keep one Milch Cow, and rear yearly; and keep for a Year one Calf for every two Milch Cows, upon the Pains aforesaid, except the Calf shall die within the Year; one Half of the Forfeitures to the King, the other to the Party suing in any Court of Record, or before the Justices of Peace at the General Sessions.

Ib. §. 4.

The Act not to extend to Cattle kept to be spent in a Man's House. The said Act is made perpetual by 13 *Eliz.* *cap.* 25.

7 *Jac.* 1. c. 8.
§. 2.

The Act of 2 & 3 *P. & M.* *cap.* 3. shall extend to Lands fit for Kine inclosed since that Act, or hereafter to be inclosed.

See *Title Cattle, Chap. 22.*

C H A P. LXX.

Peace.

Lamb. 46.

EVERY Justice of Peace hath Authority by the first *Assignavimus*, or Clause in the Commission, to keep and cause to be kept the King's Peace; by Force of which Words they have as well the ancient Power touching the Keeping of the Peace, which the Conservators of Peace had by the Common Law; as also all Authority which the Statutes since have added thereto: And so they may cause to be kept all the Statutes and

Laws

Laws now in Force, which have been made for the Peace, or Keeping thereof; and more especially they may arrest, or cause to be arrested and sent to the Gaol, all Murderers, Robbers, and Felons, and all Persons suspected of such Things.

They may also suppress, and bind to the Peace, or good Behaviour, all *Affrayors*, and *Affrayors* all Persons unlawfully and riotously assembled, or unlawfully wearing Armour, or any Weapons, by Night or by Day, or otherwise putting the People in Fear, and all unlawful *Night-Walkers* and the like. All which may be laid to be Disturbances or Breaches of the Peace. See more for these under their particular Titles.

(a) If any *Affray*, *Forcible Entry*, or other Thing in Disturbance of the Peace, be made or committed in the Presence, or within the *View of a Justice of Peace*, he hath Power to record it, and to certify the same; and also to commit the Parties to Ward, presently upon the Fact done. But if there be any mean Space, or Time, then he cannot commit them to Ward, but he may record the same, and may (at any Time after) make his Warrant to take them, and bind them with Sureties, to their good Behaviour, and for want of Sureties may send them to the Gaol. *Cro. 41. per Curiam.*

If the Justice of Peace shall certify unto the King's Bench, that *I. S.* hath broken the Peace in his Presence, upon this Certificate *I. S.* shall be there fined, without allowing him any *Traverse* thereto. *Marr. Lect. 3. Cromp. 131.*

Perjury. (a)

WHERE an Oath is administered by a Person who hath a lawful Authority, and in a *judicial Proceeding*, and the Witness sweareth falsely in a Thing material to the Cause, this is Perjury. See 1 Hawk. P. C. 171, &c.

It must be wilful, deliberate, and what is affirmed must be false to make it Perjury at Common Law, and it must be absolute and direct, and not as the Witness believes or remembers.

It must likewise be in some judicial Proceeding, either in a Court of Law or Equity, or before Persons in the Country having Authority to administer an Oath, or by making an Affidavit where the Fact is either falsely affirmed or denied.

It must be in a Matter material to the Issue, for if 'tis in a Thing immaterial, and not tending to the Cause, 'tis not Perjury.

Subornation of Perjury is likewise an Offence at Common Law, and this is by procuring another to take a false Oath, and if he doth not take it, the Person suborning is punishable by Fine; but the Punishment for Perjury and Subornation is Fine, Imprisonment, and Pillory, and the Offender is for ever afterwards disabled to be a Witness. 1 Hawk. P. C. 177.

Perjury is also punishable by the Statute *5 Eliz. cap. 9.* by which 'tis enacted, That if any Person shall unlawfully and corruptly procure a Witness to commit wilful and corrupt Perjury in any Action concerning Lands or Goods in any Court of Record, or in any Leet, Ancient Demesne Court, Hundred Court, Court Baron, or in the Courts of the Stannary in *Devon* and *Cornwall*, or shall corruptly procure or suborn any Witness sworn to testify *in perpetuam rei memoriam*, he shall forfeit *40 l.* And if he hath not Lands to that Value, or Goods, he shall be imprisoned for Half a Year, and stand in the Pillory one Hour in some Market-Town, and shall not be a Witness till the Judgment is reversed. 5 El. c. 9. §. 3. Ib. §. 4. & 5.

This Part of the Statute relates only to the Suborner, the other Part extends to the suborned, and to him who of his own Accord is perjured.

If any Person either by Subornation, or by his own Act, shall wilfully and corruptly commit Perjury by a Deposition in any Court of Record, &c. he shall forfeit *20 l.* the one Moiety of the Forfeitures to the King, the other to the Party grieved; he shall likewise be imprisoned for six Months. And if he hath not Goods, &c. to the Value of *20 l.* he shall be set on the Pillory in some Market-Town, and have both his Ears nailed, &c. Ib. §. 6. Ib. §. 7.

As well the Judges of the said Courts where such Perjury shall be committed, as also the Justices of Assises and Gaol-Delivery, and the Justices of Peace at their Quarter-Sessions, shall have Power to inquire of all Offences contrary to this Act, by Inquisition, Presentment, Bill or Information, or otherwise lawfully to hear and determine the same. Ib. §. 9.

By this Statute a greater Punishment is inflicted on the Suborner than on the Perjurer, but it extends only to Perjury by a Witness, and not to Perjury in an Answer to a Bill in a Court of Equity, or to Perjury in an Affidavit by swearing the Peace, &c. See 1 Hawk. P. C. 179, 180.

Ib. §. 11.

Neither is a false Oath within this Statute, if it is not prejudicial to some Party in the Cause. Nor does this Statute extend to Offenders of this Nature in the Ecclesiastical Courts, if the Matter is Spiritual and not Temporal.

The safest Way to proceed is by Indictment at Common Law, because so much Certainty is not required in that Prosecution, as 'tis upon the Statute.

One Justice may bind the Offender over to the Sessions.

The Defendant having made an Affidavit in *C. B.* and appearing in Court upon a Summons, *confessed* that he made it, and that it was false; whereupon the Court recorded his Confession, and ordered that he should be taken in Custody, and stand on the Pillory, &c.

It was objected that his Confession was not a Conviction, but only Evidence of his Guilt, and that he ought to be brought before the Court judicially by Indictment, and convicted thereon; besides the Court of *C. B.* hath not Jurisdiction in this Case, it being criminal: But *per Curiam*, the Confession of a Crime is the strongest Evidence against the Criminal himself; and the Statute 5 *Eliz.* gives Power to hear and determine this Offence by Inquisition, &c. or *otherwise*, by which Word the Confession of the Party may be intended, and the Punishment by Pillory is inflicted by this Statute, which shews that the Court proceeded on the Statute, but 'tis likewise an Offence at Common Law. *Trin. 9 Geo. 1. B. R.*

2 Geo. 2.
c. 25. §. 2.
made perpetual
9 Geo. 2.
c. 18.

Besides the Punishment already to be inflicted, it shall be lawful for the Court or Judge, before whom any Person shall be convicted of wilful and corrupt Perjury, or Subornation of Perjury, to order such Person to be sent to some House of Correction within the County for a Term not exceeding seven Years, to be kept to hard Labour; or to be transported to his Majesty's Plantations for a Term not exceeding seven Years; and Judgment shall be given accordingly; and if any Person so committed or transported shall voluntarily escape, or return from Transportation before the Expiration of the Term, such Person being thereof convicted shall suffer Death without Benefit of Clergy; and shall be tried for such Felony in the County where he escaped, or where he shall be apprehended.

C H A P. LXXI. (a)

Petitions.

Petitions to redress Grievances.

13 Car. 2.
c. 5. §. 2.

NO Person shall solicit, labour, or procure the Getting of Hands, or other Consent of Persons above twenty or more, to any Petition, Complaint, Remonstrance, Declaration, or Address to the King, or both or either Houses of Parliament, for Alteration of Matters established by Law in Church or State, unless the Matters thereof be first consented to, by three or more Justices of the County; or by the major Part of the Grand Jury of that County or Division, at the Assises or Sessions where the Matter arises; or if in *London*, by the Mayor, Aldermen, and Commons in Common Council. Nor shall any repair to his Majesty with any Company exceeding ten, upon Pretence of presenting any Petition, &c. upon Pain to incur a Penalty not exceeding 100*l.* and three Months Imprisonment without Bail, to be presented at Assise or Sessions, with six Months after the Offence, and proved by two or more credible Witnesses.

Ib. §. 3.

But any, not exceeding ten, may present any Grievance to a Member of Parliament after his Election, during the Parliament, or to the King; and both or either Houses of Parliament may address themselves to the King.

Pewter. (a)

19 H. 7. c. 6.
made perpetual
4 H. 8. c. 7.

JUSTICES of Peace, at their *Michaelmas* Sessions, shall appoint two Persons to be Searchers of Bras and Pewter.

C H A P. LXXII.

Plague.

IF any Person infected, or being, or dwelling in an House infected with the Plague, *Wandering.* shall be by any Justice of Peace (or other Head Officer of the City, &c.) commanded to keep his House, and notwithstanding shall wilfully go abroad, and converse in Company, *1 Jac. 1. c. 31. § 7.* having any infectious Sore upon him, it is Felony; and if such Person shall not have such Sore about him, yet for his said Offence he shall be punished as a Vagabond by the Appointment of any Justice of Peace, and further shall be bound to his good Behaviour for one whole Year.

It shall be lawful for the Justices (and other Head-officers in Corporate Towns) within their several Limits, to appoint *Officers.* *Searchers, Watchmen, Examiners, Keepers, and Buriers,* *Crom. 122. b.* for the Persons and Places infected; and to minister unto them Oaths, for the Performance of their said several Offices, and to give them other Direction as to them shall seem good. *Ib. §. 9.*

(a) If any Person infected, or dwelling or being in a House infected, shall contrary to the Command or Appointment of the Justice of Peace (or other Officer) wilfully attempt to go abroad, or to resist such their Keepers or Watchmen, then may such Watchmen with Violence enforce them to keep their Houses, and not be impeached for hurting them. *Ib. §. 7.*

(d) Any two Justices of Peace (or any two Head-Officers) of any City, Borough, Town Corporate, and Place privileged, may tax all and every Inhabitant, and all Houses of Habitation, Lands, Tenements, and Hereditaments within the said City or Borough, &c. or the Liberties thereof, for the reasonable Relief of such Persons as are infected, or inhabiting in Houses that are infected in the same City, &c. And may levy the said Taxes (by Distress and Sale of the Goods of every Person refusing, or neglecting to pay the said Taxes) by Warrant under the Hands and Seals of *two such Justices* or Head-officers, to be directed to any Person or Persons, for the Execution thereof: And in Default of such Distress, and that Refusal be made of Payment, upon Return thereof, the said Justices by like Warrant may commit such Persons to the Gaol, there to remain without Bail, until he shall satisfy the same Taxation, and the Arrearages. *Tax. Ib. §. 2. Ib. §. 3.*

If the Inhabitants of any such City, &c. are unable to relieve their infected Persons, &c. upon Certificate thereof by the Head-officer, and other Justices of Peace of such City, &c. or by any two of them, to any two Justices of Peace in the County, of or near the said City, &c. so infected, any two of the said County of, or near to the said City may tax the Inhabitants of the County within five Miles of the said Place infected, at such reasonable weekly Rates as they think fit, to be levied by Warrant from any two such Justices of Peace of or near the said City, by Distress and Sale of Goods; and in Default thereof, by Imprisonment of the Body of the Party taxed, as aforesaid. *Relief. Ib. §. 4.*

If any such Infection shall be in any Borough or Town Corporate where there are no Justices of Peace, or within a Village or Hamlet, within any County; then any two Justices of Peace of the same County wherein the said Place infected shall be, may tax the Inhabitants of the said County, within five Miles of the said Place infected, at reasonable weekly Rates, as they shall think fit, for the Relief of the said Place infected, to be levied by Distress and Sale of Goods (upon Warrant of the said Justices of Peace of the same County;) and in Default thereof, by Imprisonment as aforesaid. *Ib. §. 5.*

All such Taxes made by the Justices of the County, for the Relief of such City, &c. shall be disposed by the said Justices of the said County, and as they shall think fit (where there are no Justices of Peace in such City, &c.) And where there are Justices of Peace, then in such Sort as the Head-officer and Justice of Peace there, or any two of them shall think fit.

All such Taxes made either in City, &c. or County, shall by the said Justices that taxed them (as it seemeth) be certified at their next Quarter-Sessions to be holden within such City, &c. or County, respectively, there to be continued, enlarged, extended to other Parts of the County, or determined, as at their Sessions respectively shall be thought fit. *Ib. §. 6.*

(a) And every Constable or other Officer that shall wilfully make Default in levying such Money, shall forfeit 10 s. to be employed on the Charitable Uses aforesaid.

(d) But no Justice of Peace shall do or execute any Thing before mentioned, within either of the Universities of *Cambridge* or *Oxford*, or within any Cathedral Church, or the Liberties *Ib. §. 10.*

Liberties thereof, or within the Colleges of *Eaton* or *Winchester*: But the Vice-Chancellor of the University, Bishop and Dean of such Church, and Provost or Warden of the said Colleges, shall do and execute all Things abovementioned within their several Precincts.

This Act is in Force being continued by 3 *Car.* 1. *cap.* 4. & 16 *Car.* 1. *cap.* 4.

C H A P. LXXIII.

Poor.

What. (a) **P**OOR are here to be understood not vagabond Beggars and Rogues, but those who labour to live, and such as are old and decrepit, unable to work, poor Widows, and Fatherless Children, and Tenants driven to Poverty; not by Riot, Expence or Carelessness, but by Mischance, &c.

Not working. (d) Any one of those Justices of Peace, who may appoint Overseers for the Poor, may also send to the House of Correction, or Common Gaol, such as will not employ themselves in Work, being thereunto appointed by the Overseers, according to the Statute 43 *Eliz.*

43 Eliz. c. 2. §. 4.
Ib. §. 1. The Church-wardens of every Parish, and four, three or two Householders, to be nominated yearly in *Easter* Week, or within one Month after *Easter*, under the Hand and Seal of two Justices of Peace, whereof one of the *Quorum*, dwelling in or near the Parish, shall be called Overseers of the Poor of the same Parish.

(a) The Justices of Peace, which have the appointing of these Overseers, must therein be careful to chuse such Men as in every Town are fittest, *ſc.* Substantial Persons, having Competency of Wealth, Wisdom, and a good Conscience. And they must be Householders, not Sojourners, however otherwise qualified. And indeed, this Name and Office of Overseers, may bescem the best, and not the meanest Men (it being a Name and Office of great Antiquity and Excellency, as you may see 1 *Chro.* 23. 4. *Acts* 20. 28. and *Acts* 6. 3. 5.) And though the Persons are not dignified according to the Singularity of the Subject; yet this is not the least Office to be called Overseers of the Poor; for as God himself hath a special Respect to the Miseries of the Poor, so they be like God, who provide for the Necessities of the Poor.

Large Parishes. All poor, needy, impotent and lame Persons, within every Township and Village in the Counties of *Lancashire*, *Cheeshire*, *Derbyshire*, *Yorkshire*, *Northumberland*, the Bishoprick of *Durham*, *Cumberland*, and *Westmoreland*, and other Counties, where by Reason of the Largeness of the Parishes, they cannot reap the Benefit of the Statute of 43 *Eliz.* shall be maintained and set on Work in the respective Township or Village wherein they were inhabiting or settled; and that according to the Rules of 43 *Eliz.* shall be yearly in every Township and Village chosen two or more Overseers, who shall do and forfeit as in the Act of 43 *Eliz.* is appointed.

Cap. 2.
Ib. §. 22. The Justices of the Peace of the said Counties, shall do and execute such Authority in those Villages and Townships, as is directed by the said Act.

* *But see 2 Sid. 292. 2 Keb. 56 & 69. 2 Lev. 172.* This Act extendeth not only to the Counties therein named, but also to other Counties where such great and large Parishes are. *

The Overseers Duty. (d) Such Overseers and Church-wardens (or the greater Part of them) with the Consent of two or more such Justices, shall take Order from Time to Time for setting their Poor on Work, putting out Apprentices, and relieving their impotent, as followeth.

43 El. c. 2. §. 1.
Ib. §. 1. 1. First, for setting to work the Children of all such, whose Parents shall not by the greater Part of the Overseers be thought able to keep and maintain their Children, which Children they, or the greater Part of them, by the Assent of two Justices, may also put out to be Apprentices, *ſcil.* The Men Children till their Age of 24, and the Women Children till their Age of 21 Years, or the Time of their Marriage.

Ib. §. 5.
1 Jac. 1. c. 25. And all poor Children of the Age of seven Years, or above, so bound Apprentices, may be taken and kept as Apprentices by their Masters, any former Statute to the contrary notwithstanding.

Work. 2. For setting to Work all such Persons (married or unmarried) as having no Means to maintain them, use no ordinary and daily Trade of Life to get their Living by.

43 El. c. 2. §. 1.
Trade. (a) And note, that the Church-wardens and Overseers of the Poor may, by and with the Consent of two or more Justices of Peace (whereof one to be of the *Quorum*, &c. (with- in their respective Limits, where there are more than one, or if but one, then by his

Consent,

Consent, set up, use and occupy any Trade, Mystery or Occupation, only for the setting on work, and better Relief of the Poor of the Parish, Town or Place where they are Overseers, &c.

(d) 3. To raise weekly, or otherwise by Taxation of every Inhabitant, Parson, Vicar, *Tax.* and other; and every Occupier of Lands, Houses, Tithes, Mines or saleable Underwoods *Ibid.* (proportioning them to an annual Benefit, &c.) in the same Parish, such competent Sums of Money as they shall think fit, therewith to provide a convenient Stock of some Ware or Stuff, to set the Poor on work, and also competent Sums of Money towards the necessary Relief of their lame, impotent, old, blind, and other Poor not able to work; and for the putting out of such Children (as aforesaid) to be Apprentices.

(a) *Toll of Markets* seems also taxable, touching which in *Michaelmas Term 27 Car. 2.* *Toll taxes.* happened this Case in the Town of *Wickham* in *Bucks.*, having much Poor, and there being in the Town a considerable Market; the Toll whereof belonging to the Corporation there, was worth 60 *l. per Ann.* which the Overseers had taxed, and the Mayor and Justices refused to sign, and allow the Tax, pretending it was not taxable. The Overseers and Justices, the last *Trinity Vacation*, attended the Lord Chief Justice *Hale* for his Opinion, who said he conceived it taxable within 43 *Eliz.* Yet the Justices would not sign and allow the Tax: Of which Complaint being made to the *King's Bench*, a Rule was for the Mayor, &c. to attend, and he attended accordingly; and he observing the Court to be angry, promised to assign and allow the Tax; and the Court ordered him to pay the Overseers the Charges of their Prosecution. And *Hale* said, For such a Refusal a *Quo Warr.* would lie. Which Case I have inserted, as well to shew what is taxable, as to inform Justices of Peace of their Duty. This Case happened *Michaelmas 27 Car. 2.*

The Overseers are likewise to give an Account of the *Burials*, since their former Ac- *Burials.* count, on Pain of five Pounds: And their Accounts shall not be allowed till they have accounted for the same. See *Burials*, Chap. 18.

The Office then of these Overseers consisteth principally in two Things.

1. In taxing Contributions of Money for the Relief of the Poor.
2. In disposing thereof according to Law, and good Discretion.

*Overseers
Duty.*

And in these Taxations, there must Consideration be had, first to Equality, and then to *Tax;* Estates.

Equality, that Men may be equally rated with their Neighbours, and according to an equal Proportion.

Estates, that Men be rated according to their *Estates of Goods* known, or according to their *known yearly Value of their Lands, Farms, or Occupying*; and not by Estimation, Supposition or Report. Also herein the Charge of Family, Retinue, &c. is in some Measure to be regarded: For if one valued at 500 *l. in Goods*, hath but himself and his Wife; and another estimated at 1000 *l.* hath Wife and many Children, &c. the first Man by Reason is to be rated as much as the other; and so of Lands. *Tamen quære*, what the Law is in such Cases.

Touching the Taxation of Mens Estates, these Rules are to be observed.

1. If a Man live in the Parish where his Lands lie, and doth demise those Lands to others, the Poores Tax in that Case ought to be charged upon the Tenant, and not on the Landlord, in Respect of the Tenant's Occupation thereof. *Where to be taxed, and how.*

2. A Man having Lands in other Parishes than where he lives, the same being in Lease, or not in Lease, he is to be taxed in the Parish where he lives, according to his visible Estate there, and not for his Lands or Rent in another Parish. And both these Points were resolved by *Hutton* and *Crook*, Judges of Assizes, at *Lent Assizes at Lincoln*, upon Application to them made by Sir *Anthony Earby*, against the Inhabitants of the Town of *Boston*; and this they said was agreed upon by all the Judges of *England* upon a Reference to them.

What shall be said to be a Parish within 43 *Eliz. 2.*

If there be an ancient Parish, and an ancient Village within that Parish; which Village had an ancient Church, and those within that Village have had parochial Rights, are chosen Church-wardens and Overseers of the Poor, and have been separately taxed ever since 43 *Eliz. 2.* for the Relief of the Poor within that Village; this is a Parish within 43 *Eliz. 2.* and Taxes may be made and levied within themselves. And all this was resolved in a Cause between *Hilton* and *Pawle*, upon a special Verdict between the Parish of *Hinkley* in the County of *Leicester*, and the Village of *Stoke-Goldingham* within that Parish. *Cro. Car. 92.* And the like was also resolved *Trin. 10 Car. 1.* between *Nichols* and *Walker*, between the Parish of *Hatfield* and the Village of *Tatridge*, 1 *Jones 355.* and *Cro. Car. 394.* *What shall be a Parish, see hic postea.*

The Distinction of Parishes in *England*, I find attributed to *Theodorus*, Archbishop, who died *An. Dom.* 690. (almost one Thousand Years since); for thus it is written of him, as it is cited out of a *MS.* *Excitabat fidelium devotionem & voluntatem in quarumlibet provinciarum Civitatibus, necnon villis, Ecclesias Fabricando, Paræcias distinguendo, assensus regios procurando, ut si qui sufficientes essent, & ad Dei honorem pro voto haberent super proprium fundum Ecclesias construere, earundem perpetuo Patronatu gauderent, &c.* Beda *Ecclesiast. Historic. notis Wheel.* p. 399.

Compulsion to take.

* *This is altered. See Apprentices in Tit. Labourers.*

Note also, That as the Statute enableth the Church-wardens and Overseers (with the Consent of two Justices of Peace) to put out Apprentices, so it doth enable them to place those Apprentices with the Masters; for without Masters there can be no Apprentices. And the said Justices may * *compel* all such as be of Ability, to take such Apprentices (according to their Discretion;) and if any such Master shall refuse to take such Apprentice so to him appointed, the said Justices may bind such Master over to the next General Gaol-delivery, there to answer such Default. And this was the Direction of Sir *Henry Mountague* Knight, Chief Justice of the *King's Bench* at *Cambridge Assises*, *Anno Dom.* 1618.

8 & 9 W. 3. c. 30. §. 5.

This being doubtful, and frequently controverted; by the Statute 8 & 9 *W.* 3. *cap.* 30. it was enacted, That where poor Children shall be appointed to be bound Apprentices, pursuant to 43 *El.* *cap.* 2. the Person to whom they are appointed to be bound shall receive and provide for them, according to the Indenture signed and confirmed by the two Justices, and also execute the other Part of the Indentures; and if he refuse, Oath being thereof made by one of the Church-wardens or Overseers, before any two Justices for that County, &c. he shall forfeit 10 *l.* to be levied by Distress and Sale of Goods, by Warrant of the said Justices, to be applied to the Use of the Poor of the Parish; saving to the Person, to whom any poor Child shall be appointed to be bound, his Appeal to the next Quarter-Sessions.

Lamb. Edit. 1614. P. 360.

(d) Two such Justices of Peace are to allow the Cause or Excuse of such Overseers as shall not meet every Month to consider of the Premises, or as shall be otherwise negligent in their Office.

The Overseers Account.

43 *El.* c. 2.

Two such Justices shall take the Account of such Overseers at the End of their Year, and of the Church-wardens in every of these Particulars following:

1. Of all Sums of Money by them received, or rated, and not received.

2. Of all such Stock of Ware of Stuff as they or any of their Poor have in their Hands.

3. What Apprentices they have put out.

4. What Poor they have set at Work, or relieved.

5. Whether they have suffered any of their Poor to wander and beg out of their Town, or in the Highways, or in their Town, without their Direction. See for this 39 *Eliz.*

3 & 4. & *Lamb.* 206. *Resol.* 15.

6. Whether they have Monthly met to consider of these Things.

Lamb. 428.

7. Whether they have assessed the Inhabitants and Occupiers of Lands, &c. in their Parish, *scil.* All such as are of Ability, and with Indifferency.

Ibid.

8. Whether they have endeavoured to levy and gather such Assessments.

9. Whether they have been otherwise negligent in their Office; within which Words also there seemeth to lie included, if they have neglected to execute the Justices Warrants to them, or any of them directed, for the Levying of any Forfeiture, according to this Statute.

Charity for Apprentices.

7 *Jac.* 1. c. 3. §. 2.

(a) All Sums given to bind out Apprentices shall continue and be employed to that Use, and no other, by the Persons following, except the Givers otherwise disposed of it, *viz.* By all Corporations of Cities, Boroughs, and Towns Corporate; and in Towns and Parishes not Corporate, by the Parson or Vicar, with the Constable or Constables, Church-warden or Church-wardens, Collectors and Overseers of the Poor, or the most Part of them; and they shall have the Nomination and Placing such Apprentices, and Guiding and Employment of such Monies: And if they, or any of them, shall wilfully neglect or forbear so to do, they and every of them shall forfeit five Marks; one Half to the Poor, the other to the Prosecutor, by Action, &c.

Ib. §. 3.

The Master, or Mistress or Dame, receiving such Money with such Apprentice, shall be bound with two Sureties to the Corporation; or the Person having the Ordering thereof, conditioned to repay the Money at the End of seven Years, or three Months after; and if the Apprentice die, within one Year after his Death; and if the Master, &c. die within seven Years, then within one Year after his Death such Money shall be put out

again

again and imployed within three Months after it comes in. And if there be no poor Children to be put out, then the poorest Children of the Parish adjoining; and the poorest Children shall always be made choice of, and none to be above fifteen Years of Age. *Ib. §. 5.*

The Persons so intrusted shall once every Year at *Easter*, or within a Month after, give to four, three, or two Justices dwelling in or next the Town, &c. an Account of all Monies so imployed, of Securities taken, and what is in their Hands; and at the Time of their Account, or a Month after, deliver up to such as shall succeed them the Obligations and Money. *Account. Ib. §. 6.*

In Case of any Breach of Trust or Misemployment, the Lord Chancellor may grant Commissions, &c. *Ib. §. 7.*

Quere, What Authority the Justices have by this Statute, for it seemeth they have no Authority compulsory over the Persons accounting, but only to take their Accounts. And as they find the Money misimployed, or not imployed, to represent the same to the Lord Chancellor, &c. that Commissions may issue as that Statute directs.

(d) Now if the Church-wardens, or either of them, or any of the Overseers, shall refuse to make and yield a true and perfect * Account to the said Justices of all such Sums of Money, and of all such Stock as aforesaid, any two such Justices may commit them to the common Gaol, there to remain without Bail till they have made a true Account, and satisfied and paid to the new Overseers so much of the said Sum and Stock, as upon the said Account shall be remaining in his (or their) Hands, &c. (a) And if they make a false Account, they may be bound over to the Assises or Sessions, and there an Indictment may be preferred against them. *Refusal to account and pay. * This must be within 4 Days after the End of their Year, and after other Overseers are appointed. 43 El. c. 2. §. 2, 4. Ib. §. 2.*

(d) And as for the other Negligences of the Church-wardens and Overseers in their Office, or in the Execution of the Orders aforesaid, every of them making Default shall forfeit for every such Default 20 s. (but it seems such Default must be proved either by the Offender's Confession, or by Examination of Witnesses) which Forfeitures shall be levied by the new Church-wardens and Overseers, or one of them, by Warrant from any two Justices of Peace, by Distress and Sale of the Offender's Goods, &c. or in Defect of such Distress, it shall be lawful for any two Justices of Peace to commit the Offender to the common Gaol, there to remain without Bail till the said Forfeitures shall be paid; and the same shall be imployed to the Use of the Poor of the same Parish. *Ib. §. 11.*

Two such Justices may make their Warrant (as well to the present as subsequent Overseers and Church-wardens, or to any of them) to levy all such Sums of Money, and all Arrearages, (of every one that shall refuse to contribute according as they shall be assessed) by Distress and Sale of the Offender's Goods, (rendring to the Party the Overplus:) And in Defect of such Distress, two Justices may commit him or them to the common Gaol, there to remain without Bail till Payment be made of the said Sum and Arrearages. *Levy of Taxes. Refusers to pay their Rate. Ib. §. 4.*

If the said Justices do perceive that any Parish is not able to relieve their Poor, then any two Justices may tax and assess any other Persons within the Hundred (where the said Parish is) to pay such Sums of Money to the Overseers of the said poor Parish for the said Purposes, as the said Justices shall think fit, according to the Intent of this Law. *Parishes not able, then to tax the Hundred. Ib. §. 3.*

If any Persons find themselves grieved with any Tax, or other act done by the Overseers, or by the said Justices of Peace, they are to be relieved at the Quarter-Sessions. *Appeal. Ib. §. 6.*

Head Officers of Cities and Corporate Towns (being Justices of Peace) have the same Authority within their Limits, as herein is limited to Justices of Peace of the County, &c. And no other Justices of Peace are to enter or meddle there. *Corporate Towns. Ib. §. 8.*

If any Parish shall extend into two Counties, or Part thereof do lie in any City or Corporate Town where they have Justices, then the Justices of every County, &c. shall intermeddle only within their own Limits: And every of them respectively within their Limits, are to execute this Law concerning the Nomination of Overseers, binding of Apprentices, giving Warrants to levy Taxations unpaid, taking Account of Overseers, and committing such as refuse to account, to pay their Arrearages: And yet the said Overseers shall, without dividing themselves, execute their Office in all Places within the said Parish; but shall give up several Accounts. *Parish in two Liberties. Ib. §. 9.*

The Father and Grandfather, and Mother and Grandmother, and the Children and Grandchildren of every poor impotent Person, or other poor Persons not able to work, being of sufficient Ability, shall relieve such poor Persons in such Manner as the Justices of Peace (of that County where such sufficient Persons dwell) at their General Quarter-Sessions shall assess, upon Pain that every one failing therein forfeit twenty Shillings for every Month; the said Forfeiture to be levied by the Church-wardens and Overseers, or one *Parents to relieve their Children. 43 El. c. 2. §. 7. Forfeiture.*

one of them, by Warrant from any two such Justices of Peace (the one being of the *Quorum*) within their Limits, by Distress and Sale as aforesaid; and in Defect of Distress, any two such Justices may commit the Offender to Prison, there to remain without Bail till the said Forfeiture be paid; and the same Forfeiture shall be employed to the Use of the Poor of the same Parish.

lb. §. 11. (a) The *reputed Grandfather or Grandmother* seem not to be within this Statute, for a Bastard is *filius populi*. *Reeve's Case, M. 7 Car.*

Ibid. 346. If the Child live in the County of *Middlesex*, and be maintained by the Parish there, and the *Grandfather, &c.* live in the County of *Suffolk*, the Justices of *Middlesex* can make no Order therein; but the Justices of Peace of the County of *Suffolk* must make Order to charge, &c.

Ibid. 345. If the *Grandmother* be a Person of Ability, and then *marries*, the Person with whom she marries is a *Grandfather* within this Statute; for by the Marriage, all her Goods are given to the Husband, but with this Difference, if *the Grandmother, at the Time of the Marriage, were of Ability*, otherwise not. *Draper's Case*, also *Gerrard's Case*. But if the Wife having nothing to bring her Husband in Marriage, but after by her Industry her Husband becomes a very rich Man, the Husband shall be charged, by *Whitlock*, but *Crook* to the contrary: But they both agreed, That if an Estate descend to the Wife after Marriage, the Husband shall be charged.

And the Father may be compelled to allow Maintenance to his *Son's Wife*, (the Husband being absented) as was done in the Case of one *John Ball*, by *Ord. 2 Sept. 15 Jac. lib. Sess. pa. Mid.* *

* *And a Father-in-Law has been adjudged within the Meaning of the Act 43 El. c. 2. Style 283.*

(d) Now for the better Furtherance of this so needful and charitable a Service, and for the better Help, as well of the Justices of Peace as of the Overseers, &c. I thought it not amiss to set down here certain Resolutions and Advices of the Judges (as I find them in Mr. *Lambard*) together with certain other Observations to this Purpose.

Resolutions. If there be but *one Church-warden* in the Parish, he with the other Overseers is sufficient.

Refol. 20. Parents able. If the *Parents be able* to work, and may have work, they are to find their Children by their *Labour*, (and not the Parish:) But if they be overburthened with Children, it shall be a very good Way to procure some of them to be placed *Apprentices*, according to the Statute: And such Apprentices would be put out to Husbandry and Housewifery.

Children, where to be relieved. Young Children, whose Parents are dead, are to be set on work, relieved and maintained at the Charge of the Town where they were Dwelling at the Time of the Death of their Parents, and are not to be sent to their Place of Birth, &c. For if the Parents were not Rogues, we may not make the Children Rogues, except they wander abroad and beg. This was the Direction of *Flemming* Chief Justice, in a Case between *Weston* and *Cowledge*, *Anno 11 Jac. Regis.*

Parents dying. If any (not being Rogues) shall travel with their Children through a Town, and the Father or Mother die, or run away, that Town is not bound to keep their Children, nor to send them away, but only in Charity, except they become wandering Beggars.

Refol. 7. Birth. (a) A travelling Woman having a small Child sucking upon her, is apprehended for *Felony* and sent to the Gaol, and is after arraigned and *hanged*; this Child is to be sent to the Place of *its Birth*, if it can be known, otherwise it must be sent to the Town where the Mother was apprehended, because that Town ought not to have sent the Child to Gaol (being no Malefactor;) and so was it delivered by *Sir Nicholas Hide*, at *Cambridge* Lent Assizes, *Anno 3 Caroli Regis.*

Refusing to work at the Wages taxed. (d) Such Persons as be of any Parish, and have able Bodies to work, if they refuse to work at such Wages as are taxed, or commonly given in those Parts, are to be sent to the House of Correction, and not to their Place of Birth, or last Dwelling, by the Space of a Year. But if they have any lawful Means to live by, though they be of able Bodies, and refuse to work, they are not to be sent to the House of Correction.

Begging. None may be suffered to take Relief at any Man's Door, though within the same Parish, unless it be by the Order of the Overseers; neither may any be suffered to beg by the Highway, though in their own Parish.

Refol. 15. 39 Eliz. 3. Settlement. No Man is to be put out of the Town where he dwelleth, nor to be sent to his Place of Birth, or last Habitation, but a Vagrant Rogue; nor to be found by the Town, except the Party be impotent; but ought to set themselves to labour, if they be able, and can get work: If they cannot get work, the Overseers must set them to labour.

Houses to provide.

Refol. 9.

(a) One *Winde* and his Wife lived at *Layflas*, and used a House and Land which was given the Woman by her Brother, her Brother turned her out of it; and thereupon they went to *Kimmaltou*, and took a House there, and lived in it a Year; and at the Instance of the Parish of *K.* the Landlord at the Year's End turned him out of the House: He complained to the Justices, who ordered the Parish of *K.* to provide him a House; and for not doing it, were in Contempt. And upon Complaint at *Hereford* Lent Assises, 7 *Car.* 1. *Whitlocke* Justice of Assise, discharged the Overseers of their Contempt, and discharged the Order made upon *K.* by the Justices, as being against Law; for that *W.* was not a poor or impotent Person within 43 *Eliz.* 2. And the Justices had no Power by that Law to compel and to provide a House for him, for he might provide one himself. *Inter Parochias de Layflas & Kimmaltou*, Bulstr. Part 2. p. 347.

(d) And so of them that have or shall have Houses, when their Leases are expired; and Servants, whose Times of Service are ended though they cannot get Houses; for they must provide themselves Houses anew, if they be not impotent. Resol. 9.

But such Persons must not be put out of the Towns where they so last dwelt or served: Neither are they to be sent from thence to their Place of Birth or last Habitation, but are to be settled there to work, being able of Body; or being impotent, are to be there relieved: And yet it seems, that if such Persons shall wander abroad begging, out of that Parish, then they may be sent as *Vagabonds* (from the Place where they shall be taken wandering or begging) to their Place of Birth, &c.

(a) But for the Placing and Settling of these poor People (who now for Want of Charity are much sent and tossed up and down from Town to Town, and from Country to Country) it hath been holden by some, that it is in the Power of the next Justice of Peace to give Order therein, and that upon Appeal from him, the Justices of Peace at the Quarter-Sessions may fully take Order therein, and that their Order made in Sessions will not easily be avoided.

But Sir *Francis Harvey* at Summer Assise at *Cambridge*, An. 1629. did deliver it, That the Justices of Peace (especially out of their Sessions) were not to meddle, either with the removing, or settling of any Poor, but only of Rogues. The Practice is now quite contrary.

If a Man hireth a House in *A.* and being there with his Wife and Children, he afterwards shall bind himself as a *Servant* with one dwelling in *B.* yet are not his Wife and Children to be sent to *B.* or placed there, but are to remain still at *A.* where they were once settled. Otherwise if the Husband hath * hired a House in *B.*

A Maid-servant gotten with Child at *A.* by her Fellow-servant (or by another young Man of the same Town) after both their Times of Service are expired and they marry, and then the young Man is retained at *B.* then the Woman is delivered of the Child, she with her Child are to be sent to the Father at *B.* and there they are to be settled. * But it must be of the yearly Rent of 10 l.

Note; (By an old Law) a Stranger, or he which cometh Guest-wife to an House, and there lieth the *third Night* is called an *Hogenbyne* (or *Agenbyne*) and after the *third Night* he is accounted one of his Family, in whose House he so lieth, and if he offend the King's Peace, his Host must be answerable for him. *Terms de ley.*

Secundum antiquam consuetudinem dici poterit de familia alicujus qui hospitatus fuerit cum alio per tres noctes, qui prima nocte dici poterit Uncouth, secundo Gust, tertia nocte Hogenbyne. *Braet. fol. 124. b.*

And *Minsh.* verb. *Hogenbyne*, and *Uncouth* saith, that *Uncouth* signifieth *incognitus*, and is used in ancient *Saxon* Laws for him that cometh to an Inn Guest-wife, and lieth there two Nights at the most; and that by the Laws of *Edward*, and of the Conqueror, *Hospes trium noctium*, if he did any Harm, his Host was answerable for the Harm, as for one of his own Family; and that if he tarried any longer, then he was called *Hogenbyne* or *Agenbyne*, that is, *Familiaris*. So it seemeth in those Times, that to lodge in a Place for three or four Nights together, was counted a Settling.

(d) Such as shall remove or put any out of their Parish, that be not to be put out; this is against the Statute concerning the Relief of the Poor, and fineable. And if any have been so sent, they may be sent back again. Resol. 11.

Now this *Fine* seemeth to be by Force of the Statute 39 *El. cap.* 4 *, and to amount to five Pounds, and is to be levied by Distress and Sale of the Offender's Goods, upon a Warrant under the Hands and Seals of any two Justices of the Peace, either upon the Confession of the Offenders, or else upon the Testimony of two sufficient Witnesses. * The 39 Eliz. c. 4. is repealed by 12 Ann. c. 23. §. 28.

(a) Upon Complaint made to any Justice of Peace by the Church-wardens or Overseers, within forty Days, of any Person, likely to be chargeable coming to settle in a Tenement under 10 l. per Annum, two Justices *Quorum unus* of that Division where he comes Removal. 13 & 14 Car 2. c. 12. §. 1

to inhabit, may by Warrant remove and convey him to the Parish where he was last legally settled, as a native Householder, Sojourner, Apprentice, or Servant, for forty Days, unless he give Security for the Discharge of the Parish, to be allowed by the said Justices.

Appeal.

Ib. §. 2.

The Persons thinking themselves grieved, may appeal to the next Sessions, who shall do them right.

Harvest.

Ib. §. 3.

Any Person may, for Harvest-work or other Work, travel out of one County into another, so as they carry with them a Testimonial under the Minister's Hand, and the Hand of one Church-warden and one Overseer, that he hath a Dwelling-house there, and hath left a Family there, or otherwise as the Condition of the Person shall require; and if he shall not return when his Work is finished, or shall become impotent: This shall not be accounted a Settlement, but two Justices of Peace may convey him back under the Penalties in that Act.

Not going.

Ibid.

If such Person shall refuse to go, or shall not remain in the Place where he ought to be settled, but shall of his own Accord come back to the Place from which he was removed. Two Justices of Peace may send him to the House of Correction, to be punished as a Vagabond, or to a Workhouse, in that Act mentioned, to be set on Work.

Ibid.

If any Church-warden or Overseers refuse to receive such Person so to be removed, and provide for him as an Inhabitant; any Justice of Peace may bind them to the Assises or Sessions, to be indicted for their Contempt. This Act to continue to the End of the first Session of the next Parliament.

* *This Act is continued by several Statutes, and by the Stat. 12 Ann. c. 18. 'tis made perpetual.*

This * Act being but temporary, but of general and publick Concern, if any future Parliament shall think fit to continue it, it were good these following Matters were also provided for, and so the Queries here made, thereby removed.

1. A Maid-servant or Man-servant being single, and at Service in one Parish by the Year, do contract for a Year with a Master in another Parish, and are there settled; whether upon Complaint they may be removed by this Act. This hath been made a Doubt, but yet, it seemeth such Servant is not within the Meaning of the Act: First, For that the Act instanceth in a Person's coming to settle in a Tenement under 10 *l. per Annum*, and so aimeth at Persons keeping House, and having a Family. Secondly, For that it is not likely such Persons can give the Security intended by the Act; so likewise of Apprentices.

* *The Consideration Money must be 30 *l.* otherwise he shall have no Settlement for any longer Time than he dwelleth there,*

2. A Man dwelling in *A.* and having a Family, * purchaseth *bona fide* Lands in *B.* under 10 *l. per Annum*, and cometh to live in it with his Family: Whether he be removeable by this Act. And it seemeth he is not: For that such a one cannot well be adjudged likely to be chargeable; nor can it be thought the Mind of the Parliament to prevent such Settlements.

3. As there is a Time limited for Complaint, and no Time limited for the Removal. *Quere*, Within what Time that must be procured. But it seems reasonable it should be before the next Sessions after the Complaint; otherwise a Parish having complained, may let the Person continue with them, and take his Labour, and keep him under Apprehensions of Removal, which would discourage Industry.

Which Cases and Queries are obvious, as many more are; and it is well worthy Consideration of wise Law-makers to consider, whether notwithstanding the specious Allegations in the said Act's Preamble, it be not prejudicial to the Commonwealth. For that, 1. By the Words *likely to be chargeable*, too great a Scope is given to any Person, although never so just and prudent, to inspect and to determine another Man's Livelihood and Condition. 2. * A Man without his Offence, is debarred of his natural Liberty, upon a Possibility remote enough, may be made a Beggar and a Prisoner, at the same Time deprived of the Company of Friends and Relations, Choice of Air and Place of Trade. 3. It tends to Discouragement of Ingenuity and Industry; for why should any one learn or endeavour to be excellent in any Handicraft, which he is likely to make small Use, and smaller Benefit of? 4. Places and Persons are deprived of the Labour and Industry of others. 5. It tends to Depopulation, which is the greatest Inconvenience an Island can undergo.

* *This is now remedied by the Certificate.*

The Authority of the following Resolutions is not great; for some Country Gentlemen coming to Sir Robert Heath, when Chief Justice in the Circuits, put to him these several Queries,

Queries, to which he subscribed his own Opinion, then brought the same into Serjeants-Inn-Hall, and proposed the same to the Rest of the Judges; but they differing in Opinion from him in many Things, they never came to a Resolution, and so were no more than his private Opinion; which some Clerk getting, hath published the same, as Justice Twifden declared in the Court of King's Bench in Easter Term 28 Car. 2. as I heard and observed. And afterwards in Michaelmas Term 28 Car. 2. a Gentleman of the Bar using these Resolutions to the third, fourth, and eighth Questions touching putting out Apprentices, as an Authority to his Purpose, Justice Twifden said, Why do you use that as an Authority, which all the Judges disclaimed? *

* These Resolutions, though!

not of Authority, are here inserted, because many of them are confirmed or explained by late Statutes, as will appear by the Marginal Notes. But not to swell the Book needlessly, Extracts from these Resolutions, which in many Places of this Chapter in former Editions were interspersed with Dalton's Text, are omitted.

Resolutions of the Judge of Assise, 1633.

1. *Quest.* **W**HETHER the Church-wardens and Overseers of the Poor of the Parish, with Assent of two Justices of the Peace, one being of the *Quorum*, may by the Statute of 43 *Eliz. cap. 2.* or any Law, inforce a Parishioner of the same Parish to * take a Child of a poor Parishioner of the same Parish, who is not able to keep his said Child, to be an Apprentice? * By Stat. 8 & 9 W. 3. c. 30. he must take the Child or pay 10 l.

Resol. The Statute of 43 *Eliz.* which saith, That the Church-wardens and Overseers of the Parish shall put out Children to be Apprentices, necessarily implieth, That such as are fit must receive Apprentices, and the putting out of poor Children to be Apprentices, is one of the best Ways for the providing for the Poor. Of inforcing Persons able to take Apprentices. 43 El. c. 2.

2. *Qu.* If they may, then whether they must not give Money with him, and who shall determine what Money shall be given with him, if the Party that is to take such an Apprentice, and the Church-wardens and Overseers cannot agree thereupon? Of giving Money with Apprentices.

Resol. There is no Necessity that Money must be given, but that must be left to the Discretion of the Church-wardens and Overseers, all Circumstances of Age and Ability being considered; and if they cannot agree with the Party, then the Justices of Peace near adjoining, or in their Default, the Sessions of Peace are to determine these Controversies.

3. *Qu.* Whether a Knight, Gentleman, Clergyman, or Yeoman, or one that is a Sojourner, using Husbandry, Clothing or Grasing, or the like, may be inforced to take such an Apprentice? What Persons are bound to entertain Apprentices.

Resol. Every Man who is by Calling or Profession, or Manner of Living, that entertaineth, and must have the Use of other Servants of the like Quality, * must entertain such Apprentices, wherein Discretion must be had upon due Consideration of Circumstances. * Or forfeit 10 l.

4. *Qu.* Whether a wealthy Man keeping few or no Servants, nor wanting a Servant, but living privately, may be forced to take such an Apprentice; if not, then whether he may be taxed towards the putting forth of such an Apprentice?

Resol. For the receiving of such Apprentices, the Answer may be referred to the Question next before; but out of Doubt every such Person must contribute to the Charge, as to other Charges for the Provision of the Poor.

5. *Qu.* Whether they may inforce a Parishioner that is of one Parish, to take such a Child Apprentice, that is of another Parish, but within the same County or Division, if the proper Parish be not able to provide for the Children of the same Parish? Apprentices when to be put unto other Parishes.

Resol. The Justices may provide Masters for them in other Parishes within the same Hundred; if the same Hundred be not able, then out of that Hundred, in the rest of that County; as for other Provision for the Poor, which must be at a Quarter-Sessions.

6. *Qu.* If such a Parishioner may be inforced to take such an Apprentice, and shall refuse not only to take such an Apprentice, but also refuse to be bound to appear at the next Quarter-Sessions or Assises what shall be done to him? Persons refusing to take such Apprentices, forfeit 10 l.

Resol. If any refuse, let such a one be bound over to the next Sessions or Assises; if he refuse to give Bond, let him be sent to the Gaol, there to remain until he shall give such Bond.

7. *Qu.* If such a Parishioner who refuseth to take such Apprentice, shall be bound over to the Sessions for not taking such an Apprentice, and when he appeareth there, shall likewise refuse, what shall be done to him; and what shall be done to the Parents who

who refuse to suffer their Children to be put out to be Apprentices, themselves not being

* But by Stat. able to maintain them*?

8 & 9 Will. 3.

cap. 30. the Person refusing, upon Oath thereof by one Church warden or Overseer before two Justices, forfeits 5 l. to be levied by Distress, &c. to the Use of the Poor.

Refusers to take Apprentices at the Quarter-Sessions to be bound to the Good Behaviour, This is altered by the said Stat. 8 & 9 W. 3.

Resol. If at the Sessions or Assises such a one refuseth to take an Apprentice, and his Excuse be not allowed, it is fit he be bound to the Good Behaviour; and it will be a good Course to indict such a Refuser for a Contempt, and thereupon to fine and imprison him; if he refuse to be bound to the Good Behaviour, let him be imprisoned till he will; and the King's Book of Orders directs, that such be bound with good Sureties to appear at the Council-board: And if the Parents of such poor Children refuse to suffer their Children to be bound Apprentices, or being bound, intice them away, themselves not being able to maintain them, let them be committed to the House of Correction.

Fines certain not to be mitigated.

8. *Qu.* Whether it be in the Power of any General Quarter-Sessions to mitigate any Penalty upon a Statute-Law; if the Party indicted shall submit himself to the Fine of the Court, and wave the Traverse?

Resol. If the Party be convicted, or confess the Fault, it is not in the Power of the Court to mitigate the Fine, in such Cases where the Statute makes it certain: But if the Party indicted protesting his Innocency, yet *quia noluit placitare cum domino rege* puts himself upon the Grace of the Court, they may impose a moderate Fine, and order to forbear the Prosecution.

9. *Qu.* If any be bound to appear at the Sessions, and shall tender Submission to the Court, whether the Sessions may stay the Indictment, and mitigate the Fine aforesaid upon the Confession of the Fact?

Resol. This is answered before to the next precedent Article.

No Discharge of any Forfeiture after Conviction for Drunkenness, Tippling, &c.

10. *Qu.* If any Man be convicted for being drunk, tipling, and keeping an unlicensed Alehouse, or being licensed, is convicted for suffering others to remain Tipling in his House; or for swearing or driving Cattle upon a *Sunday* contrary to the Statute; whether the Justice of Peace, before whom he was convicted, or any other Justice of the Peace may discharge him of all, or Part of the Forfeiture or Punishment appointed by the Statute?

Resol. The Justices have no such Power of Mitigation after Conviction, where the Statute appoints the Measure of the Punishment.

Constable break open an House.

11. *Qu.* Whether a Constable may upon a Warrant for carrying one to the House of Correction for keeping an unlicensed Alehouse, upon the second Conviction break open the House, wherein the Party convicted is, to apprehend him?

Resol. This Question is to be advised upon, it is put in general Terms, and referred to be considered in the Particular where it appeareth.

Settlement of a Woman gotten with Child.

12. *Qu.* If a Woman unmarried be hired from Week to Week, or from Half-year to Half-year, in one Parish, and there be gotten with Child, and then goeth from thence unto another Parish, where she is settled in Service by the Space of two or three Months, and then discover'd that she is with Child. The Question is, Whether she shall be settled in the Parish where she was begotten with Child, or in the Parish where she was settled?

Resol. The Place where such a Woman was lawfully settled, is the Direction in this Case, not where she was gotten with Child.

A Woman gotten with Child, the Master to provide for her till her Delivery.

13. *Qu.* If a Woman-servant unmarried, be gotten with Child, and then goeth out of her Master's Service, before or after it is discovered that she is with Child, and the reputed Father be run away, or is not able to free the Parish: Whether the Master may be inforced to provide for her till she be delivered, and for a Month after?

Resol. If the Master hath legally discharged his House of such a Servant, he is no more bound to provide for her than for any other.

Tenant in Ancient Demesne.

14. *Qu.* In Case a Parish consist Part of *Ancient Demesne*, and Part of Guildable, an Assess is made for the Relief of the maimed Soldiers, the Gaol, &c. according to the Statute of 43 *Eliz.* cap. 3. Whether the Tenants in *Ancient Demesne* shall contribute with the *Guildable* for the Payment of the Assise?

Resol. The Statute doth not distinguish between the *Ancient Demesne* and the *Guildable* in these Cases, *Ubi Lex non distinguit, ibi nec nos distinguimus.*

Indictment of Forcible Entry removed by Certiorari.

15. *Qu.* Whether an Indictment of Forcible Detainer be within the Statute of 1 *Jac.* 1. cap. 5. and not to be removed by *Certiorari*, unless the Party indicted first find Sureties according

according to the Statute; and whether the Party indicted be to be bound in his Absence to prosecute according to that Statute; and whether an Indictment of Forcible Entry, &c. found at a private Sessions, be to be removed by *Certiorari* without Sureties, according to that Statute?

Resol. This is fittest to be left unto the Court of King's Bench, to whose Commission and Jurisdiction this is most proper.

16. *Qu.* If one be convicted upon the Statute of 3 *Car. cap. 2.* for driving of Cattle on the Sunday throughout several Parishes; whether he shall forfeit 20 s. to every of the said Parishes, or only to one; if to one, then to which of them? *Driving Cattle on the Sabbath.*

Resol. The Statute giveth the Forfeiture but of one 20 s. for one Sabbath-day, although the Driving of that Day be through divers Parishes. Therefore where the Action is first attached, and the Distress first taken, that Parish shall have the Benefit of the Forfeiture, and not the other.

17. *Qu.* If one who is under the Age of thirty Years, and brought up in Husbandry, or a Maid-servant, or brought up in any of the Arts and Trades mentioned in the Statute of 5 *Eliz. cap. 4.* and not inabled according to that Statute, to live at his or her own Hand, shall be warned by two Justices of the Peace to put him or herself in Service, by a Day prescribed by them, and shall not do the same accordingly, but shall after continue living at his or her own Hand; what Course shall be taken with such a Person, and how punished? *Persons able not putting themselves to Service after Warning.*

Resol. Such Persons being out of Service, and not having visible Means of their own, to maintain themselves without their Labour, and refusing to serve as an hired Servant by the Year, may be bound over to the next Sessions or Assises, and to be of the Good Behaviour in the mean Time, or may be sent to the House of Correction.

18. *Qu.* Whether the Tax for the Relief of the Poor upon the Statute of 43 *Eliz. cap. 2.* shall be made by Ability, or Occupation of Lands, or both; and whether the visible Ability in the Parish where he lives, or general Ability wheresoever; and whether his Rent received within the Parish where he lives shall be accounted visible Ability, and whether he shall be taxed for them only, and for any Rent received from other Parishioners; and what shall be said visible Ability? *Taxes for the Poor, now to be made according to the Stat.*

Resol. The Land within each Parish is to be taxed to the Charges in the first Place equally and indifferently, but there may be an Addition for the personal visible Ability of the Parishioners within that Parish, according to good Discretion, wherein if there be any Mistaking, the Sessions, &c. or the Justices must judge between them.

19. *Qu.* Whether Shops, Salt-pits, Sheds, Profits of a Market, &c. be taxable to the Poor as well as Lands, Coal-mines, expressed in the Statute 43 *Eliz.* *Things taxable to the Poor.*

Resol. All Things which are real, and a yearly Revenue, must be taxed to the Poor.

20. *Qu.* Whether the Tax for the County-stock, Gaol, and House of Correction, is to be made by the Statute of 14 *Eliz. 5.* 43 *Eliz. 2.* by Ability, and upon the Inhabitants of the Parish only, or upon them, or the Occupiers of Lands, dwelling in that Parish, or whether such as occupy Lands in that Parish, and dwell in another Parish shall be taxed? *Tax for the County-stock, Gaol, House of Correction, how to be made.*

Resol. If the Statute in particular Cases give no special Direction, it is good Discretion to go according to the Rate of Taxation for the Poor: But when the Statutes themselves give Direction, follow that.

21. *Qu.* Whether any Taxes ought to be made for the Charges that Petty Constables and Bortholders are at, in conveying Rogues from Parish to Parish, and relieving of them, and how to be rated? *Tax for the Charges of Petty Constables.*

Resol. It is fit to relieve the Constable and Tithingmen, in such Sort as hath been used in the several Places where they live.

22. *Qu.* Whether a Justice of Peace may discharge a Servant, being with Child, from her Service, allowing that as a reasonable Cause that she is thereby made unable to do the Service, which otherwise she might have done; and if he may discharge her, whether that Parish shall provide for her, till her Delivery, if she cannot provide for herself; and so also, if her Time be expired before her Delivery, who shall provide for her after her Time ended?

Resol. If a Woman being with Child, procure herself to be retained with a Master who knoweth nothing thereof, this is a good Cause to discharge her from her Service. And if she be gotten with Child during her Service, it is all one: But the Master in neither Case must turn away such a Servant of his own Authority. But if her Term be ended, or she lawfully discharged; the Master is not bound to provide for her, but

it is a Misfortune laid upon the Parish, which they must bear, as in other Cafes of casual Impotency.

23. *Q.* Whether one being delivered of a Bastard-child in one Parish, and goeth into another with her Child, and becomes Vagrant, and so is sent to the Place of her *Birth*, her Bastard-child being under the Age of seven Years, shall be settled with the Mother, and there maintained; if the Mother be not able, nor the reputed Father known, found; or whether it shall be sent to the Place of its Birth, or being settled with the Mother, whether the Parish where it was born, shall be ordered by the two next Justices, to pay a weekly Sum towards the Maintenance of it?

Bastard children, how to be disposed.

Resol. The Bastard-child must be placed with the Mother, so long as it is within the Quality or Condition of a *Nurse-child*, which shall be, till seven Years of Age; and then it is fit to be sent to the Place of its Birth to be provided for, the Mother or reputed Father not being able. And the Parish where the Child is born shall not be forced to contribute to the Charge, as long as the Mother lives, and the Child be under seven Years old.

24. *Qu.* A Man with his Wife and Children, takes an House in one Parish for a Year, and before the End of his Term is unlawfully put out of Possession, and after takes Part of an House as an Inmate in another Parish, from whence he is also put out, and then not being able to get any Dwelling, they come to lie in a Barn in a third Parish, where the Husband falleth sick, and the Wife is delivered of another Child, where ought these to be settled?

Illegal Un-settlement not to be allowed.

Resol. If a Man or Woman having House or Habitation in one Parish, be thrust out; this is an illegal Unsettling, which the Law forbiddeth, and none must be enforced to turn Vagrant, and such one must be returned to the Place where he or she was last lawfully settled, and the Child also born in the Time of his Distraction.

Apprentice put out into another Parish, where the Master dies.

25. *Qu.* Whether an Apprentice put out by the Church-wardens, &c. according to the Statute, to a Master in another Parish, if his Master die and leave no Executor or Administrator fit to keep an Apprentice; or able to place him; he shall be provided for in the Parish where he was Apprentice, or shall be sent back to the Parish from whence he was put out?

Resol. Servants and Apprentices are by Law settled in that Parish, and if they become impotent there, the Parish must abide the Adventure, after their Term or Time of Service be lawfully ended.

What is accounted a lawful Settlement.

26. *Qu.* What is accounted a lawful Settling in a Parish, and what not?

Resol. This is too general a Question, to receive a perfect Answer to every particular Case which may happen: But generally this is to be observed, that the Law unsettleth none who are lawfully settled, nor permits it to be done by a Practice or Compulsion; and every one who is settled as a native Householder, Sojourner, an Apprentice or Servant for a * Month at the least, without a just Complaint made to remove him or her, shall be held to be settled.

* This must be accounted from the Publication of Notice in Writing, 3 & 4 W. c. 11. A Rogue misconfessing the Place of his Birth or Habitation.

27. *Qu.* A Rogue is taken at *C.* and will not confess the Place of his Birth; neither doth it appear otherwise, but that he confesseth the last Place of his Habitation to be at *S.* Hereupon he is whipped, and sent to *S.* the Place of his Birth is there known to be at *W.* and thereupon the Rogue confesseth it to be so, whether he might without any new Vagrancy be sent to *W.*?

Resol. In this Case it is fit to send such a Rogue to the Place of his Birth, for this is but a mistaken, and no legal Settling.

In what the Goal may be delivered at the Sessions.

28. *Qu.* If an Indictment be preferred to the Grand Jury of the Quarter-Sessions of the Peace, against one for Murder, Manslaughter; for Robbery, Felony, or Petty Larceny, and *Ignoramus* found, whether the said Sessions may deliver the Party by Proclamation, or not?

Resol. Not by Proclamation at all; but for Petty Larcenies, and other petty Felonies, in Discretion the Gaol may be delivered of them.

Constable elected refusing.

Qu. 29. If a Constable be chosen and refuseth to take his Oath, what shall be done, and whether a Constable may make a Deputy, and by what Means?

Deputy Constable.

Resol. The Refusal or Neglect to take an Oath in such a Case, is a Contempt worthy of Punishment, and thereupon to fine and imprison him; and the making of a Deputy is rather by Toleration than by Law.

Constable dying, how to be supplied.

30. *Qu.* If a Constable die, or remove out of the Parish where, &c. how is his Place to be supplied?

Resol.

Resol. By the Lord of the Leet, if that Time fall near, otherwise by the Sessions; but if that be too far off, then by the next Justices.

31. *Qu.* If a poor weak Man be chosen Constable or Tithingman, and be unfit for the Place; how may he be removed, and a fit Man sworn in his Room?

Constable unfit, how to be removed.

Resol. The Justices of Peace must help this, and if the Lord of the Leet have Power to chuse a Constable or Tithingman, and perform it so ill, it is a just Cause to seize his Liberty.

32. *Qu.* If a Nurse-child, a Scholar at a Grammar-School, or in the University prove to be impotent by Sickness, Lameness, Lunacy, or Discovery of Ideocy, &c. how such Persons shall be disposed of?

Nurse-Child, Scholar, Bastard in a Gaol, Houses of Correction.

Resol. A Nurse-child, or a Scholar at the Grammar-School, or at the University, or Persons sent to the Common Gaol, Hospital, or House of Correction, are not to be esteemed as Persons to be settled there, more than Travellers in their Inns; but their settling is where their Parents are settled; and Children born in Common Gaols and Houses of Correction, their Parents being Prisoners, are to be maintained at the Charge of the County.

33. *Qu.* What Proportion shall Parsonages or Tithes bear to the Taxation of the Poor of the Parish?

Parson, Vicar, how chargeable to the Poor upon the St. 43 El.

Resol. The Parson or Vicar Presentative, shall bear according to the reasonable Value of his Parsonage, having Consideration to the just Deductions.

34. *Qu.* Whether for placing the Poor of the Parish, not to be removed by Consent of the Parish, these poor Men may not be placed as Inmates for a Time?

In what Cases Poor may be placed as Inmates.

Resol. They may by express Words of the Statute of the 43 Eliz.

35. *Qu.* If a Parishioner, or Owner within a Parish, do bring into the Parish, (without the Consent of the Parish) a Stranger of another Parish, which is, or apparently is like to be burdensome unto the Parish; how may they ease themselves?

Strangers apparently like to be chargeable to the Parish brought in, the Bringers in of them to be taxed.

Resol. By taxing such an one to the Charge of the Rates of the Poor, not only having Respect to his Ability, or the Land he occupies, but according to the Damage and Danger he bringeth to the Parish by his Folly.

36. *Qu.* For warding in the Day-time, for apprehending of Rogues, whether the Constable may not enlarge it to a further Time?

Warding in the Day-time for apprehending of Rogues.

Resol. Warding in the Day-time is of great Use, and must be left to the Discretion of the Constables, or Direction of the Justices to vary according to the Occasion.

37. *Qu.* Whether Alehouses ought to be allowed only in thoroughfare Towns, and others in other Places to be restrained only to sell to Poor out of Doors?

Alehouses to be moderated in Number.

Resol. The Justices shall do very well to allow none but in Places very fit for their Situation and Uses, and to moderate the Number.

38. *Qu.* A Man for his Quality otherwise fit to be a Constable, or of other Office of that Nature, procures himself to be the King's Servant extraordinary, and by that Means would excuse himself to serve in the Country?

Constable the King's Servant.

Resol. A Servant extraordinary may well perform his ordinary Service in the Country, according to his Quality.

The Justices Opinion touching the Commission by which the Justices sit at Newgate.

THE Justices at Newgate sit by Virtue of two Commissions, viz. Gaol-delivery, and Oyer and Terminer.

By the Commission of Gaol-delivery, they may try all Prisoners in the Gaol, or by Bail, or such as be indicted, and will render themselves generally for all Felonies; and also for such other Offences as are particularly assigned to them by Statute.

The Statute of 4 Eliz. 3. cap. 2. giveth them Power to receive Indictments against Prisoners, or such as are upon Bail, and to proceed to try the same, viz. Indictments taken before the Justices of the Peace, and by Equity thereof, all Indictments before Coroners, 3 Mar. Bro. Commission 24. saith, the Commission is, *Ad deliberand. Gaol. de prison. in eisdem existen'*. But they cannot take Indictments as Justices of Gaol-delivery, but being Justices of the Peace, they may take Indictments against Prisoners, but not against them that be at large; forasmuch as no Power is given them, consequently they must have Means so to do, which is by Indictments. *Id quærend.*

Howsoever it is so clear, that they may inquire of many Offences, and take Indictments in such Cases where Power by the Statute is given to the Justices of Gaol-delivery; in such Cases where they have Authority by Law or Statute, there the Title of Indictment is, that

ad gaolom deliberand. tent. before the Commissioners of Gaol-delivery *J. S.* was indicted, and the Record must be made up so.

And whereas by the Statute of 4 *Eliz.* 3. *cap.* 3. Indictments taken before Justices of Peace or Coroners, or any other against any Prisoner, then the Entry of the Indictments is returned taken, *Memorand. quod ad generalem Sessionem tent.* before *A. B. C.* Justices *ad pacem in Com. Middlesex* or *London conservand.* *J. S.* was indicted, and then tried before Justices of Gaol-delivery, and by Virtue of the said Statute, Indictments taken before Justices of the Peace of *London* or *Middlesex*, are tried before the Justices of Gaol-delivery.

The Commissioners of *Oyer* and *Terminer* is *Ad triand. inquirend. audiend. & determinand.* They may inquire of all Offences mentioned in the Commission, tho' the Offenders be at large, but they cannot try Prisoners upon Indictments taken before any other than themselves, as the Justices of Gaol-delivery may by the aforesaid Statute, unless there be a Special Commission made, as it was in the Case of the Earl of *Leicester*, mentioned in *Plow. Com.* for the ordinary Commission of *Oyer* and *Terminer* is *ad inquirend. audiend. & determinand.* Therefore they cannot determine of Things unless they made Inquiry first; and on the other Side also the Justices of Gaol-delivery may try Indictments taken before Justices of the Peace; yet if one be indicted before Commissioners of *Oyer* and *Terminer*, the Justices of Gaol-delivery cannot try the same, because the Record of the Commission of *Oyer* and *Terminer* is to be return'd in the *King's Bench.* 44 *E.* 3. 31.

3 Mar. Br.
Com. 24.

The Commission and the Records of the Proceedings before the Justices of Gaol-delivery, are to be returned to the *Custos Rotulor.* of the County, when the same Persons are Justices of Gaol-delivery, and of *Oyer* and *Terminer*, they may sit the same Day and Place, and inquire by the same Jury, but the Entry of the Records must be several, according as the Indictment is.

At the Assizes in the Country, the Justices have their several Power, as the Justices of Gaol-delivery, *Oyer* and *Terminer*, and Justices of Peace.

But when the Records are made up, they must be according to the Power they made Election to proceed upon.

This is the regular and legal Course. But the Clerks of the Assizes promiscuously make Entry thereof; but if a Writ of Error be brought, they must certify according to Law, or else it will be erroneous; and so upon a *Certiorari.*

The Sessions of *London* may begin at the *Guildhall*, and then adjourn to *Newgate*; if some Indictments be at *Guildhall*, then these must be so certified: If others at *Newgate*, then the Adjournment must be mentioned, and that the Indictment was then taken.

Note, That the Trial of Indictments taken before Justices of the Peace of *London*, cannot be tried at *Newgate*, as in Nature of a Trial before Justices of the Peace at *London*, for many of the Commissioners for Gaol-delivery are not Justices of the Peace for *London*; but in such Cases the Trial must be before the Justices of Gaol-delivery: As upon Indictments taken before the Justices of the Peace of *London*; as in the Case of Indictments taken before the Justices of the Peace of *Middlesex.*

But if Indictments at *Newgate* are originally taken before them, as Justices of Gaol-delivery, then it is inquirable how the Jury sworn and impanelled to inquire at the Sessions of the Peace for *London* or *Middlesex*, do serve to present Indictments before the Justices of Gaol-delivery at *Newgate*, unless the Custom and Usage will warrant the two several Juries sworn at the Sessions of Peace for *London* or *Middlesex*, are also by the same Oath, and impanelling, to serve for the Grand Jury for the Commission of Gaol-delivery, *Oyer* and *Terminer.*

Upon Conference with the Clerks for *Newgate* of *London* and *Middlesex*, and the Clerks of Assize, and View of the several Entries, more certain Resolution may be given, as Occasion may be offered, in any particular Case.

(d) Next, here is a Consideration to be had of three Sorts or Degrees of Poor.

1. Poor by Impotency and Defect.

1. The Aged and Decrepit that are past Labour.
2. The Infant, Fatherless and Motherless, and not able to work.
3. The Person naturally disabled, either in Wit or Member, as an Idiot, Lunatick, Blind, Lame, &c.
4. The Person visited with grievous Diseases, or Sickness, though casually, yet thereby for the Time being impotent.

All these (being impotent and not able to work) are to be provided for by the Overseers of necessary Relief; and are to have Allowances proportional, and according to the Continuance

Poor, three
Sorts.

nuance and Measure of their Maladies and Needs; and of these it may be said, *Si non par-
visti, occidisti.*

2. Poor by Casualty.

- 1. The Person casually disabled, or maimed in his Body, as the Soldier, or Labourer, &c. maimed in their lawful Callings.
- 2. The Householder decayed by Casualty of Fire, Water, Robbery, Suretyship, &c.
- 3. The poor Man overcharged with Children.

All these last (and such others) having Ability and Strength of Body, but not sufficient Means to maintain themselves, are to be holpen, or set to work by the Overseers; and being not able to live by their Work, are in Charity further to be relieved in some reasonable Proportion, according to their several Wants and Necessities.

3. Thriftless Poor.

- 1. The riotous and prodigal Person, that consumeth all with Play or Drinking, &c.
- 2. The dissolute Person, as the Strumpet, Pilferer, &c.
- 3. The slothful Person, that refuseth to work.
- 4. All such as wilfully spoil or imbezil their Work, &c.
- 5. The Vagabond that will abide in no Service or Place.

For all these last, the House of Correction is fittest; and such Persons being able in Body are to be compelled to labour; for the Rule of the Apostle is, *That such as would not work, should not eat.* 2 Thef. 3. 10.

(a) And all such Persons sent to the House of Correction, must there live by their own Labour and Work, without charging the Town or Country for any Allowance. See to that Purpose the Statute of 7 Jac. 1. cap. 4.

But for the Overseers to suffer such Persons (or any other Persons who can live of their Labours or otherwise) to be chargeable to the Town, or to relieve such, this is a Means to nourish them in their Lewdness or Idleness, and to rob others of Relief who want it, to wrong those of their Money that pay it, and to condemn those of Oversight who dispose of it.

And yet if any of these last happen to prove impotent, then according to the Statute 11 H. 7. cap. 2. they are to be relieved with *Bread and Water* without other Sustenance: And so a Reverend Judge delivered it in his Charge at *Cambridge Assizes*. But yet Charity wills us in Cases of manifest Extremity, that they are to be relieved by the Town. But I leave that to better Consideration.

(d) Where any Sums of Money are given, to be continually employed for the binding out Apprentices, the Parson, or Vicar, Constables, Church-wardens, and Overseers for the Poor, in Towns not Incorporate, are by the Statute appointed to have the Disposing of such Stocks and Sums of Money: Which Persons shall, once every Year, within one Month after *Easter Day*, make a true and perfect Account before two or more Justices of the Peace (dwelling in or next to every the said Towns or Parishes) of all such Sums as they have employed, and of all Bonds taken for the Payment thereof, and of all Sums remaining in their Hands, and not employed.

*Apprentices.
Charity.
7 Jac. 1. 3.*

Two Justices of Peace may license the poor diseased Persons to travel to the Baths for Remedy of their Grievs, so as they be provided of necessary Relief (*scil.* with Money in their Purfes, &c.) for their Travel, and beg not. See hereof *postea* Tit. *Rogues*, &c. cap. 83. *

*39 El. 4.
1 Jac. 1. 25.
*The 39 El. 4.
is repealed.*

The Justice of Peace dwelling near where any Person suffering Shipwreck shall land, or where any poor Soldier or Mariner shall land, may and ought to make a Testimonial under his Hand to such Persons, of their Landing, &c. and thereby to license them to pass the next direct Way to their Place of Birth or Dwelling, limiting therein a convenient Time for their passing thither. See Tit. *Rogues*, Chap. 83.

*Testimonial.
39 El. 17.
§. 3.*

But it seems no Justice or Justices of Peace can license a poor Man to beg or wander, nor travel but only in the Cases aforesaid. See Tit. *Rogues*, Chap. 83.

(a) The forty Days Continuance of a poor Person in a Parish, intended by 13 & 14 Car. 2. cap. 2. to make a Settlement, shall be accounted from the Time of his Delivery of Notice in Writing of the House of his Abode, and the Number of his Family, to one of the Churchwardens or Overseers of the Poor of the Parish to which they shall remove.

*1 Jac. 2. c. 17
§. 3.*

Forty Days Notice of the Continuance of a Person to make a Settlement, shall be accounted from the Publication of Notice in Writing, to be delivered to the Churchwarden, &c. which shall be read after Divine Service in the Church or Chapel on the next Lord's Day, and the same to be registred in the Poors Book. And the Church-wardens, &c. refusing to read or cause to be read such Notice as aforesaid, or refusing to register the

*3 & 4 W. &
M. c. 11. § 3.
Ib. §. 5.*

same, (upon Proof by two Witnesses before a Justice of the Peace) shall forfeit 40 s. to the Use of the Party grieved, to be levied by Distress, by Virtue of a Justice's Warrant to the Constable, &c. and for Want of a Distress to be committed for a Month.

Settlement.
Ib. §. 7 & 8. Any Person executing any publick Office in a Parish during a Year, or paying his Share towards publick Taxes; or having no Child or Children shall be lawfully hired for a Year, or being bound an Apprentice, shall be accounted a good Settlement without Notice in Writing. And Persons aggrieved by the Determination of any Justice of Peace, Ib. §. 9. may appeal to the next Quarter-Sessions, who shall finally determine the same.

Ib. §. 10. Any Person removed from one Place to another, by a Warrant of two Justices of Peace by Virtue of this Act, the Church-wardens, &c. of the Place to which he shall

Removal. be removed to, shall receive him, and upon Refusal (upon Proof by two Witnesses upon Oath, before a Justice of Peace of the County, &c. to which he shall be removed) shall

Penalty. forfeit 5 l. to the Poor of the Parish from which he shall be removed, to be levied by Distress, &c. by Warrant from a Justice of Peace of the County, &c. to which he shall

Ib. §. 11. be removed, to the Constable of the Place where such Offender dwells; and for want of Distress shall be committed for forty Days. Any Person aggrieved by the Judgment of the said two Justices, may appeal to the next General Quarter-Sessions of the Place from
Appeal. which the said Person was removed.

Register Alms.
Ib. §. 12. Books shall be kept in every Parish, to register the Names of such as receive Alms: And in every *Easter-week* they shall be called over, and a new List shall be made, and none allowed to receive Collections, but such as are authorized under the Hand of a Justice of Peace residing in the Parish, or in the Parts next adjoining, or by Order of the Justices of Peace in their Quarter-Sessions, except in Cases of pestilential Diseases, in respect of Families infected only.

What shall be a Settlement of the Poor, and where. The Husband served an Apprenticeship in the Parish of *M.* and there he married, and had several Children; afterwards his Wife being dead, he married another Woman, who was possessed of Lands for a Term of Years in the Parish of *H.* where he lived with his said Wife for a Year, and then returned to *M.* and lived there two Years, and was taxed to the Poor and died; then his Widow and Children were removed by an Order to *H.* The Question was, that he returning to *M.* without giving Notice in Writing, &c. whether his being taxed to the Poor there made a Settlement; and adjudged that it would not; but this is not Law.

Shower Rep.
12. For it hath been adjudged, that taking a House and being rated to the Poor, and so
* 1 Jac. 2. observed by the Overseers in their Parish Book, this amounts to Notice, because 'tis plain
c. 17. that the * Acts of Settlement by which Notice in Writing, and Publication of such
3 & 4 W. c. 11. Notice in the Church, is enjoined to be given, were made to prevent clandestine Settlements, and not publick Removals, where the Parishioners might of themselves take Notice of Persons who come to be settled amongst them.

Hiring. A Servant was hired for Half a Year, and when that Time was expired he was hired for a whole Year, and served the first Half-Year, and above Half of the whole Year, for which he was last hired; and this was adjudged a good Settlement in that Parish where he was hired, because here was a Hiring for a whole Year at one Time, and a Service for a Year. This is not Law: For the Hiring must be upon one intire Contract for a Year, and so must the Service.

Birth.
2 Bull. 351, legitimate may be sent to the Place of their Birth, because it is a Settling them in a certain Place, for that they may not be Vagabonds.
357.

So where a Woman was delivered of a Child in the House of Correction, that Child is to be sent to the Parish where she was last legally settled, for that is the Place which by Law is bound to provide for it.

Style 168. A Servant was hired for a Year in the Parish of *B.* and being afterwards visited with Sickness, her Master turned her away; and she going towards *H.* where she was born, begged for Relief, and by Reason thereof was sent as a *Vagrant* to the said Place of her Birth, who sent her back to the Parish of *B.* Adjudged, that she ought to be settled in the Parish of *B.* where she was hired, and not in *H.* where she was born.

Hiring.
8 & 9 W. 3. No unmarried Person hired into a Place for a Year, shall be adjudged to have a Settlement there, unless such Person shall abide in the same Service for one whole Year.

Birth.
c. 30. §. 4. A Travelling Woman was committed for Felony, having then a sucking Child, and was afterwards convicted and executed: Adjudged, that the Child shall be sent to the Parish where it was born, if that can be known, but if not, then to the Place where she was apprehended for the Felony.

The Wife ought to be sent to the Place where her Husband was last legally settled, tho' such Settlement was by his being a Servant, &c.

Adjudged that by the Order of two Justices to remove a Man from one Parish to another, the Right of Settlement is determined till that Order is reversed upon an Appeal, therefore without an Appeal the Parish to which the poor Person was sent cannot remove him to a third Parish, because that would be to falsify the Original Order, which cannot be done but on an Appeal. 2 Salk. 483.

An unmarried Person hired for a Year, married before the Year was expired, the Justices of Peace cannot remove him to the last legal Place of his Settlement, because they cannot make the Contract between him and the Master void; for that must be done upon the Complaint of the Master, and if the married Person lives and serves the whole Year, he gains a Settlement there. 2 Salk. 527, 529.

Adjudged, that paying to a Scavenger's Rate in a Ward in London, doth not make a Settlement without Notice, &c. because this is not a parochial Tax, there being several Parishes in one Ward. What shall not be a Settlement.

A Servant was hired for a Quarter of a Year, and when that Time was expired, he was hired again for Half a Year, and after that Time expired for Half a Year more, and served all that Time: Adjudged that this made no Settlement within the * Statute, because the Hiring must be one intire Hiring for a Year, and the Service must be intire for that Year, and not for a Quarter of a Year and Half-Year, as in the principal Case, and for that Reason the Order was quashed. Hiring. * 8 & 9 W. 3. c. 30.

Adjudged that a Hiring ten Days after Michaelmas, as from that Michaelmas till the following, is no good Settlement; for the Reason before mentioned. Hiring.

No Person shall gain a Settlement by a Purchase, where the Consideration-Money doth not amount to 30 l. bona fide paid, for any longer Time than the Person shall dwell on such Estate, and then shall be liable to be removed where he was last legally settled before such Purchase made. Purchase. 9 Geo. 1. c. 7. §. 5.

It hath been formerly held, that the Statute 3 & 4 Will. being an explanatory Law, ought not to be taken according to Equity, but ought strictly to be pursued by Publication of Notice in Writing, as in the Cases following. Of Settlement without Notice given.

§. The Banns of Matrimony were published in the Parish of H. between a poor Man and Woman, who being chargeable to another Parish where he lived, was by Order of two Justices sent to the Parish of H. where the said Banns were published, and where he had lived for some Time; but upon an Appeal that Order was quashed, because this was not such Notice as was required by that Statute. Banns of Marriage.

One who was born in the Parish of C. and served an Apprenticeship there for seven Years, went into another Parish without giving any Notice, &c. and there he rented a Shop of the Widow of a Blacksmith, and likewise a Chamber for 50 s. per Ann. and this was with the Consent of the Bailiff of the Manor, and was publickly employed by the Parishioners to shoe their Horses: Adjudged that this publick Way of Living did not amount to Notice in writing pursuant to the explanatory Statute, tho' it might satisfy the Statute 1 Jac. 2. cap. 17. as amounting to the Delivery of Notice in Writing. 2 Salk. 476.

So where a Man was settled in one Parish, and clandestinely came into another, without giving any Notice, and there lived several Years, but being chargeable was removed to the first Parish by an Order, &c. which was confirmed upon an Appeal, and good; for tho' he had lived in the other Parish several Years, yet Notice ought to be given to make a Settlement; and since the Statutes before mentioned, Notice shall not be presumed. 2 Salk. 472.

But now the Law is held to be otherwise (*vis.*) that those Statutes being made to prevent clandestine Settlements, therefore Notice taken shall be Notice given; for where the Parishioners might of themselves take Notice of a poor Man coming to dwell in their Parish, by some open and publick Acts, that shall amount to Notice given.

There are four Exceptions out of the explanatory Act 3 & 4 Will. which make Settlements good without Notice delivered, or Publication of Notice in writing. 3 & 4 W. 3. c. 11.

1. Where a Man on his own Account executes any publick annual Office during one whole Year.

Now as to this Matter it was held, that where a poor Man was appointed to be a Parish Clerk, which Office he executed for a Year, this made a good Settlement; and that 'tis not material whether he had the Office by the Appointment of the Parson, or by

by the Election of the Parishioners, because he is in for Life; and this is an executing an Yearly Office within the Meaning of that Statute.

2. *Where a Man is charged and payeth the publick Taxes of the Parish.*

Taxes to the King are not comprehended in this Exception, for those may be paid by Reason of the *Residence* of the Party.

2 Salk. 478. A poor Man rented an House at 7 *l. per Ann.* and lived therein for a Year, and paid the *Rates and Taxes due for his House*, which were charged on the said *House*, and not on his Person: Adjudged that such Payment made a Settlement.

2 Salk. 534. A poor Man rented Part of an House at 3 *l. per Ann.* but by an Agreement between him and his Landlord he was to *pay no Taxes*; the Apartment which he rented was distinct from the Dwelling-house, but it was *taxed* as an House, and assessed on the Landlord; the poor Man lived there for some Time, and was made Free of the Corporation, and voted at an Election of the Chief Magistrate there: Adjudged that this did not make a Settlement within this explanatory Act, tho' it might within the Statute 1 *Jac.* 2. and the Voting relates to the Corporation, and not to the Parish.

2 Salk. 523. It was resolved by the Court, that where a Man is taxed to the Parish Rates, and lives there forty Days after he is *taxed*, and without giving Notice, &c. this doth not make a Settlement within the Act, because *Taxing* alone is not equivalent to Notice, *but Taxing and * Paying the Tax* is equivalent both to the Delivery of Notice, and to the Publication of that Notice in Writing.

* 3 Salk. 253.

3. *Where an unmarried Person, not having Wife or Children, shall be hired into a Service for a Year, such Service shall be a Settlement without Notice.*

8 & 9 W. 3. c. 30. §. 4.

This is explained by a subsequent Statute, by which 'tis enacted, that an unmarried Person hired, &c. for a Year, shall gain no Settlement unless he serve for a Year.

2 Salk. 478.

The Master put his menial Servant to a *Barber* in another Parish to learn to shave, for which he (the *Barber*) was to have 5 *l.* and the Servant continued with the *Barber* for a Year upon this Agreement, but he himself was no Party to it: Adjudged that this did not make a Settlement in that Parish where he served the *Barber*, because he was not *hired*, but rather continued there as a *Boarder* to learn to shave.

The Reason of that explanatory Statute 8 & 9 *Will.* was because of some Doubt upon those Words (*such Service*) in the Statute 3 & 4 *Will.* (*viz.*) whether these Words shall relate to a Service where the Person continues *unmarried for a Year*, or where the Service was pursuant to a *Hiring for a Year*, and as to that Matter this Case happened.

Hiring.

2 Salk. 527.

¶ A Servant being hired for a Year, continued in that Service for Half a Year, and then married a Woman in another Parish: Adjudged that the Words (*such Service*) in the Statute 3 & 4 *Will.* shall relate to a Service where the *Hiring* is for a Year, because the Marriage is no Hindrance of the Service of the Man; therefore the *Hiring* shall not be determined by it, for the Contract still continues between the Master and the Servant, and not to be dissolved upon the Complaint of the Parish Officers, tho' it might upon the Complaint of the Master, but that must be at his Election; for if he will suffer such a married Servant to continue in his Service for a Year, no Body else can disturb him, and that will make a good Settlement.

Service upon two Contracts.

2 Salk. 535.

* 3 Salk. 257.

A Servant continued in his Service for a whole Year, but it was upon two Contracts, each of them for Half a Year: Adjudged this made no Settlement, because the Service ought to be for a whole Year, upon *one intire Contract*, or *Hiring for a Year*; for the Statutes require that the Agreement shall be intire, as well as the Service; * though a Year after the Making the Statute, a Service for a Year and more, upon two Contracts, was held a good Settlement.

4. *Where a Person shall be bound Apprentice, and inhabit in any Parish, such Binding and Habitation shall be a Settlement without Notice.*

Mod. Co. 190.

The Son of a Man was bound *Apprentice* to his Father, who afterwards gave up the Indentures of Apprenticeship, but did not *cancel them*; then the Son was hired into another Parish for a Year, and served a whole Year there, and being likely to be chargeable, he was sent by an Order to the Parish where he lived as an *Apprentice*, because the Indentures being not cancelled, he still continued an *Apprentice* there.

A poor Boy was Apprentice for four Years to a Master who was only a *Lodger* in the Parish, and had no Settlement there: Adjudged that this Apprentice having served there for some Time, hath gained a Settlement though his Master had none; because his Settlement did not depend on his Master, he having gained a Settlement for himself within the Statute 14 Car. 2. by living in a Parish forty Days as an Apprentice. The Law is the same of an hired Servant, though his Master had no Settlement, if such Servant was hired for a Year, and continued in his Service for a Year.

Servant settled tho' the Master was a Lodger.
2 Salk. 533.

The Master who lived in one Parish, took a poor Boy Apprentice, where he lived for some Time, and then *assigned* him to another Master who was an Inhabitant in another Parish: Adjudged that this Apprentice is legally settled in the second Parish where the Master lived to whom he was assigned, for though an Apprentice is not *assignable*, so as to pass an Interest, yet such Assignment is not void; for 'tis good by way of Covenant, and shall amount to a Contract between the Master and the Assignee.

Apprentice assigned.

An Order of two Justices, &c. was quashed, because it did not appear that it was made upon the Complaint of the Church-wardens or Overseers of the Poor, besides there was no Adjudication.

Orders of Removal quashed, being informal and not quashed.

It was held by the Court for a general Rule, in Cases of Orders for Removal, that if the Parish to which a poor Person is removed doth not *appeal* in Time, such Order is conclusive to the contending Parishes, and indeed to all Parishes, except where an After-Settlement can be fixed.

Appeal.

An Order was quashed, though it was mentioned to be made upon *due Notice*, and upon hearing the Allegations and Proofs on both Sides, because it ought to be made upon Complaint of the Church-wardens and Overseers of the Poor, which was omitted.

It must be made upon Complaint of Parish Officers.

The Sessions made an Order for the Parish of C. to provide an *House* for A. and another Order to relieve B. it was held, that if those Persons are not impotent, or if they have Means to live, or are able to work, that such Orders are against Law, and ought to be quashed.

Upon Complaint to the Sessions, that the Parents did not relieve a poor Child, they appointed two Justices to examine the Matter, &c. who made an Order for the Parents to relieve it; but it was quashed, because the Sessions could not delegate their Power to other Justices, therefore they should have made the original Order.

Sessions cannot delegate their Power.
Style 154.

The Order of two Justices set forth, that the Person removed was *lately settled* in the Parish of C. &c. it should have been *last legally settled*, &c. and for that Reason it was quashed. 9 Ann.

It must be last legally settled.

The Order of two Justices recites, that they were *credibly informed*, that T. S. was last legally settled in the Parish of C. for which Reason it was quashed, for it must positively be adjudged to be the last Place of legal Settlement.

And so positively alledged.
2 Salk. 473.

It was recited in the Order, that the two Justices were *residing in the County of W.* for which Reason it was quashed, for it must appear they were Justices *in and for the County*, &c.

Order for removing a poor Man, and his Wife and *Family*, from such a Place, &c. was quashed, because it did not appear of whom his Family consisted, * probably it might be of some who are not removeable by Law.

Family.
2 Salk. 585.
* 3 Salk. 260.

A poor Man was removed from the Parish of A. to the Parish of L. and afterwards he went away to the Parish of P. which was a third Parish, and thereupon this third Parish got several Orders from two Justices to enforce the Execution of the original Order by which he was sent to L. but they were all quashed, because the Parish of P. ought to have made an original Complaint to two Justices, and upon that to have got an Order, and not to have grafted it upon the original Order of Removal from A. to L.

2 Salk. 489.

In every Order of Removal of a poor Person, it ought to appear, that he is *removeable by Law*, therefore it ought to be averred, that he is *chargeable*, or *likely to be chargeable* to the Parish, and there ought to be an *Adjudication* of that Matter, and of the *last Place of his lawful Settlement*.

The Party must be removeable by Law.
2 Salk. 491.
3 Salk. 255.

An Order made upon *Complaint* generally, &c. is not good, it must be made upon the Complaint of the *Parish Officers*; and therefore where that was omitted, the Order was quashed; and though upon the Return of the *Certiorari*, it appeared to be made upon the Complaint of the *Church-wardens*, &c. yet that shall not supply the Defect in the *original Order*, because the Justices had executed their Authority before the Return made, and therefore they had no Power to make such a Return; they should have returned the very Order *in hæc verba*, &c.

3 Salk. 255.
2 Salk. 492.
5 Mod. 149.

- The Party must be poor.*
3 Salk. 255.
Order must be directed to the Parish Officers.
3 Salk. 256.
- An Order was quashed, because it did not set forth, that the Person removed was *Poor*, or likely to become *chargeable* to the *Parish*.
Every Order of Removal ought to be directed to the *Parish Officers removing*, and to the *Parish Officers to whom removed*, and not to the Officers of that Parish alone to which the Person is removed, and for that Reason the Order was quashed.
- Certiorari returned thereof good.*
3 Salk. 258.
- The Return of the *Certiorari* in a Schedule annexed to the Writ was not made by two Justices, but by the *Clerk of Peace*; but he not being the Person to whom the Writ was directed, it was quashed, and a new *Certiorari* granted, which being returned and filed, it was objected, that it did not appear by the Order, that it was made by *two Justices of the Division, &c.* pursuant to the Statute 13 & 14 Car. 2. but adjudged, that as to this Matter the Statute was only directory and not restrictive, as the Words *Quorum unus, &c.* are.
- Of Appeals to the next Quarter-Sessions, and of Orders made at the Sessions.*
1 Vent. 310.
- 'Tis a standing Rule in *B. R.* that where an Order of two Justices is either *affirmed* or *quashed* upon an Appeal, upon the *Merits of the Cause* there heard, that this is conclusive between the contending Parishes, unless there is Error in the Form.
- Costs.*
8 & 9 W. 3.
c. 30. §. 3.
- The Sessions upon an Appeal from an Order of Settlement, or upon Proof of Notice of an Appeal given by a proper Officer to the Parish Officer of the Parish, (though the Appeal is not prosecuted) shall award to the Party in whose Behalf the Appeal shall be determined, or to whom such Notice was given, &c. his reasonable *Costs*; and if the Party who is to pay it shall live out of the Jurisdiction of the Court; then one Justice of the County where such Person shall live (upon Request to him made, and a Copy of the Sessions Order produced, and proved by a credible Witness) shall cause the Money mentioned in the Order, to be levied by Distress, &c. and for Default thereof to commit the Person to Gaol for twenty Days.
- Appeals, where to be determined.*
Ib. §. 6.
- All Appeals against an Order of Removal of a poor Person shall be determined at the Quarter-Sessions in the County or Place from whence the poor Person is removed, and not elsewhere.
- Notice.*
9 Geo. 1. c. 7.
§. 8.
- No Appeal shall be proceeded on for Removal of a poor Person unless reasonable *Notice* be given by a Parish Officer of that Parish who appeals to a Parish Officer from whence the Person is removed; and the Sessions to whom the Appeal is made shall determine the Reasonableness of the Notice; and if the Court shall be of Opinion, that the Notice was not reasonable, they may adjourn the Appeal to the next Sessions, whose Determination shall be final.
- Ib.* §. 9.
- And if the Court shall determine in Favour of the Appellant, they shall award so much Money as shall appear to have been reasonably paid by the Parish appealing, and expended by them in Relieving such poor Person from the Time of his undue Removal to the Time the Appeal was determined, to be recovered and levied by Distress, &c.
- Sessions must either affirm or reverse the Order.*
2 Salk. 475.
- Upon an Appeal from an Order of two Justices, the Sessions sent the poor Man by an Order to a third Parish, for which Reason it was quashed; for the Sessions have only Power to affirm or reverse the Order of the two Justices, and they cannot make an original Order.
- Sessions have no Jurisdiction but on Appeal.*
- An Order was quashed upon an Appeal, but that Sessions Order was likewise quashed, because it did not appear that it came before them by Way of Appeal, and they have no Jurisdiction but upon an Appeal.
- The Order upon an Appeal is conclusive as to the contending Parishes.*
2 Salk. 486.
- The Order of two Justices, by which a poor Man was sent from *B.* to *K.* was reversed upon an Appeal, and thereupon he went back to *B.* and that Parish sent him to *D.* a third Parish, who moved to quash it, for that the Order of Reversal was conclusive to all Parishes, and had actually settled the Man at *B.* but adjudged, that the Determination upon the Appeal was conclusive only between the contending Parishes, and not to a third Parish, who was not concerned in the Order or Appeal.
- Affirmance of an Order on an Appeal conclusive to all Parishes.*
Reversal is conclusive only to the contending Parishes.
2 Salk. 492.
3 Salk. 260,
261.
- There is a Difference as to the Place of Settlement, where the Order of two Justices is *confirmed*, and where 'tis *reversed* upon an Appeal, or not appealed from; for where 'tis *confirmed* or not appealed from, there that Parish to which the poor Man was removed by the original Order, shall never say, that it was not the last Place of his legal Settlement, because the Affirmance of the Order upon an Appeal is conclusive to all Parishes; but where the original Order is discharged upon an Appeal, there the Matter is at large again as to all Parishes, except that to which the poor Man was removed, which upon the Appeal was determined not to be the last Place of his lawful Settlement.

An Appeal from the Order of two Justices ought to be to the next Sessions, that is, it ought to be lodged then, but there is no Necessity that it should be determined at that Time, because the Sessions may * adjourn it to another.

Appeal must be to the next Sessions.
2 Salk. 605.
* 3 Salk. contra.

The Order of two Justices was discharged upon an Appeal to the next Sessions; and upon a Motion to set aside this Order of Discharge it was objected, that the Sessions did not say, whether it was discharged for a Defect in Form, or upon the Merits; for if it was for Want of Form, then the Parish from which the poor Person was removed, is not bound; but if on the Merits, then 'tis bound; but adjudged, that the Sessions are not obliged to give any Reason of their Judgment in the Orders they make, no more than any other of the Courts of Law.

Sessions need not give the Reason of their Judgment, as to the Discharge of Order.
2 Salk. 607.

Adjudged, that the Sessions have no Jurisdiction upon an Appeal, but only to reverse or affirm the original Order of the two Justices made between the two contending Parishes; therefore where they made an Order to send a poor Woman to a third Parish, not concerned before, this Order was quashed, for the Reason abovementioned.

Sessions have no Jurisdiction but upon an Appeal.
3 Salk. 254.

Adjudged, that where a Village in a Parish had a Church before the Statute 43 Eliz. and that such Village had been used and reputed as a Parish, and had all parochial Rights and Church-wardens, &c. that this is a Parish, and chargeable to maintain its own Poor. *Cro. Car. 92.*

What shall be a Parish to relieve the Poor, and who are not to be relieved.
Lit. Rep. 73.

Cro. Car. 394. S. P. W.

Jones 355.

There were two Villages in the Parish of H. one of which Villages had a Chapel of Ease, where they used to bury, and to chuse Overseers of the Poor amongst themselves, and had been reputed a Parish: Adjudged, that this was a Parish in Reputation, and rateable to the Poor. *2 Roll's Rep. 160.*

Parish in Reputation.

A Badge must be worn by those who receive Collections, (*viz.*) a Roman P. with the first Letter of the Name of the Parish; this must be upon the Shoulder of the right Sleeve; and the Person neglecting or refusing to wear it, one Justice may either abridge or suspend the Relief, or commit the Offender to the House of Correction, to be whipp'd and kept to hard Labour, not exceeding twenty-one Days.

Badge must be worn.

8 & 9 W. 3. c. 30. §. 2.

Any Person leaving his Wife and Children to the Parish, in such Case the Parish Officers may by Warrant of two Justices, &c. seize so much of the Goods and Chattels of the Person running away, and receive so much of his Rents and Profits as those two Justices shall order towards the Discharging the Parish, which Order being confirmed at the next Sessions, that Court may order the Parish Officers to dispose thereof as they shall think fit, and likewise to receive the Rents, &c. for the Purpose aforesaid; but to be accountable to the Sessions.

Seize the Goods and receive the Rents of one who runs away.

5 Geo. 1. c. 8. §. 1, 2.

No Justice, &c. shall order Relief to a poor Person without Oath made before him of some Matter which he shall judge to be a reasonable Cause for giving Relief, and that the Person hath applied himself to the Vestry, or to two Overseers, &c. and was denied Relief, and until the Justice hath summoned the Overseers, &c. to shew Cause why the Person should not be relieved, and they are heard, or refuse to appear upon such Summons.

Where the Justice may order Relief, where not.

9 Geo. 1. c. 7. §. 1.

If the Justice shall see Cause to allow Relief, then the Name of the poor Person shall be entered in the Parish Book as one who is to receive Collection, as long as the Cause of such Relief continues; and no Parish Officer (unless upon some extraordinary Occasion) shall bring to Account any Money he shall give to the Poor, who is not registered in his Parish Book, on Pain of 5 *l.* to be levied by Distress, &c. by Warrant from two Justices, which said Sum shall be applied to the Use of the Poor of that Parish, by the Direction of the said Justices.

The Poor must be registered in the Parish Book.

Ib. §. 2.

The Sessions made an Order for a *Feme Covert* to keep and relieve her Grandchild; but it was quashed, because her Husband ought to be charged by an Order, and not the Wife.

The Grandfather ought to be charged, and not the Grandmother.
Style 283.

The Son ordered to relieve the Father.

2 Salk. 534.

It was ordered by the Sessions, that the Son should pay 2 *s.* per Week towards the Relief of his Father, till the Court should order otherwise: Adjudged a good Order, tho' it was indefinite, and no certain Time limited how long he should pay the said 2 *s.* but it had been otherwise if a certain Time had been limited.

The Father charged to relieve his Daughter.

The Father was ordered by the Sessions to allow his Daughter 2 *s.* per Week, but the Order was quashed, because it did not appear that she was not able to work, or that she was sick, old, or otherwise impotent.

Children may be settled where their Parents are settled.

2 Salk. 470.
3 Salk. 256.

Ideot.

2 Salk. 427.

Children must be settled where their Parents live.

Mod. Ca. 87.

Birth.

3 Salk. 257,
259.

3 Salk. 259.

Birth.

Of the Certificate.

8 & 9 W.
c. 30. §. 1.

9 & 10 W. 3.
c. 11.

12 An. St. 1.
c. 18. §. 2.

Certificate is conclusive to the Parish who gives it, but that is only to the Parish to whom it was given.

Certificate-man cannot be removed, unless he is actually a Charge.

2 Salk. 530.

Certificate-man may be sent to a third Parish.

3 Salk. 535.

The Settlement of the Child must follow that of the Parents till 'tis eight Years old, but after that Age it may acquire another Settlement; and if removed from the Place where the Parents were settled, it must appear in the Order that such Child hath gained a Settlement elsewhere.

An Order was made to send an *Idcot* to the Parish where his Father was last legally settled; this was adjudged a good Order.

A Child born in the Parish of *H.* the Father removed from that Parish whilst it was under eight Years old, and gained a Settlement in the Parish of *C.* adjudged that the Child shall likewise be settled there; so where the Father is settled in a Parish, and dies, and the Mother being with Child likewise dies in Child-bed, the Child born shall be settled in that Parish.

The Reason, because it cannot be sent to its Parents where they were last legally settled, because they were both dead; therefore it must be sent to the Place where born.

But if the Parents are living, they must be sent to the Place where they were last legally settled; and as to that Matter this Case happened.

A poor Man, lawfully settled in a Parish, had several Children born there; and afterwards he and his Wife and Children went into another Parish, and he gained a Settlement there; and being likely to be chargeable, his Children under seven Years old were removed by an Order of two Justices, to the first Parish where they were *born*: But adjudged that 'tis not the Birth of legitimate Children, but the Settlement of the Father which makes a Settlement for them; and the Father in the principal Case having gained a new Settlement in the second Parish, his Children must be settled there, and not as Nurse-Children, but as Part of his Family. 'Tis true, if the Father had been dead, and the Mother had married a second Husband, settled in a third Parish; in such Case her Children by her first Husband must go with her as Nurse-children, and not as Part of her Family; for those Children shall be maintained at the Charge of the Parish where their Father was last legally settled in his Life-time, and thither they may be sent after seven Years old, as to the Place of their lawful Settlement; for this accidental Settlement of their Mother by marrying a second Husband, shall not gain a Settlement of her Children by her first Husband.

A poor Man may remove into any Parish, having a Certificate from the Parish where he was settled, signed and sealed by the Churchwardens and Overseers, or the major Part of them, acknowledging the Person to be an Inhabitant legally settled in their Parish.

But he who comes into a Parish by Virtue of such *Certificate*, shall not have a lawful Settlement there by any Act whatsoever, unless he rent an House, &c. of 10 *l. per Annum*, or execute some annual Office in that Parish.

If any Person shall be an Apprentice, or hired Servant to one who came into the Parish by Certificate, and not having afterwards gained a legal Settlement in the said Parish, such Apprentice or Servant shall not gain any Settlement by Reason of such Apprenticeship, or serving therein, but shall have their Settlement in such Parish, as if they had never been bound Apprentice, or been hired as a Servant.

Anno 9 Annæ, The Parish of *H.* gave a *Certificate* to a poor Man and his Children, to the Parish of *A.* where he afterwards becoming chargeable, was sent back to *H.* by the Order of two Justices, which said Parish of *H.* sent him to the Parish of *C.* as the Place of his last legal Settlement, from which last Order the Parish of *C.* appealed, where it was set aside; and these Orders being removed into *B. R.* the Court held that the Certificate given by the Parish of *H.* is conclusive to them, to remove this poor Man to any other Parish.

Where a poor Man comes into a Parish with a *Certificate*, he cannot be removed, unless he is actually chargeable to that Parish; for 'tis not sufficient to say that he is likely to be chargeable.

A Person who was born in the Parish of *A.* lived some Years in the Parish of *B.* but he had no Settlement there by Law, and yet they gave him a Certificate to remove to *C.* where becoming chargeable, he was sent back to the Parish of *B.* who finding that he was born in *A.* got an Order of two Justices to send him thither: Adjudged, that *B.* who gave the Certificate ought to receive him, and to discharge the Parish of *C.* to whom the Certificate was given, but did not conclude them as to the Sending him to any other Parish, where he was last lawfully settled.

About nine Years after the last mentioned Case there was a Resolution to the contrary, (*viz.*) That before the Statute Certificates were frequently given, but then they were only

Evidences of a private Nature between the Parishes, and in Nature of a Contract; but now since the Statute they are solemn Acknowledgments that the Person is legally settled with them; and as all other Parishes are bound to receive him, so that Parish which certifies is concluded as to all other Parishes whatsoever; for 'tis in Nature of an Adjudication, 'tis signed by the proper Officers, and allowed by two Justices who are proper Judges, and who upon less Evidence could have adjudged it a Settlement.

Certificate. The giving a Certificate makes a Settlement.

Adjudged, that where a poor Man who hath a lawful Settlement in one Parish, comes into another by a Certificate, and gains a Settlement there, he shall not afterwards be sent back to the Parish certifying, because the Certificate being only a private Agreement between the two Parishes, shall not alter the Law by which he had gained a Settlement in that Parish to which the Certificate was given.

But if he gain a Settlement after the Certificate given, 'tis good. 3 Salk. 253.

The Mother, who was an Inhabitant legally settled in C. had two Children there under the Age of 7 Years; and after the Death of her Husband, she with her said Children came by a Certificate from C. to the Parish of D. afterwards she married another Husband, who was a Parishioner in S. and who lived with * her at B. but had no legal Settlement there, and for that Reason the Churchwardens of S. gave a Certificate to the Parish of B. (where the second Husband and his Wife lived) owning them to be Parishioners of S. but her two Children by her first Husband were not named in this last Certificate: The Mother died, and the Children were sent to S. where their Father in Law and Mother were settled; but it was held by the Judges that C. was the Place of their Settlement, because that it did not appear that they ever lived with their Mother after her second Marriage.

*Certificate shall not make a Settlement of the Children not named in the Certificate, unless they live with their Parents. * But it did not appear that her two Children lived with her there.*

Where a Parish is not able to provide for their own Poor, two Justices of Peace, by Virtue of the Statute 43 Eliz. may tax any other of other Parishes, or out of any Parish within the same Hundred, to pay such Sums to the Parish Officers, as they shall think fit; and if the Hundred shall not be thought able to relieve them, then the Quarter-Sessions may rate any other Parishes, or out of any Parish within the County, &c.

Of Rates, &c. what Parishes, Places and Things shall be rated to maintain the Poor.

The Words of the said Statute, viz. (Any other of other Parishes, or out of any Parish) are general; and therefore it hath been adjudged, that the two Justices may rate any particular Inhabitants of another Parish, and are not obliged to lay a general Rate on the whole Parish.

43 El. c. 2. 1 Vent. 350.

The Husband who lived in the Parish of St. Botolph without Aldgate, lying in two Counties, viz. in London and Middlesex, had several Children born there, and afterwards he died; then the Widow married a second Husband, and they put these Children to Nurse in Enfield in Middlesex, and then the Mother and Father in Law died; afterwards the Nurse applied her self to the Parish of St. Botolph for Money, in which Parish there is but one Church-warden, but several Overseers of the Poor for each Part thereof, and the Parish Rates are several, the Mother living and dying in that Parish which lies in Middlesex: The Justices ordered them to pay the Money, but upon an Appeal and all Orders removed into B. R. it was held that each Party of the Parish should be contributory; but it appearing that each had distinct Officers, and made distinct Rates, and Time out of Mind had made distinct Accounts to the Justices of each County, it was adjudged that each Division was a distinct Parish; adjudged likewise that the Birth of the Children is not to be regarded, but the last Place where their Father was settled.

Raim. 476.

Resolved by all the Judges of England, that the Rates for Relief of the Poor ought to be made according to the visible Estates, both real and personal in the Parishes where the Persons live, without any Respect to be had of their Estates in any other Place; and that the Occupiers and not the Owners of the Lands there ought to be rated.

Rates how to be made.

Resolved by three Judges against the Chief Justice Holt, that a Farmer shall not be rated to the Poor for his necessary Stock which he uses on his Farm, for that would be in Effect to make the Land pay twice for one and the same Thing, viz. according to a Pound Rate for his Rent, and according to the Value of his necessary Stock used on his Farm; for what is the Land but the Profits thereof, and how can those Profits arise but by the Stock?

2 Bull. 154.

Farmer not to be rated for his necessary Stock.

The most reasonable Way of taxing Land, is according to the Pound Rate, and where a personal Estate, as Goods, Money, &c. are taxed, it ought to be in the same Proportion as the Lands, viz. the Value of 100 l. at 5 l. per Annum, and the Person must be charged in that Place where the Goods are when the Rate is made; for if he hath not a personal Estate to that Value there, and is distrained for not paying the Rate, he may have an Action of Trespass.

The Pound Rate is the most reasonable Rate for Land

By the Statute 43 Eliz. every Occupier of Houses, Lands, Tithes, Woods, Mines or other Things out of which an yearly Profit may arise, may be rated.

The personal Estate must be rated in Proportion to the Rate on Land.

43 Eliz.

And it hath been resolved, that if two Houses are inhabited by several Families, tho' they had but one Common Door into both, yet they are ratable as two Houses; so if one House is divided by a Partition, and inhabited by several Families, such are several Tenements, ratable severally to the Poor; but if one Family remove, then 'tis but one Tenement again.

Distress for a Quarter's Rate cannot be made till the Quarter is ended.

Adjudged likewise that where *T. S.* took Part of an House in the Parish of *H.* on the first Day of December, and was rated as an Inhabitant, and distrained at Christmas following for a Quarter's Rent, by Virtue of a general Warrant made for the whole Year, that this was illegal, viz. that he could not be rated for the whole Quarter, because the Statute directs that the poor Rates should be assessed monthly.

Resolved likewise that *T. S.* could not be distrained by this Warrant made before the Rate, but there ought to be a Special Warrant for this particular Purpose; and lastly, that a Distress could not be made for a Quarter's Rate before the End of that Quarter; *per Holt Chief Justice*, All this was adjudged in *Replevin, &c. Trin. 3 Annæ.*

Hospital Lands.
2 Salk. 527.

Adjudged that Hospital Lands shall be charged in a Rate to the Poor, because no Man by appropriating Lands to an Hospital shall exempt them from such Rates, for which they were charged before, and by that Means to lay a heavier Burden on the whole Parish.

Rates. Who shall be charged. Clergymen.

One who possesses Lands lying in several Parishes, shall be rated in every Parish according to the annual Value of the Land lying in each Parish.

Every Clergyman is to be rated for his Glebe and Tithes, according to their yearly Value so long as they are in his own Occupation, because the Statute charges every Occupier of Tithes, &c. and the Clergy are contained under those general Words, unless particularly exempted.

Of Appeals, &c. and of Overseers Accounts. Sessions may quash a whole Rate.
Salk. 483.
43 Eliz. c. 2.

In a Rate for the Relief of the Poor, the Charge was laid on the *real Estates*; and upon an Appeal to the Sessions that Rate was quashed, and the Parish Officers were ordered to make a new Rate, which they did, but very unequal; for they charged the *real Estates* ten Times more in Proportion than the *personal Estates*; and upon another Appeal that Rate was likewise quashed by the Sessions: And now these Orders being removed into *B. R.* it was insisted that the Sessions could not quash a whole Rate, for they had only Power to relieve particular Persons aggrieved; but adjudged that they might set aside a whole Rate, because the Words of the Statute are, that upon Complaint, &c. they may take such Order as by them shall be thought convenient; therefore they may either make a new Rate, or refer it to the Church-wardens, &c. to make a new one, which they have done.

Overseer not bound to lay out his own Money for Relief. If he doth, a Mandamus will not be granted to reimburse him.
2 Salk. 531.

An Overseer having laid out his own Money to relieve the Poor, was turned out of his Office before he could make a Rate to reimburse himself; whereupon he moved for a *Mandamus* to be directed to the succeeding Parish Officers to make a Rate for that Purpose, but it was denied. 'Tis true, it may be granted to raise Money for the Relief of the Poor, but not to raise Money for reimbursing an Overseer, especially since he is not bound to lay out his own Money to relieve them.

Money in the Hands of an Overseer, and he refusing to pay it over to his Successor, must be levied on him by Distress, and if

Two Justices took the Account of an Overseer, &c. and allowed it; from which the Parish appealed to the Sessions, and there it was disallowed, and they ordered him to pay so much Money over to his Successors, which they adjudged to be in his Hands, which he refusing, they committed him; but it was ruled that the Commitment was illegal, because the Money ought to be levied by Distress and Sale, &c. and for Default thereof, then to have committed him, but not before.

Churchwarden was committed for refusing to account; it must appear that he was Overseer, &c. as well as Churchwarden.

A Church-warden was committed by the two next Justices (as *Churchwarden*) without Bail, for refusing to account for the Money received and disbursed by him; but upon an *Habeas Corpus* he was discharged, because by the Warrant of Commitment it ought to appear that he was Overseer of the Poor; for by the Statute 43 *Eliz.* that is annexed to his Office of Church-warden, and the Justices have no Jurisdiction over him as *Churchwarden*, but as Overseer. *Mich. 15 Car. 2.*

Overseers are to account before two Justices, and not to their Successors.
2 Salk. 525.

Mandamus was granted to the Justices to compel the old Overseers to account with their Successors, but it was quashed, because by the Statute 43 *Eliz.* they are to give their Accounts to two Justices; besides it did not appear by the Writ that all of them therein named were Overseers.

Mandamus to Overseers of the Poor to give an Account to the *Justices* of what Money they had received to the Relief of the Poor; they return that they had given an Account, and that they had disposed several Sums in such a Manner, setting it forth in the Return: Adjudged that this *Mandamus* was ill, because it was not suggested that the ordinary Means could not be had for them to account.

Mandamus to account ill, for it did not suggest that the ordinary Means could not be had.

The Defendants were indicted at the Sessions for that they being duly chosen Overseers, &c. and having taken upon themselves the said Office, they, & *uterque eorum*, did collect and receive several Sums for the Relief of the Poor, and refused to account within four Days after the End of their Year: It was objected that this Indictment would not lie, because the not accounting was an Offence created by the Statute 43 *Eliz.* by which 'tis enacted that they shall account of all Things concerning their Office, under the Penalty of forfeiting 20 s. therefore that ought to be pursued. 'Tis true, that is the proper Punishment, but refusing to account was a Contempt of the Law, and therefore an Indictment will lie.

Indictment lies for refusing to account.

5 Mod. 179.

Two Justices made an Order, that *T. S.* being duly elected Overseer, should take upon him that Office; it was objected that this Order was not good, because it did not appear that he was an Inhabitant or Housekeeper in that Parish, and the Court will not intend that he was; therefore this Order was quashed.

Order for an Overseer to take upon him that Office, quashed.

Mod. Ca. 77.

The Churchwardens of *Bishopsgate* made a Tax for the Relief of their Poor for a whole Year, which amounted to 600 l. and upwards, when they should have made only a quarterly Tax; and this was confirmed by the Alderman of the Ward, thro' Inadvertency, who fearing the Churchwardens might collect the whole Sum and make some ill Use of it, refused to grant his Warrant to distrain for this Tax, whereupon they moved for a *Mandamus*, and obtained a Rule for the Alderman to shew Cause why it should not be granted, who upon another Day shewed the Matter before-mentioned for Cause; and thereupon a Rule was made, that he should grant his Warrant to distrain quarterly. *Mich. 1721. The Churchwardens of Bishopsgate versus Alderman Beecher.*

Mandamus to the Justices to appoint Overseers of the Poor in the Town of *Rufford*; they return, that *Rufford* is an extraparochial Place, and therefore they are not to provide for their Poor.

It was objected against this Return, that admitting it to be extraparochial, yet the Justices are obliged by the Statute 43 *Eliz. cap. 2.* to appoint Overseers of the Poor, even in such Places, because in the enacting Part the Words are general, and extend to all Places (*viz.*) *The Churchwardens of every Parish, and two or more Householdors there to be nominated, &c. by the Justices, shall be called Overseers, &c.*

And the Court was of Opinion, that Places extraparochial are within the Words of the Statute, for by the general Words the Justices have Power to name Overseers in all Parishes, which must extend to extraparochial Places as well as to Parishes in general; for where there is the same Inconvenience, it should be subject to the Controul of the Justices, and most of the Forests in *England* are extraparochial, but they ought to maintain their own Poor.

The Husband was born in the Parish of *St. Giles* in *Reading*, where his Wife had likewise a Settlement before she married, but the Husband was bound Apprentice in the Parish of *Evershy*, where he served two Years, then his Master broke, and the Apprentice came back to *Reading*, and married there and had several Children, and died, and afterwards his Widow and Children were by Order of two Justices removed to *Evershy*, which Order was quashed on an Appeal, and an Order made to send them to the Parish of *St. Giles*, because the Mother had a Settlement there before she married; and now both the said Orders being removed into *B. R.* by *Certiorari*, the original Order of the two Justices was confirmed, (*viz.*) That the Widow and the Children should be settled where the Husband and their Father was settled, and that his Death made no Alteration in the Case; and tho' the Wife had another Settlement before she married, yet that was lost by her Marriage. *Trin. 9 Geo. 1.*

Upon an Order of Removal of a poor Man confirmed on an Appeal, and removed by *Certiorari*, the Case was, (*viz.*) he lived last at *B.* at a Place called *Roscoes Tenement*, and paid Taxes by the Name of the Occupier of that Tenement, whereas he ought to be personally charged, and not as an Occupier of the Tenement; but it was held, that paying Taxes as Occupier of a Tenement, and naming him Farmer thereof, is a sufficient Designation of the Person.

Faster 1721. B. R.

No Person who shall be taxed to the Scavenger, or Repairs of the Highways, and shall duly pay the same, shall be deemed to have any legal Settlement by Reason of such Payment.

G. 1. c. 7. §. 6.

Nor

1b. §. 5.

Nor shall any Person have a Settlement by Purchase of an Estate of Inheritance in a Parish where the Consideration-Money was not above 30*l.* for any longer Time than the Purchaser shall inhabit on such Estate.

A Servant was hired for a Year in *Christ-Church* in *Oxford*, and afterwards lived with her Mistress three Months of that Year in the Parish of *Fawley* in *Berks*, where her Mistress was a *Visitor*, and she served the remaining Part of the Year in *Christ-Church* where she was hired, that being an extraparochial Place; and becoming Poor she went into the Parish of *St. Peter* in *Oxford*, from whence she was removed by an Order to *Fawley*, which Order was quashed upon an Appeal, the Sessions being of Opinion, that her Settlement was in *Christ-Church* where her Service determined, against which it was objected, that she could have no Settlement there, because it was an *extraparochial* Place, it being neither a Town or Parish, and by Consequence could have no Parish Officers, and therefore not within any of the Statutes relating to the Settlement of the Poor; for those Statutes require, that the *Hiring* should be in some Town or Parish, where there are proper Officers to take Care that it should not be fraudulent to charge the Parish, and she could have no Settlement in *Fawley*, because her Mistress was there as a *Visitor*.

As to both these Points the Court declared, that where a Servant continues forty Days in the Service of a *Visitor* as well as of a Lodger, he gained a Settlement, for he could not be removed, unless the Parish shew some Cause, (*viz.*) that he was brought thither on Purpose to have a Settlement; and as to the Objection, that the Statute requires the *Hiring* should be in a Town or Parish, and that this Servant was hired in neither, but in an extraparochial Place, she may properly be said to be hired in every Parish where she serves. *Pasch. B. R. 1722.*

An Appeal from a Removal of a poor Person from one Parish to another, shall not be proceeded on, unless reasonable Notice be given by the Parish Officers, who make the Appeal, to the Parish Officers from whence such poor Person shall be removed, the Reasonableness of which Notice shall be determined by the Justices in the Quarter-Sessions to which the Appeal is made; and if it shall appear that reasonable Notice was not given, then they shall adjourn the Appeal to the next Quarter-Sessions, and there finally determine it.

If upon an Appeal concerning any Settlement, the Sessions shall determine in Favour of the Appellant, that the poor Person was unduly removed, then they shall award the Appellant so much Money as shall appear to have been reasonably paid by the Parish on whose Behalf such Appeal was made, for the Relief of such poor Person, between the Time of such undue Removal and the Determination of the Appeal.

*Of providing
Workhouses for
the Poor.*

9 Geo. 1. c. 7.
§. 4.

The Parish Officers, with the Consent of the major Part of the Parishioners in Vestry, or other publick Meeting assembled, may purchase or hire any Houses in the same Parish, and contract with Persons for the Lodging, Maintaining, and Employing all such Poor as shall desire to receive Relief, and there keep and employ them and receive the Benefit of their Work and Labour, for their better Maintenance and Relief: And if any Person shall refuse to be lodged or maintained in such House, he shall be put out of the Books where the Names of the Persons who ought to receive Collection are to be registred, and shall have no Relief from the Parish Officers.

The Parish Officers, with the like Consent, may contract with any other Parish Officers for Lodging, Maintaining and Employing any poor Persons of another Parish; and if they refuse shall be put out of the Collection Book.

3 Geo. 2.
c. 29. §. 8.

The Witnesses who attested the Execution of Certificates of Settlements, or one of them, shall make Oath before the Justices, who by 8 & 9 *W. 3. cap. 30.* are directed to allow the same, that such Witness did see the Church-wardens and Overseers sign and seal the said Certificates, &c. and the Justices shall certify that such Oath was made before them; and such Certificate shall be allowed in all Courts as fully proved, and be taken as Evidence without other Proof.

1b. §. 9.

When any Overseers of the Poor, or other Persons, shall remove back any Persons and their Families, sent by Certificate, they shall be reimbursed such reasonable Charges as they have been put to in maintaining and removing such Persons, by the Church-wardens or Overseers of the Parish to which such Persons are removed; the Charges being ascertained by one Justice of the County to which such Removal shall be made; the which Charges shall, in case of Refusal of Payment, be levied by Distress and Sale of the Church-wardens and Overseers Goods, by Warrant of such Justices.

For exposed and deserted young Children. See Chap. 196. infra.
Posse Comitatus. See Chap. 171, 172.

C H A P. LXXIV. (a)

Post-Office.

THE Post-Master General may appoint Persons to measure the Roads *by the Wheel*, 9 Ann. c. 10. §. 11. except such Roads where the Stages are already settled, and the Persons so appointed shall make fair Surveys of each Kingdom of *Great Britain* and *Ireland*, and shall leave one with the Post-Master General in *London*, and another at the *Chief Office* in *Edinburgh*, and another at the Chief Post-Office in *Dublin*; which Surveys shall be signed by the Person who made them, and by the Post-Master General, or his Deputies in each Kingdom, and by the Controllers and Surveyors at the General Post-Offices in *London*, *Edinburgh* and *Dublin*, which Surveys shall determine the Distances on all the said Roads.

He who makes such Survey shall make Oath before some Justice, &c. in each Kingdom respectively, to perform the same according to the best of his Skill, and the Justice, &c. shall certify the same in Writing, to be entered in the three General Post-Offices. Who must make Oath before some Justice. Ib. §. 12.

All Money due for Letters not exceeding five Pounds shall be recovered before Justices of Peace as small Tithes are recovered, and shall be paid before any Debt due to a private Person. Postage of Letters shall be recovered as small Tithes. Ib. §. 30. See c. 102, infra.

The Post-Master and all his under Officers must take the Oath enjoined by the Statute before some Justice of Peace of the County where resident, &c. Post-Master and all his Officers must make Oath.

See the Form of the Oath in the Statute, and see the Statute at large for the Postage of all Letters.

A Letter, in which there were Bills of Exchange, was delivered at the General Post-Office in *London*, to one who was appointed by the Post-Master to receive Letters, and there it was opened, and the Bills taken out; and in an Action brought against the Post-Master, three Judges against *Holt* Chief Justice held, that it would not lie, because this was an Office of Intelligence and not of Insurance, or of Conveyance of Treasure; but the Chief Justice held, that the Action would lie, because the Post-Master hath a Reward, which is the Reason that Inn-keepers and Carriers are to keep Goods safely, &c. Action against the Post-Master for opening a Letter and taking out Bills. Salk. 17.

Bills of Exchange wrote on the same Piece of Paper with a Letter, and also Letters to several Persons wrote on the same Piece of Paper, shall be rated as so many distinct Letters. 6 G. 1. c. 21. §. 51.

The Proviso in *9 Ann. cap. 10. sect. 13.* shall extend only to such Merchants Accounts, Bills of Exchange, Invoices and Bills of Lading, as shall be sent to or from the General Post-Office in *London*, to or from any Parts beyond the Seas, not within his Majesty's Dominions; and all other Merchants Accounts, Bills of Exchange, Invoices and Bills of Lading, shall be rated as so many several Letters. Ib. §. 52.

Nothing in the Act *9 Ann. cap. 10.* ought to restrain any Messenger of the Penny Post, from taking for every Letter originally sent by the Penny-Post, which shall be delivered at any Place, out of *London*, &c. *1 d.* over and above the *1 d.* paid upon putting such Letter into the Office. 4 G. 2. c. 33.

C H A P. LXXV.

Preachers.

IF any Person shall of his own Authority, willingly disturb any Preacher in the Time of his Sermon, or other Divine Service, or shall be aiding, procuring, or abetting thereto; or shall rescue any such Offender being apprehended, or shall disturb the Arresting of any such Offender; and that any of the said Offenders shall be brought before any Justice of Peace, (within the County where the said Offence shall be committed) then every such Justice of Peace (upon due Accusation thereupon made) shall forthwith Disturbing. 1 Mar. Stat. 2. c. 3. § 1, 2, 3, 4, 5 & 6.

commit every such Offender (so brought before him) to safe Custody, by his Discretion.

Two Justices
Examination.

Within six Days (after Accufation had of any the said Offences) and after the Committing of the said Offender to safe Custody by one Justice of the Peace, one other Justice of the Peace of that Shire, must join with the first Justice in the Examination of the said Offence; and if they Two, upon their Examination, shall find the Party accused guilty (and that by two sufficient Witnessess, or by his own Confession) then shall they commit him to the Gaol, there to remain without Bail, for three Months then next ensuing; and further, to the next Quarter-Sessions, &c. But inquire, if all this Statute be not repealed by 1 Eliz. cap. 2. in general Words at the latter End thereof. *Lamb.* 199.

(a) Yet it seemeth not to be repealed in this Matter, *scil.* for Disturbance of Preachers: For this Statute containeth several Matters, and so divers Statutes. *Cromp.* 14.

And yet Sir *Nicholas Hide* at *Bury*, *Lent* Assizes, *An.* 1629. delivered it (as I am credibly informed) that this Statute was wholly repealed by the Statute made 1 Eliz. cap. 2.

1 W & M.
Stat. 1. c. 88.

Dissenting Preachers taking the Oaths and subscribing the Declaration at the Quarter-Sessions where they live, shall not be liable to certain Penalties in former Statutes. See *the Statute at Large*, and 10 *Annæ*, cap. 2. *sect.* 8. *supra*, cap. 26. *Tit. Conformity.*

Such Preachers must declare their Approbation and subscribe the Articles of Religion, excepting certain Words in the 20th, 24th, 25th and 36th Articles.

§. 18.

Preachers thus subscribing shall not serve on Juries, and shall be exempt from Parish Offices; and he who disturbs them in Preaching shall be bound with Sureties in 50 *l.* to appear at the Sessions, and being convicted, shall forfeit 20 *l.* to the Crown; and if he will not fine, shall be committed till the next Sessions.

The Proof must be by two Witnessess, on Oath before one Justice.

§. 19.

Preachers in *Anabaptist* Meetings subscribing the Articles of Religion, excepting that Part of the 27th Article relating to Infant Baptism, and taking the Oaths, and making and subscribing the Declaration, shall enjoy the same Advantages as other Dissenting Preachers.

C H A P. LXXVI. (a)

Printers and Printing.

THE Statute of 13 & 14 *Car.* 2. cap. 33. (Entitled *An Act for preventing Abuses in printing Seditious, Treasonable and Unlicenced Books and Pamphlets, and for regulating of Printing and Printing-Presses*) inserted in former Editions of this Book, was continued by 1 *Jac.* 2. c. 17. for seven Years from 1685, and then expired.

Probate of Wills. See *Chap.* 41. *Tit. Fees.*

Proccs. See *Chap.* 193.

C H A P. LXXVII.

Prophecies.

(a) TOO true is that Saying of the sharp *French* Historian *Comines*, *lib.* 6. of his *Commentaries*, *Tribuunt Angli Plurimum vaticiniis*, and great Mischiefs have arisen from the Multitude's too great Credulity to (and others phantastical Publication, and setting on Foot) false Prophecies; against which Evils were the Statutes of 33 *H.* 8. 14. & 3 *E.* 6. 15. made, but they being expired, was made the Statute of 5 *Eliz.* 15. whereby it is provided, that if any shall publish or set forth by Writing, &c. Speech or Deed, any fond phantastical or false Prophecy, upon, or by Occasion of any Arms, Fields, Beasts, Badges, or Things accustomed in Arms, Cognizances, or Signets; or by

reason of any Time, Year, Day, Name, Bloodshed, or War, to make any Rebellion or Disturbance in the Realm, and other the Queen's Dominions, he shall be imprisoned for a Year without Bail, and forfeit 10*l.* And for the second Offence be imprisoned for Life, and forfeit all his Goods; a Moiety to the King, the other to the Prosecutor.

Justices of Peace have Authority to hear and determine these Offences, so as the Party be accused within six Months.

(d) It seemeth that every Justice of Peace may imprison (by the Space of one Year, without Bail) such as advisedly shall publish any false Prophecies (contrary to the Tenor of the Statute 5 *Eliz.* 15.) to the Intent thereby to make any Rebellion, Insurrection, or other Disturbances within the King's Dominions. P. Just. 24.
P. Prop. 1.

(a) But *Quere* hereof, for they are so enabled as Justices of Assise are, which is in their Courts, and Imprisonment is to ensue Conviction; which must be in the Sessions.

C H A P. LXXVIII.

Prison.

ANY Justice of Peace, having sent or committed to the Gaol an Offender (for any Offence or Misdemeanor) if the Offender (having Means or Ability thereto) shall refuse to bear and defray the Charges of such as shall convey and guard him or them to such Gaol, or shall not at the Time of their Commitment, pay or bear the same, then the said Justice may give his Warrant under his Hand and Seal (to the Constable of the Hundred, or Constable of the Town) where such Offender shall be dwelling, or from whence he shall be committed, or where the said Offender shall have any Goods within that County or Liberty, to sell so much of the Offender's Goods, as by the Discretion of the said Justice will satisfy such Charges, &c. the Appraisalment to be made by four Inhabitants of the Parish where such Goods be (yielding to the Party the Overplus of the Money :) And where the Offender hath no such Goods, then the Charge thereof must be born by the Town where the Offender was taken, and the Taxation made on the Town for that Purpose, must be allowed under the Hand of one Justice of Peace; and by like Warrant from such Justice, the Goods of the Person refusing to pay such Taxation, may be distrained and sold by the Constable and Church-wardens by Appraisalment made by four Inhabitants, rendring the Overplus. 3 Jac. 1. c. 10

(a) The next Justice of Peace, or the Quarter-Sessions, may adjudge what is fitting to be taken for each Night's Lodging, or other Expences, by any Under-Sheriff, Bailiff, Sergeant, or other Officer that hath any Person in his Custody, by Virtue of any Process or Warrant, while he is under Arrest, and before he is carried to Prison. Arrest.
Fees.
22 & 23 Car. 2.
c. 20. §. 9.

Upon the Presentment of the Grand Jury at the Assises or Quarter-Sessions, that the Gaol is out of Repair, the Sessions upon examining Workmen, may agree on a Sum for Building or Repairing it, and levy the same on the several Divisions and Hundreds of the County by a Sessions Warrant to the High Constables, and may make a Receiver. 11 & 12 *Will. cap.* 9. made perpetual by 6 *Geo.* 1. *cap.* 19.

All Justices of Peace shall use their Endeavour and Diligence to examine and find out all Legacies and Gifts for the Benefit of poor Prisoners for Debt, and to send for Deeds, Wills, Writings, and Books of Accounts, and any Person concerned therein; and to examine them upon Oath, and to order and settle the same. Charity.
22 & 23 Car. 2.
c. 20. §. 11.

Which Legacies, Gifts, Rates of Fees, and the future Government of Prisons, shall be signed and confirmed by the Justice of Peace, and the Judges of the Circuits, and fairly written, and hung up in a Table in every Gaol, and be registered by the Clerk of the Peace, and after such Establishment, no other greater Fees to be taken. Ib. §. 12.

The Justices of Peace, at their Quarter-Sessions, may provide a Stock of Materials to set Prisoners on work, in such Manner as other County Charges are levied and raised: Provided no Parish be rated above Six Pence a Week; and may provide fit Persons to oversee them, and make orders therein, and alter or amend them. * Work.
19 Car. 2.
c. 4. §. 1.
* Vide 12 G. 2.
c. 29. in Chap.
196. infra.

The Sheriff or Person having the Custody of the Gaol, by Consent of four Justices of Peace (*Quorum unus*) upon emergent Occasions, may provide other safe Places for Removal of Sick, or other Persons to be there kept, and conveyed to Gaol-delivery. The like may be done in Corporations. Sickness.
Ib. §. 2.

Removal of
Prisoners.

31 Car. 2. c. 2.
§. 9.

Persons Subjects of this Realm committed for any Crime, shall not be removed into Custody of any other Officer unless by some legal Writ; or where the Prisoner is delivered to the Constable, &c. to be carried to Gaol, or sent by any Judge or Justice of Peace his Order to a Work-house, or removed within the County in order to his Trial or Discharge, or in Case of Fire, Infection or Necessity. And Persons signing any Warrant for Removal contrary hereunto, or countersigning the same, and the Officer or Officers that obey or execute such Warrant, shall for the first Offence forfeit to the Party grieved 100*l.* and for the second Offence 200*l.* and be incapable to hold his Office; to be recovered by Action of Debt, Suit, Bill, Plaint or Information, in any of the King's Courts at *Westminster*.

See the Appendix, *Tit. Gaol.*

Pretended Privileged Places.

9 Geo. 1.
c. 28. §. 1.

IF any Person shall within *Suffolk Place*, or the *Mint*, or their pretended Limits, oppose the Service of any Writ, &c. or any Warrants of Justices of Peace; or Assault any Person serving such Writ, whereby he shall receive any Damage, such Offender shall be guilty of Felony and transported.

Ib. §. 2.

Rescuing any Prisoner taken upon such Writ within the said Place, or concealing any such Prisoner, or such who rescued, or assisting in resisting the Officer, or joining in making any pretended Rule or Ordinance, for supporting any pretended Privilege within the said Place, every Person so offending, convicted on Indictment or Information brought within six Months after the Offence, shall be guilty of Felony and transported.

Ib. §. 3.

Any Person masked or disguised, abetting any Riot in such Place, or opposing Process, &c. shall be guilty of Felony and transported.

Ib. §. 4.

Any Person apprehending any of the aforesaid Offenders shall have 40*l.*

Ib. §. 5.

And if a Person be killed in endeavouring to apprehend such Offender, the Executors, &c. of such Person killed shall receive 40*l.*

11 Geo. 1.
cap. 22. §. 1.

If any Number of Persons, not less than Three, shall within the Hamlet of *Wapping-Stepney*, or any other Place within the Bills of Mortality of the Cities of *London* and *Westminster*, wherein Persons shall unlawfully assemble for the Sheltering themselves from their Debts, of which Complaint shall have been made by Presentment of the Grand Jury at a Quarter-Sessions, knowingly obstruct any Persons serving any Writ, Rule or Order of any Court, or other legal Process, and shall assault or abuse any Person serving or executing such Writ, &c. whereby such Person shall receive bodily Hurt, the Offender being convicted shall be guilty of Felony, and transported for seven Years.

Ib. §. 2.

Rescuing, &c. any Prisoner, the Offender shall be guilty of Felony and transported.

C H A P. LXXIX.

Purveyors.

Universities.

13 Eliz. c. 21.
1 Jac. 1. c. 25.

IF any Person within five Miles of *Cambridge* or *Oxford*, shall refuse reasonably to serve the Provision of the said Universities, then may the Vicechancellor, and any two Justices of Peace within the same University, Town or County, under their Hands and Seals, allow any the King's Purveyors to provide any Corn or Victual of any such Person, to the Use of the King, as they lawfully may in other Places, without the said Precinct.

2 & 3 P. & M.
c. 15.
13 El. 21.
P. Jul. 60.
P. Purv. 32.

The Vicechancellor (or his Commissary for the Time being) in either of the Universities, with any two Justices of Peace of the same County, may by the Oaths of Twelve Men, inquire of, and punish the Offences of Purveyors, committed contrary to the Statutes for the Privileges of the Universities, &c. *scil.* in taking or bargaining for any Victual or Grain, within *Cambridge* or *Oxford*, or within five Miles of either of them, without the License of the Chancellor, or Vicechancellor in Writing, under the Seal of their Office; or not according to such License.

23 H 5. c. 14.

(a) If any Buyer, or other Officer of any Lord or other Person (but only for the King and Queen, and their Houses) do take any Victual, Corn, Hay, Carriages, or any other

other Thing whatsoever, of any of the King's People, in any wise against their Will (without lawful Bargain between the said Buyer and Seller made) then upon Request made to the Mayor, Sheriff, Bailiff, Constable, Officer, or other the King's Ministers (under which Word * Ministers, the Justices of Peace be also comprehended) of the Cities, Boroughs, Counties, or Places, where such Taking shall happen to be, the said Mayor, Sheriff, Minister, and Justice of Peace, shall presently take and arrest such Buyer and Officer so offending, and them shall send to the King's next Prison, there to remain without Bail, until they have re-delivered the said Goods so taken, or the Value thereof †.

* Cromp. 62 a. † The Stat. 2 & 3 Ph. & M. 15. 13 Eliz. 21. mentioned by Dalton, and the Stat. 23 H. 6. 14. inserted by former Editors, are obsolete, and therefore omitted in Mr. Cay's Abridgment.

But it being impossible to regulate these Purveyors by the many Laws made against them, and that on the utmost Penalties: By the Statute of 12 Car. 2. cap. 24. it is enacted, That no Sum or Sums of Monies, or other Thing shall be taken, levied, &c. for or in Regard of any Provision, Carriages, or Purveyance for the King, his Heirs or Successors.

No Person by Commission, &c. or otherwise by Colour of Purveyance, for the King or Queen of England, or for any Children of any King or Queen, or their Household, shall take Timber, Fewel, Cattle, Corn, Grain, Malt, Hay, Straw, Victual, Carts, Carriages, or other Thing whatsoever, from any Person, without the Owners free Consent had without Menace or Inforcement; nor shall summon any Carriages for such Use without the Owners Consent.

No Pre-emption shall be allowed or claimed, in Behalf of the King, Queen, or their Children, in Market or out of Market; but the King's Subjects may sell and dispose of their Goods as they list.

If any Person shall make Provision or Purveyance for the King, Queen, or Children, or impose any Carriages or Things, on any Pretence or Colour of any Warrant whatsoever. The Justices of Peace, or two, or one of them that dwell near; and the Constables of the Parish or Village, may, and are hereby enjoined to commit, or cause, &c. the Offenders to the Gaol until next Sessions, there to be indicted and proceeded against for the same, at the Request of the Party grieved; and the Party shall have his Action for treble Damages, and treble Costs.

C H A P. LXXX. (a)

Quakers.

Persons so called, may not assemble themselves together above five in Number, of the Age of sixteen Years or more, under Pretence of Religious Worship, not established by Law, upon Penalty for the first Offence upon Conviction by Verdict or Confession, or by notorious Evidence of the Fact, to pay a Fine not exceeding 5 l. for the first Offence; and after Conviction for the first, being convicted of a second Offence, 10 l. to be levied by Warrant of the Parties before whom the Conviction shall be, and for want of Distress and Non-payment within one Week after Conviction: For the first Offence Imprisonment in Gaol, or House of Correction, three Months; the second Offence six Months, without Bail, which Penalties shall be employed for maintaining the House of Correction; the third Offence, the Party offending shall abjure the Realm, or otherwise the King may give Orders to transport the Offender to any of his Majesty's Plantations beyond the Seas.

And Justices of Oyer and Terminer, Assise, Gaol-delivery, and Justices of the Peace in open Sessions, may hear and determine the same Offences within their respective Limits. And any Justice of Peace, Mayor or chief Officer of a Corporation, may commit to the Gaol, or bind over Persons with sufficient Sureties, in order to their Conviction.

But this is now taken away by the Act 8 Geo. 1. ff. The Quakers subscribing the Declaration of Fidelity, and the Christian Belief, before two Justices, shall be intitled to the Benefit of that Act.

No Quaker shall be a Witness in Criminal Causes, or serve on Juries, or bear any Office or Place of Profit in the Government; and their solemn Affirmation is to go for an Oath.

7 & 8 W. 3.
c. 34.
Declaration,
altered by the
Statute
8 Geo. 1. c. 6.

Penalty.

Every Quaker shall, where any Oath is lawfully required, instead thereof, make a solemn Declaration in these Words, *viz.* I A. B. do declare in the Presence of Almighty God, the Witness of the Truth of what I say; which shall be taken to be of the same Force in all Courts of Justice, as an Oath taken in the usual Form: And upon Condition that he hath declared any Matter or Thing, which if the same had been in the usual Form of an Oath, would have amounted to wilful Perjury, he shall incur the same Penalties as in Case of Perjury.

Tithes.

16. §. 4.

Quakers refusing to pay or compound for great or small Tithes, or to pay Church-Rates, the two next Justices of Peace of the same County, (other than such Justice as is Patron of the Church, or interested in the said Tithes) may, upon Complaint, convene before them such Quaker, and examine upon Oath the Truth of the said Complaint, and ascertain what is due to the Parties complaining, and by Order under their Hands and Seals direct the Payment thereof (not exceeding 10 *l.*) and such Quakers refusing to pay according to such Order, any one of the said Justices may by Warrant under his Hand and Seal, levy the Money so ordered to be paid, by Distress and Sale of the Offender's Goods. And any Persons finding themselves agrieved by any Judgment given by such two Justices may appeal to the next Quarter-Sessions for the County, &c. and the Justices there may finally hear and determine the Matter: And if they continue the Judgment, then to decree the same by Order of Sessions, and give Costs against the Appellant, to be levied by Distress and Sale of Goods. Proceedings upon this Act shall not be removed or superseded by *Certiorari* or other Writ out of the Courts at *Westminster*, unless the Title of such Tithes come in Question. The said Statute is made perpetual by 1 *Geo. cap. 6.*

Appeal.

Certiorari.

Rape. See *postea* Tit. *Felonies by Statute.*

Rates. See *Stock of the Shire*, Chap. 96. and Chap. 196.

Recognizance. See *Chap. 168.*

C H A P. LXXXI.

Recusants*.

* This Title is in the old Edition of Dalton, but much altered and enlarged in subsequent Editions, we have here followed that of 1727.
Recusants,
who.

THIS Word *Recusant* is now become of that Signification, as to describe a Person on the Account of Adherence to the Church and Court of *Rome*, in her pretended Supremacy over all other Churches in Spiritual Matters, under which Head she also would comprehend all *Temporal Affairs*, she denying to Temporal Princes (claiming under God Imperial Thrones, and justly possessing them, and to the King of *Great Britain* in particular,) That Supremacy that they all lawfully may, and do some of them actually claim, as their great Charge and Duty; and which by the Statute of 26 *H. 8. cap. 1.* is justly united to the Imperial Crown of this Kingdom.

Supremacy.

The Exactions of that Church and Court being intolerable, and their Ends and Designs proving Dangerous to Temporal Government, the same King assisted with his Parliament, did that which other Princes, even in Popish Times and Countries, sought to redress; who, although they cut off some Branches, yet leaving the Root untouched, the Tree grew even to a monstrous Height. This wise Prince laid the Ax to the Root, by the Statute 26 *H. 8. cap. 1.* having by the Statute of 24 *H. 8. cap. 12.* discharged all *Appeals to Rome*, and put the Causes in a right Channel, to receive a just and righteous Decision. And by the Statutes of 25 *H. 8. cap. 20.* & 26 *H. 8. 3.* prevented the Court of *Rome* from receiving *First Fruits for Ecclesiastical Livings*, and taken Care for a Succession of Archbishops and Bishops: And also by the Statute of 25 *H. 8. 21.* taken off the Payment of all *Impositions to Rome*, the Clergy having in Convocation recognized that King to be *Supreme Head of the Church*, and taking Care for the due Management of this asserted Jurisdiction.

Thus stood the King's Supremacy all the Residue of the Reign of *Henry the Eighth*, and *Edward the Sixth*, and *Queen Mary*, although a Papist, yet kept *Supremum caput* in her Stile, and thereby summoned her first Parliament; but soon after omitted it, and the Statutes made in her Father's Time for asserting the King's Supremacy were repealed.

pealed. But her Authority being short, 1 *El. c. 1.* those Statutes of Repeal were repealed, and consequently the Statutes by Queen Mary repealed, were revived. By which, as that Statute recites, *all usurped and foreign Jurisdiction was put away*; and the ancient Jurisdictions, Superiorities, and Preheminences of Right belonging to the Imperial Crown of this Realm thereto united, by Reason whereof the Subjects were kept in good Order, and disburdened of great and intolerable Exactions. And by that Statute of 1 *Eliz. 1.* an Oath was directed for good Subjects to take; the Form you may see *cap. 4. sect. 5.* and a Law made the same Year, *cap. 2.* for establishing a *Common Prayer-Book in English, and Uniformity in Divine Service*, and requiring all Persons to come to Church and hear the same, under divers Penalties,

Common Prayer-Book.

Now although the Common Prayers and Service of the Church were in *English* all Edward the Sixth's Time, yet the King's Subjects came to Church and received the Sacrament all his Time, and no open Defection was on that Account. And although the Common Prayer-Book and Service, received some Alteration different from that of *Rome* in 1 *Eliz.* Yet until the eleventh Year of Her Reign, did all her Subjects come to Church promiscuously, so that the Bishop of *Rome* perceiving his Authority at last Gasped, by his Bulls *interdicted the Kingdom, absolved her Subjects from their Obedience to their Prince*, and thereby wrought that Schism which those that profess Obedience to that See, have ever since maintained; and had not the Pope then interposed, it is probable a perfect Union had been in the *English* Church, which will be more reasonable to believe, if we consider how few Persons quitted their Livings and Dignities, for refusing Communion with the *English* Church, and refusing the Oath prescribed by 1 *El. 1.* namely, not much above 100 of 9000 and more, as *Camden* witnesseth.

Defection by the Pope's Means.

9000 Benefices in England.

After which Practices, the State thought it necessary to provide for it self; and thereupon the Statute of 5 *El. 1.* was made, *that any that maintained the Bishop of Rome's Authority, should incur a Præmunire.* And the Statute of 13 *El. 1.* against such as *levied War, or intended bodily Harm to the Queen.* And another 13 *El. c. 2.* against such Bulls, and the bringing over and publishing them; and the Statute of 23 *Eliz. 1.* against *reconciling to Rome*; and the Statute of 27 *Eliz. 2.* for *departing of Priests and Jesuits*; and the Statute of 29 *Eliz. 6.* against *Frauds in Conveyances* were made.

Near which Time there rose another Sort of People, called (by 35 *El. 2.*) *Seſtaries* and Disloyal Persons, who did oppose the Queen's Authority in Causes Ecclesiastical, but not upon Popish Designs, and on that Account forbore to come to Church, against whom that Statute is made.

Seſtaries.

The first Statute I meet with, wherein the Word *Recusants* is mentioned, is that of 35 *Eliz. 1.* which mentioned the Statute of 23 *Eliz. 1.* to be made against Recusants, which was against the Papists only. And then comes 35 *Eliz. 2.* that mentions a *Popish Recusant.* Which Word is plainly taken from refusing to take the Oath of 1 *Eliz. 1.* And refusing to read or hear Common Prayers, prescribed by 1 *Eliz. 2.* And to express the Words of those Statutes, is a Refusal with Obstinacy.

First Mention of Recusants.

So that now there being a twofold Recusancy, Popish and Sectarian, it will be necessary to observe and distinguish the Laws made against them.

Recusants of two Sorts.

The Statutes now in Force against *Recusants* of all Sorts, seem to be 1 *Eliz. 1.* 1 *Eliz. 2.* 8 *Eliz. 1.* 23 *Eliz. 1.* 5 *Eliz. 1.* 13 *Eliz. 2.* 35 *Eliz. 1.* And 35 *Eliz. 2.* 1 *Jac. 4.* 3 *Jac. 4.* 3 *Jac. 5.* 7 *Jac. 2.* 7 *Jac. 6.* 29 *Eliz. 6.* 27 *Eliz. 2.* All which are yet in Force, and particularly 33 *El. 1.* is by 16 *Car. 1. c. 4.* declared to be in Force: And all the rest, except 35 *El. 1.* against Sectaries, were perpetual. All which by 1 *Jac. 1. 4.* are ordered to be put in due and exact Execution. I call that of 35 *El. 1.* a Law against Sectaries, for so the Preamble mentions it to be; and by an Exception therein contained, Popish Recusants are excepted. And I observe some material Differences between them.

Statutes.

First, The Statute of 35 *Eliz. 1.* requires Conformity from all Persons, or else inflicts Abjuration. The Statute of 35 *Eliz. 2.* for Nonconformity from Persons of mean Estates only, and that the Residue repair to their Dwellings, Confinement there, and Forfeiture of Goods and Land.

Secondly, The Statute of 35 *El. 2.* is temporary to the End of the next Session of Parliament, when it might have expired, had not some clamorous Persons Enormities revived it: But the Statute of 35 *El. 1.* is perpetual.

Thirdly, No married Women are punishable by 35 *El. 1.* but are thereout excepted; but by 35 *El. 2.* married Women are declared to be within all Branches and Penalties of it, but Abjuration.

Two Points of
Recusancy.
1 El. 2.

Absence from
Church.

The Matter of Recusancy stands in two Particulars, first, *Absenting from the Church*; secondly, *refusing the Oath prescribed by 1 El. 1. and 3 Jac. 1. 4.*

All and every Person, inhabiting within this Realm, or other the King's Dominions, shall (having no reasonable Excuse to be absent) endeavour themselves to resort to their Parish Chapel accustomed, or upon reasonable Let thereof, to some usual Place where Common Prayer and such Service of God shall be used in such Time of Let, upon every Sunday and Holiday; and there remain orderly and soberly, during the Time of Common Prayer, Preaching and Service, upon Pain of Punishment by the Censures of the Church; and to pay for every Offence 12 d. to be levied by the Church-wardens, to the Use of the Poor, by Distresses.

By 1 W. & M.
c. 8. this doth
not extend to
Dissenters.
23 El. 1.

The Statute of 23 Eliz. 1. saith, *That every Person of 16 Years of Age, which shall not repair to some Church, Chapel, or usual Place of Common Prayer, but forbear the same contrary to 1 El. 2. And being thereof lawfully convicted, shall forfeit for every Month 20 l. &c.*

If any Subject shall not resort to Church, Chapel, or other Place appointed, &c. every Sunday, and hear divine Service, according to 1 El. 2. one Justice, upon Confession or Oath of Witnesses, shall call the Party before him; and if he can make no Excuse, the Justice shall give a Warrant to the Church-wardens to levy 12 d. for every Default, by Distresses; and if no Distress, to commit him till Payment, 3 Jac. 4. so as the Party be impeached within one Month.

Cases there-
upon.
Godb. Rep.
148.

1. Note, that in an Indictment upon 1 El. 2. it need not be averred, that the Offender was an Inhabitant; for that ought to come of the other Side. See *Anne Mammock's Case, M. 3 Jac. 1.*

2. That where the Statute of 23 El. 1. says, *being thereof convicted*, does not intend a former Conviction, but a Conviction in the same Action; as is resolved in *Dr. Foster's Case.*

Moor's Rep.
606.

3. That where the Statute 23 El. says, *every Person of sixteen Years, &c.* an Indictment that saith, *Quod A. B. de, &c. Existens Ætat. 16. Annorum, &c.* This *Existens* shall go to the Time of the Offence, and not to the Time of the Indictment. *Talbot's Case.*

Bullst. 3. p. 87.
Hob. p. 179.

4. That *Feme Coverts* are within the Statutes of 1 El. 2. & 23 El. 1. touching all the Penalties for *Absence from the Church*, and an Information lies against the *Husband* for the same, as was resolved in *Laws's Case. P. 13 Jac.*

Co. 11. 91.
& 63.

5. That the Penalty of 12 d. a Sunday, by 1 El. 2. & 3 Jac. 4. and of 20 l. per *mensē*, by 23 El. 1. shall be both paid.

6. That the Statute of 1 El. 2. extends to *Holidays* as well as *Sundays*; but the Statutes of 23 El. 1. & 3 Jac. 4. extend only to *Sundays*.

7. Note also, this Repairing to Church every Sunday, must be as well to *Evening Prayers*, as to *Morning Prayers*; for it ought to be an intire Day, and an intire Service. And so Sir *Richard Hutton*, one of the Judges of the Court of Common Pleas, did deliver it in his Charge at *Cambridge Lent Assizes, Anno 1 Car. Regis*; and therewith agreed Sir *Robert Bartlet* at *Summer Assizes, Anno 9 Car. Regis.*

Holidays.

And because 1 El. 2. extends to *Holidays*, it is convenient to observe which are *Holidays*: And as to that, I refer you to the Statute of 5 & 6 E. 6. cap. 3. And the *Rubrick* of our present Service-Book, now confirmed by 14 Car. 2. c. 4.

Oath.

5 El. 1.

The *Oath of Supremacy* must be taken by *Spiritual Persons*, before such as have Power to admit them; and so of *Lay Persons*, preferred by the King to any *Lay Office, Ministry, or Service*, before such as shall admit them to that Office, or before such Persons as by the King's Commission shall be appointed; and if such Person refuse, he is disabled to take that Office: But if any Person having any Estate of Inheritance in the Office, shall first refuse, and afterwards during his Life take it, he shall enjoy it. *Vide* the *Oath bic. cap. 4. sect. 5.*

Maintaining
Foreign Au-
thority.

1 El. 1.

If any shall by *Writing, Printing, Teaching, Preaching, exprefs Words, Deed or Act*, maintain, set forth, or defend the Authority or Jurisdiction, *Temporal, or Ecclesiastical*, of any *Foreign Prince, Prelate, State, Potentate*, formerly claimed or usurped, or shall put in Use or execute any Thing for Maintenance or Defence of the same, every such Offenders, their *Abettors, &c.* convicted thereof after the Course of the Common Law, shall lose to the King all their Goods and Chattels, real and personal; and if the Offender have not 20 l. in Goods, over and besides his Goods, he shall be imprisoned for a Year.

Penalty.

And if the Offender be a Spiritual Person, he shall forfeit all his Spiritual Promotions, ^{1 El. 1.} and the next Patron or Donor may present, as if he were dead; for the second Offence, he shall incur a Premunire; and for the third, suffer as for Treason, but there must be two Witnesses, and they brought Face to Face; and as touching Aiding, &c. it must be proved by two Witnesses, that the Person had Knowledge of the Offence.

All Persons admitted *Ad ordines Sacros*, or taking any Degree in the University, ^{Oath.} School-Masters, and Teachers of Children; and all Persons taking any Degree or Learning ^{5 El. 1.} at Common Law; and all Attornies, Prothonotaries and Philizers; and all Persons admitted to any Ministry or Office belonging to the Canon Law, or any other Law allowed in *England*, or that shall belong to any Court, shall before Admission, in open Court, or before Commissioners take the Oath. The Lord Chancellor or Lord Keeper may direct Commissions to tender the Oath to any Persons, without further Warrant.

The Persons compellable to take that Oath, and refusing, shall incur a *Premunire*. ^{Refusing.}

The Persons having Power to tender the Oath, shall within forty Days, if the Term be open, or the first Day of the next Term after the forty Days, return the same Refusal into the King's Bench, upon Pain of 100 *l.* And the Sheriff of the County, where the King's Bench is, may impanel a Jury; and upon the Evidence of that Certificate, and other Evidence, may indict the Party. ^{5 El. 1.}

If any Person *above sixteen Years of Age* that absents from Church by a Month, shall practise, go about, or perswade any Subject or Person, in the King's Dominions, to oppose his Authority Ecclesiastical, and shall move or perswade any to abstain from Church, or receiving the Communion, or to be present at Conventicles; or if he shall be present at Conventicles, being thereof convicted, shall be committed to Prison without Bail, until he conform and make the Submission required by that Act, if within three Months after such Conviction, he shall not conform and submit, being required by the Bishop of the Diocese, or a Justice of Peace, or the Minister or Curate, he shall in open Sessions or Assises, or Gaol-delivery * abjure the Realm, and depart at such Haven, Port and Time the Justices shall assign him, which Abjuration the Justices shall record and certify to the Assises. ^{35 El. 1.}

Secularies.

^{35 El. 1.}

Conventicles.

* *This is now taken away by the Statute 1 W. 3. c. 1.*

upon taking the Oaths and subscribing the Declaration.

The Oath of Abjuration may be taken by the Justices of Peace of such Recusants, in this Form, or to this Effect: ^{Abjuration.}

YOU shall swear, That you shall depart out of this Realm of England, and out of all other the King's Majesty's Dominions; and that you shall not return hither or come again into any of his Majesty's Dominions, but by the Licence of our said Sovereign Lord the King, or of his Heirs. So help you God. See *Stamf.* 119. *Vide Wilk.* 40. ^{Oath of Abjuration.}

^{35 El. 1.}

And such Recusants thereupon shall depart out of this Realm, at such Haven and Port, and within such Time as shall in that Behalf be assigned and appointed by the said Justices of Peace, unless he be letted and stayed by such lawful Means or Cause as the Common Law doth allow in Cases of Abjuration for Felony, &c. ^{35 El. 1.}

Departure.

^{35 El. 1.}

If any such Recusant shall refuse to make such Abjuration, or after such Abjuration made, shall not go to such Haven, and within such Time as is so appointed him; and from thence depart out of this Realm, according to this Statute, or after such Departure shall return or come again into any his Majesty's Realms or Dominions, without his Majesty's special Licence in that Behalf first obtained, in every such Case the Person so offending shall be adjudged a Felon. *Ibid.* ^{Not going.}

^{35 El. 1.}

The Justices of Peace before whom any such Abjuration shall be made, shall cause the same to be presently entred upon Record before them, and shall certify the same at the next General Gaol-delivery to be holden in the same County. ^{35 El. 1.} All this is now taken away by the Statute 1 *W.* 3. *cap.* 18.

Certificate.

^{35 El. 1.}

If after Conviction, and before required to abjure, the Party repair to some Church or Chapel on some Sunday or Holiday, and hear Divine Service; and before the Sermon or Reading of the Gospel, make publick Declaration of his Conformity in the Form therein expressed, *viz.* *I A. B. &c.* the Party offending shall be discharged of all Penalties, &c. ^{Submission.}

^{35 El. 1.}

The Minister or Curate shall forthwith enter it into a Book, and within ten Days certify the same to the Bishop of the Diocese. ^{Certificate.}

^{35 El. 1.}

Relapse.
35 El. 1. If the Party shall afterwards relapse, and refuse to go to Church, or shall go to Conventicles, he shall stand in the same Flight, as if no Submission had been made. 35 *Eliz.*

Penalties.
35 El. 1. The Penalties by 23 *Eliz.* 1. and 35 *Eliz.* 1. shall be recovered to the Queen's Use, by Action of Debt, Bill, Plaint or Information, in the King's Bench, Common Pleas and Exchequer; and a third Part shall go to charitable Uses. 35 *Eliz.* 1.

Courts.
Popish Recusants confined.
35 El. 2. Every Person born in *England*, or made Denizen, above sixteen Years of Age, having a Place of Abode, and being a Popish Recusant, that shall be convicted of Absence from the Church, and being in *England* at the Time of such Conviction, shall within forty Days after such Conviction, if at Liberty; or if restrained, within twenty Days after, repair to his Place of Abode, and shall not remove five Miles from thence upon Pain to lose his Goods and Chattels, and all his Lands, &c. for his Life. But if he hath no Place of Abode, he shall within the Time aforesaid, repair to the Place where he was born, or his Father or Mother dwells, upon Pain of Forfeiture as aforesaid: And being come to such Place, shall within twenty Days present himself, and give his Name to the Minister or Curate, and to the Constable, &c. And the Minister or Curate shall enter his Name in a Book, to be kept in the Parish; and the Minister and Constable shall certify the same to the next Sessions, and the Justices shall enter it in the Rolls.

Abjuration now taken by Statute, as aforesaid.
35 El. 2. A convicted Popish Recusant of small Ability (not having twenty Marks Freehold *per Ann.* or forty Pounds in Goods, nor being a *Feme Covert*) that shall not repair to his Place of usual Dwelling, or Place of Birth, or where his Father or Mother is dwelling, and there notify himself to the Minister and Constables, according to the Statute of 35 *Eliz.* 1. or shall afterwards remove above five Miles from the same. If after he be apprehended, and shall not conform himself within three Months, in coming usually to Church, and in making such publick Submission, as in the said Statute is appointed, being thereunto required; then any two Justices of the Peace, or Coroner of that County, may require such Offender to abjure the Realm, and may assign him the Time, and Haven, &c. And every such Offender, shall upon his corporal Oath, before the said Justices, abjure this Realm of *England*, and all other the King's Dominions for ever.

The Abjuration must be entred and certified, as herein is directed by 35 *Eliz.* But because that of 35 *Eliz.* 1. was made against Sectaries, and this of *cap.* 2. against Popish Recusants, I have so distinguished them; and having observed some Difference in penning the two Acts, the only remaining Difference is in the Words of Submission in the Acts, that of Sectaries by 35 *Eliz.* 1. being thus:

Submission of Sectaries.
35 El. 1. **I** A. B. do humbly confess and acknowledge, That I have grievously offended God, in contemning her Majesty's godly and lawful Government and Authority, by absenting myself from Church, and from hearing Divine Service, contrary to the godly Laws and Statutes of this Realm; and in using and frequenting disordered and unlawful Conventicles and Assemblies, under Pretence and Colour of Exercise of Religion. And I am heartily sorry for the same, and do acknowledge and testify in my Conscience, that no other Person hath, or ought to have any Power or Authority over her Majesty. And I do promise and protest, without any Dissimulation, or any Colour, or Means of any Dispensation, That from henceforth I will, from Time to Time, obey and perform her Majesty's Laws and Statutes, in repairing to the Church, and hearing Divine Service; and do my utmost Endeavour to maintain and defend the same.

Submission of Recusants.
35 El. 2. **T**HAT of Popish Recusants by 35 *Eliz.* 2. being thus: I A. B. do humbly confess and acknowledge, That I have grievously offended God in contemning her Majesty's godly and lawful Government and Authority, by absenting myself from Church, and from hearing Divine Service, contrary to the godly Laws and Statutes of this Realm. And I am heartily sorry for the same, and do acknowledge and testify in my Conscience, That the Bishop or See of Rome, hath not, nor ought to have any Power or Authority over her Majesty, or within any her Majesty's Realms or Dominions. And I do promise and protest without any Dissimulation, or any Colour, or Means of any Dispensation, That from henceforth I will from Time to Time, obey and perform her Majesty's Laws and Statutes in repairing to the Church, and hearing Divine Service, and do my utmost Endeavour to maintain and defend the same.

Which Submission by 35 *Eliz.* 2. is in the same Manner to be required and made, and to have the same Advantage, and to be certified in the same Manner, as by 35 *Eliz.* *cap.* 1. And the like Provision touching Relapse, Women shall be comprehended in and bound by every Branch of that Statute, except those of Abjuration. 35 *El.* 2.
Women.

All fraudulent Conveyances made by Persons that come not to Church, whether upon Power of Revocation, or with any Intent for the Maintenance of himself or Family, are void. 29 *Eliz.* 6. Fraudulent
Conveyances.

Convictions of Recusancy shall be in the Court of King's Bench, Assise or Gaol-delivery, and not elsewhere, and shall be certified and estreated into the Exchequer the next Term, after such Conviction, in such convenient Certainty for the Time, and other Circumstances, as that the Exchequer may award Process for Seizure of the Lands and Goods of such as have not paid the Forfeiture 27 *Eliz.* 6. But see *Pye* and *Lowell's Case*, *Hob.* 204. It was resolved, That an Information or Action of Debt lay in the Common Pleas, notwithstanding this Statute: For this Statute extends only to Indictments for the Queen's Benefit, and not to Informations. Convictions,
where.
This Statute
doth not extend
to Protestant
Dissenters.
1 W. & M.
c. 18.

Such as are convicted, shall pay their Forfeitures into the Exchequer, at two Times in the Year, without any other or further Conviction, having not conformed. 29 *El.* 6. And if they be not paid, the Process shall issue to seize the Goods, and three Parts of the Lands. Forfeiture.
29 *El.* 6.

No Indictment shall be quashed for not mentioning the Offender to have been in *England*, nor shall any Indictment be reversed for lack of Form, or for other Matter whatsoever, save only by the direct Traverse of not coming to Church. 29 *Eliz.* 6. 3 *Jac.* 4. But if he go to the Church where he most abides, or if none such, to the Church next adjoining to his Dwelling-house, and there hear *Divine Service*, and receive the Sacrament, he shall be admitted to avoid, discharge, reverse, and undo the same Indictments, and all Proceedings thereupon. Indictment.
29 *El.* 6.
3 *Jac.* 4.

Upon such Indictment at Assises or Gaol-delivery, Proclamation shall be made, that the Offender shall render his Body to the Sheriff before next Assises or Gaol-delivery. And if he do not appear, he shall stand convicted as upon Trial; and now by 3 *Jac.* 4. Justices of Peace may hear, inquire, and determine of Offences for not coming to Church and receiving the Sacrament, as Justices of Assise may do by former Laws, and may make Proclamation upon such Indictments for the Parties to render themselves to the Sheriffs, &c. Or else convict and certify them as is appointed by 29 *Eliz.* 6. But the Render must be to the Sheriff, Bailiff or Gaoler of the Liberty, &c. And the Forfeiture must be paid into the Exchequer, and Certificates of such Recusancy, as by the Statute of 29 *Eliz.* 6. is directed. Conviction by
Proclamation.
29 *El.* 6.
3 *Jac.* 4.
These Statutes
do not extend
to Protestant
Dissenters by
1 W. 3. c. 18.

The King may refuse the 20 *l.* *per menssem*, and take to the two Parts of the Lands, and all the Goods, &c. And an Advowson is without that Clause. *Jones Reports* p. 20, &c. King's Electi-
on.
29 *El.* 6.
1 *Jac.* 1. 4.
1 *Jac.* 1. 4.

The King shall seize two Parts only of the Recusant's Estate to satisfy the 20 *l.* *per menssem*, but not the third Part, either in the Hand of the Ancestor or Heir: But after the Death of the Ancestor, two Parts shall remain liable to the Arrears of 20 *l.* *per menssem*. 1 *Jac.* 1. 4.
1 *Jac.* 1. 4.

Any Popish Recusant that conforms, shall within a Year next after receive the Sacrament, and so once every Year after, or forfeit 20 *l.* for the first Year, 40 *l.* for the second Year, and 60 *l.* for the third Year, and 60 *l.* every Year after, until he receive it; and if he receive it, and again offend in not receiving a Year, he shall forfeit for every Year 60 *l.* &c. 3 *Jac.* 4. Conformity.
Sacrament.
3 *Jac.* 1. 4.

A Recusant's House shall be reserved to him, and the King's two Parts shall not be demised to a Recusant. House.
3 *Jac.* 1. 4

If a Recusant reform, and be obedient to the Laws and Ordinances of the Church, and duly go to Church, and continue there during Service and Sermon, he shall during the Time of such Conformity, be discharged of all Penalties. 1 *Jac.* 4. Conformity.
1 *Jac.* 1. 4

If a Recusant die, and his Heir be no Recusant, he shall be discharged of all Penalties, in respect of his Ancestor's Recusancy; or if the Heir be a Recusant and afterwards conform, he shall be in like Manner discharged: But if the Heir be within sixteen Years of Age, and at sixteen shall become a Recusant, he shall be charged with the Penalties run upon his Ancestors, until he do conform; but then shall be discharged. Heir

If such Offender conform or die, no Forfeiture of 20 *l.* a Month, or Seizure, shall ensue upon full Satisfaction of all Arrears. 29 *Eliz.* 6.

- 23 El. 1. Any Person guilty of any Offence against that Statute, except Treason and Misprision of Treason, which shall before Judgment conform before the Bishop of the Diocese, or before the Justices before whom he shall be indicted, arraigned or tried, having not made the like Submission upon his Trial, for the first Offence shall upon his Recognition of such Submission in open Assises or Sessions of the County where he is resident, be discharged of all Offences, except Treason and Misprision of Treason.
- Servant.*
3 Jac. 1. 4. If any Person shall willingly maintain, retain, relieve, keep or harbour in his House, any Servant, Sojourner, Stranger, who shall forbear for a Month together, to hear Divine Service, not having a reasonable Excuse, shall forfeit 20*l.* for every Month, &c.
This doth not extend to Protestant Dissenters. 1 Will. 3. cap. 18.
- 3 Jac. 1. 4. Any that shall keep or retain in his, her, or their Service, Fee or Livery, any Person that shall forbear going to Church by a Month, shall for every Month he shall so keep, forfeit 100*l.*
- 3 Jac. 1. 4. But a Man may keep his Father, Mother, or Ward, &c.
Justices of Peace. Justices of Peace may hear and determine all Offences of that Statute, except Treason.
- 3 Jac. 1. 4. Wives shall not forfeit for not receiving the Sacrament, during Marriage, nor Husbands for their Wives not receiving.
Wives.
3 Jac. 1. 4. By the Statute of 1 El. 2. Justices of Oyer and Terminer, and of Assise, have Power to inquire and determine the Offences; but by 23 El. 1. the Justices of Peace have also Power to inquire and determine thereof, and of the Offences the Party must be indicted at the next Sessions by 1 Eliz. 2.
- 3 Jac. 1. 4. *Justice of Peace.*
- 23 El. 1. The Justices of Peace may inquire of the Offences against 23 Eliz. 1. And the Statutes made 1, 5 & 13 El. touching acknowledging her Majesty's Supreme Government in Causes Ecclesiastical, and other Matters touching the Service of God, or coming to Church, or establishing true Religion in this Realm; as other Justices therein named may do, and may hear and determine all Offences against this Act, except Treason and Misprision of Treason.
- 1 El. 2. *Forfeitures.* All Forfeitures of Money shall be divided into three Parts, one third Part to the Queen for her own Use; another third Part to the Queen for the Use of the Poor of the Parish where the Offence is committed, to be delivered by the principal Officers of the Exchequer, without further Warrant; and the other third Part to the Prosecutor in any Court of Record, &c.
- 23 El. 1. *Justice of Peace.* Justices of Peace in Sessions, have Power to inquire of all Offences against 5 El. 1. against such as shall maintain the Authority of the Bishop of Rome, and shall make Certificates within forty Days after the Indictment into the King's Bench, or every one in Default, forfeits 100*l.* 5 El. 1.
- 5 El. 1. *Oath of Obedience.* Any two Justices of Peace, the one being of the Quorum, may out of Sessions, require any Person of the Age of eighteen Years or above, which is convicted or indicted for any Recusancy, other than Noblemen or Noblewomen, for not repairing to Divine Service; or which have not received the Communion twice the Year past; or which travel-eth the Country, and is unknown (and being examined upon Oath) shall confess, or not deny themselves to be Recusants; or that shall confess, or not deny, that he or she had not received the Sacrament twice the Year past, to take the Oath of Allegiance appointed by the Statute 3 Jac. 1. cap. 4. And if such Person shall refuse to answer upon Oath, such Justices of Peace examining him as aforesaid, or to take the Oath of Allegiance, then the said two Justices shall commit the same Person to the common Gaol, there to remain without Bail until the next Assises or Quarter-Sessions; but Noblemen and Noblewomen are excepted, as not to be dealt withal herein by the Justice of Peace.
- 3 Jac. 1. 4. *Certificate.* Which Justices shall certify under their Hands to the next Sessions, the Names, &c. In which Sessions, the Oath shall be again tendred to them; and if they, or any other shall refuse, he or they so refusing, shall incur a Præmunire, except Femmes Covert, who shall be committed till they take it. The Oath *vide hic*, cap. 4.
- 1 Jac. 1. 7. *Præmunire Women.* Also any two Justices of Peace may take the said Oath of Allegiance of such Persons as have Charge of Castles, Fortresses, Blockhouses, or Garrisons; and of all Captains, having Charge of Soldiers within this Realm, and upon Refusal, may commit the Offender, being of the Age of eighteen Years, to the common Gaol, there to remain without Bail till the next Assises or Quarter-Sessions. 7 Jac. 6.
- 7 Jac. 1. 6. Also by the same Statute 7 Jac. cap. 6. any two Justices of Peace, the one being of the Quorum, may require any other Person or Persons Man or Woman, be they Recusants

fants or not, of the Age of eighteen Years or above (under the Degree of a Baron or Baroness) to take the said Oath, and may commit them as aforesaid, upon their Refusal.

And by the said Statute, if any Person whatsoever of the Age of eighteen Years, under the Degree of a Baron, shall stand and be presented, indicted or convicted, for not coming to Church or receiving the Communion, before the Ordinary or any other, having lawful Power to take such Presentment or Indictment; or if the Minister, Petty Constable and Church-wardens, or any Two of them, shall complain to any one Justice of Peace near adjoining, and the said Justice of Peace shall find Cause of Suspicion; then that Justice, or any one other Justice of Peace, within whose Commission or Power such Person shall be, upon Notice thereof, shall require such Person to take the said Oath: And if any Person shall refuse to take the Oath tendered to him or her as aforesaid, then such Justice or Justices shall commit such Offender to the common Gaol, there to remain without Bail, till the next Assises or Quarter-Sessions.

The said two Justices of Peace shall certify in Writing, subscribed with their Hands, at the next Quarter-Sessions, the Names and Place of Abode of such Persons, as have so taken the said Oath before them, by Force of the Statute of 3 Jac. 4.

And it seemeth requisite, That the Justice or Justices of Peace do make like Certificate at the next Assises or Quarter-Sessions, of such Persons as have taken the said Oath before them, by Force of the Statute 7 Jac. 6.

Such Persons as have been reconciled to the Pope, if they shall return into the Realm; and thereupon within six Days next after their Return, shall submit themselves to his Majesty, and his Laws, before any two Justices of Peace, jointly or severally, of the County where they shall arrive; the said Justices may take such Submission, and withal may take their Oath of the Supremacy, and their Oath of Allegiance. And the said Oaths so taken, the said Justices shall certify at the next Quarter-Sessions, upon Pain of 40 l.

Any two Justices of Peace of the County where any of his Majesty's Subjects (not being a Jesuit, or other Popish Priest, &c.) brought up in any Seminary shall arrive, within six Months next after Proclamation to be made in that Behalf in the City of London, under the Great Seal of England, may within two Days next after such Return, receive his Submission to his Majesty and his Laws, and take his Oath to the Supremacy.

The Justice or Justices of Peace, that shall receive or take any Submission or Oath as aforesaid, by force of the Statute 37 El. cap. 2. shall certify the same into the Chancery, within three Months after such Submission, upon Pain to forfeit 100 l. 37 El. cap. 2. P. Jesuits 11.

If any married Woman under the Degree of a Baroness, being lawfully convicted as a Popish Recusant, shall not within three Months after such Conviction, repair to the Church and receive the Communion, &c. Any two Justices of Peace, (the one being of the Quorum) may commit her to Prison, there to remain without Bail, until she shall conform herself, &c. unless the Husband shall pay the King for the Wife's Offence for every Month 10 l. or else the third Part of his Lands and Tenements, at the Husband's Choice, for so long as she remaining a Recusant convict, shall continue out of Prison; during which Time, and no longer, she may have her Liberty.

The Church-wardens and Constables of every Town, Parish, or Chapel, or some or one of them; or if none, then the Constables of the Hundred, as well in Places exempt as not exempt, shall once every Year present the monthly Absence of all Popish Recusants from the Church, and the Names of their Children nine Years of Age and upwards, abiding with their Parents; and their Age, and the Names of their Servants at the Quarter-Sessions, which shall be received and entered without Fee, by the Clerk of the Peace or Town-Clerk respectively; or else every Church-warden, Constable or High-Constable, shall for every Default of Presenting lose 20 s. And every Clerk of the Peace or Town-Clerk for not Recording 40 s. And if upon such Presentment the Party shall be convicted (being not before convicted) the Party making such Presentment shall have 40 s. of the Recusant's Goods and Estate, to be levied in such Form as the major Part of the Justices, by Warrant under their Hands and Seals, shall appoint.

Every Person going beyond Seas to serve any foreign Prince, State or Potentate, and not taking the Oath before the Customor or Comptroller of the Port, or their Deputy or Deputies, shall be adjudged a Felon, 3 Jac. 4. If any Gentleman or Person of higher Degree, or any Person that hath born, or shall bear any Office or Place of Captain, Lieutenant, or any other Office or Charge in Camp, Army, or Company of Soldiers, or Conductor of Soldiers, shall go voluntarily out of the Realm to serve any foreign

- 3 Jac. 1. 4.
Bond.
Certificate. reign Prince, State or Potentate, or shall serve them before they shall with good Sureties become bound in 20*l.* with Condition not to be reconciled, &c. nor to enter into any Practice against the King or Realm, but shall disclose it, shall be a Felon. Which Bond shall be given before the Customer, &c. 3 Jac. 4. Which Bond and Oath he shall certify into the *Exchequer* once every Year, or forfeit 20*s.* for every Oath, and 50*l.* for every Bond not certified, &c.
- Reconciling.* The Branches of Treason in reconciling, &c. or being reconciled, shall be proceeded upon in the King's Bench, Assize, or Gaol-delivery, as if the Offence had been committed in the County where he is taken. 3 Jac. 4.
- 3 Jac. 1. 4.
Sending beyond Sea for Education. See the Penalties of conveying a Child, or any other, under his Government, beyond the Seas, to enter into any College, &c. or to repair to them for Instruction, or to be resident in any Popish Family, and be there instructed by any Popish Person, or to be sent, or to go or continue there for those Ends, and to send any Money, &c. to, or for the Maintenance of any there, or under the Name of *Charity*, &c. towards the Relief of any Priory, &c. 1 Jac. 4. 3 Jac. 5. 3 Car. 1, 2. But of those Offences, I take it, the Sessions cannot meddle with or inquire.
- 3 Jac. 1. 5.
Armor. The Penalty of Reconciling, &c. and being reconciled, &c. See Tit. *Treason*. All such Armor, Gunpowder and Munition, as a Popish Recusant hath in his House or Houses, or elsewhere, or in the Hands of any other of his Disposition, shall be taken from him by Warrant of four Justices of Peace at their General Quarter-Sessions (other than necessary Armor, in the Discretion of the Justices, for the Defence of his Person and House) and shall be kept at the Costs of such Recusants, in such Place as the Justices shall appoint. 3 Jac. 5.
- 3 Jac. 1. 5. After any Warrant is granted from any four Justices of Peace in Sessions, for the Taking away the Armor of any Popish Recusant convict; if any such Recusant having any such Armor, Gunpowder or Munition, or if any other Person having any such Armor to the Use of any such Recusant, shall refuse to declare unto the said Justices of Peace, or any of them, what Armor he or they have, or shall hinder or disturb the Delivery thereof, to any of the said Justices, or to any other Person authorized by their Warrant, to take and seize the same; then every such Offender shall be imprisoned by Warrant of, and from any two Justices of Peace of such County, by the Space of three Months without Bail.
- Coming to Court.* No Popish Recusant convicted, shall come to the Court or House where the King or Heir apparent is, unless commanded by the King or Warrant from the Council, or any of them, upon Pain to forfeit 100*l.* a Moiety to the King, another Moiety to the Discoverer and Prosecutor, in any of the King's Courts of Record. 3 Jac. 5.
- 3 Jac. 1. 5.
Want of Satisfaction.
Service in House. He that cannot satisfy the Money forfeited within three Months, shall be committed to Prison, until he have paid, or conform. And a Man having Service in his House, and going four Times a Year to some Church or Chapel, shall incur no Penalty.
- Child.*
Oath. Before some Justice of Peace of the County, Liberty or Limits, where the Parents of a Child sent beyond Seas, without License, did dwell; such Child must take the Oath of Allegiance, expressed 3 Jac. cap. 4. And they that were beyond Seas, before the Making of this Act, are to take the same Oath within six Months after their Return, before some Justice of Peace where such Persons inhabit, before they can take the Benefit of a Gift, Conveyance, Devise, or Descent, &c. of any Lands or Tenements, &c. 3 Jac. cap. 5.
- 3 Jac. 1. 5.
Books.
Search. Any two Justices of Peace, from Time to Time, may search the Houses and Lodgings of every Popish Recusant convict, and of every Person whose Wife is a Popish Recusant convict, for Popish Books and Relicks of Popery; and they may presently deface and burn such Books and Relicks as they shall find and judge not convenient for them: Yet if it be a Relick of any Price, the same is to be defaced at the General Sessions of the Peace, and to be restored to the Owner.
- London.* Any Popish Recusant that shall dwell in *London*, or within ten Miles of it, which shall be indicted or convicted of Recusancy, or shall forbear to come to Church three Months, shall within ten Days after such Indictment or Conviction depart thence: And if he live in *London*, or ten Miles, &c. shall give up his Name to the Lord Mayor; and if he live above ten Miles, then to the next Justice of Peace, upon Pain to forfeit 100*l.* &c.
- 3 Jac. 1. 5.
Bear no Office. No Recusant convict shall practise the Common or Civil Law, as Counsellor (not as Chancellor, as the Print is) Clerk, &c. Nor practise Physick, nor as an Apothecary, nor be a Judge, Minister, Clerk, or Steward of any Court, or keep any Court, nor bear any Office in any Camp, Troop, or Company of Soldiers, nor bear any Office

vice in any Ship, Castle or Fortrefs, but be utterly disabled, and shall forfeit 100*l.* &c. 3 *Jac.* 5.

A Recusant convict, or having a Wife that is a Popish Recusant convict, shall not after his or her Conviction, exercise any publick Office or Charge in the Commonwealth, except such Husband and his Children nine Years old, and his Servants or Household, shall once every Month, having no Excuse, at Church hear Divine Service, and his Children and Servants, at Times appointed, receive the Sacrament, and bring up his Children in the true Religion. 3 *Jac.* 5.

A Popish Recusant convicted shall be reputed an excommunicated Person until Conformity, and take the Oath of 3 *Jac.* 4. And it may be pleaded in Disability in all Actions, except for such of his Lands, &c. as are not to be seised, &c. 3 *Jac.* 5. And the Sheriff and Officer may upon an *Excommunicato capiendo*, break the House to apprehend him. 3 *Jac.* 4.

Any Man being a Popish Recusant convict, that shall be married otherwise than according to the Orders of the Church of *England*, shall be disabled to be Tenant by the Curtesy; and a Woman otherwise married shall lose her Dower, Jointure, Widow's Estate, and Free Bench, or any Portion of Goods, by the Custom of any City, &c. And if such Man marry a Woman that hath no Land whereof he may be intitled, *As Tenant by the Curtesy*, he shall forfeit 100*l.* 3 *Jac.* 5.

If a Popish Recusant baptise not his Child at Church, or Place appointed for Baptism by a lawful Minister, within a Month, if it may be carried thither, otherwise by the Minister of the Parish, &c. he, if he live a Month after the Birth (or if he die within a Month) the Mother shall forfeit 100*l.* a third Part to the King, a third Part to the Prosecutor, and a third Part to the Poor. 3 *Jac.* 1. 5.

If a Popish Recusant not excommunicated, shall not be buried in a Church or Church-yard, or not according to the Law Ecclesiastical; the Executor or Administrator knowing the same, or the Party causing the same, shall forfeit 20*l.* a third Part to the King, a third Part to the Prosecutor, and a third Part to the Poor, &c. where he died. *Burial.* 3 *Jac.* 1. 5.

No Popish Recusant convict, shall present to any Ecclesiastical Living, Free-School, Hospital, or Donative, but be disabled; but the Chancellors and Scholars of *Oxford* to those in *Suffex*, &c. and the Chancellor and Scholars of *Cambridge* to those in *Essex*, &c. But they shall not present any to any Ecclesiastical Living, that hath another Living with Cure. *Presentators.*

A Popish Recusant convicted at the Death of the Testator, or at granting Administration, is disabled to be Executor or Administrator, or to have the Custody of a Child, or be Guardian in Chivalry, Socage or Nurture, and the next of Kin, to whom the Estate cannot descend, that comes to Church usually, and received the Communion three Times that Year before, he shall be Guardian, &c. *Executors, &c.* 3 *Jac.* 1. 5.

Any Justice of Peace, within the County, in which any Jesuit, or Popish Priest, or other Ecclesiastical Person, shall arrive, or land, within three Days after their Landing, may take their Submission Oath, and Acknowledgment touching their Obedience to the King's Majesty and his Laws, provided in Cases of Religion; but if it be any other Subject, who is no Priest, &c. and yet brought up in any Seminary, they must make their Submission, and take the Oath, &c. before two Justices, &c. *Jesuits.* 37 *El.* 2. *See more in this Title.*

Every Subject knowing any Jesuit or Popish Priest, to be within the King's Dominions, ought to discover the same to some Justice of Peace, or other higher Officer, within twelve Days, &c. And such Justice of Peace ought within eight and twenty Days, after such Discovery made to him, to give Information thereof to one of the King's Privy Council, &c. upon Pain of two hundred Marks, and upon such Information given by the Justice of Peace, he shall have redelivered to him a Note in Writing, subscribed by such Privy Counsellor, &c. with his own Hand, testifying, that such Information was made unto him. *Discovery of Priests.* 27 *El.* 2.

If any Person to whom any *Agnus Dei*, Cross, Picture, Beads, or such superstitious Things shall be delivered or offered, do disclose such Deliverer or Offerer to any Justice of Peace, &c. that Justice of Peace, within fourteen Days, must declare the same to one of the King's Privy Council, or else he shall incur the Danger of a Premunire. *Superstitious Things.* 13 *El.* 2.

If any Person suspected to be a Jesuit, Seminary or Massing Priest, being examined by a Person having Authority so to do, shall refuse to answer directly whether he be so, shall by the Person examining him, be committed to Prison without Bail, till he answer directly. *Answer.* 35 *El.* 2.

Discovery.

3 Jac. 1. 4.

The Party that doth first discover to any Justice of Peace, any Recusant, or other Person, entertaining or relieving any Jesuit, Seminary or Popish Priest, or any Mass to have been said, or any of them that were present thereat, and the Priest that said the same, within three Days after the Offence, and by Reason of his Discovery any of the Offenders be taken and convicted, shall be freed from Danger of the Offence, if he be an Offender therein, and have the third Part of the Forfeiture which shall be forfeited by such Offence. 3 Jac. cap. 4. if it exceed not 150 *l.* or if above, he shall have 50 *l.* and the Discoverer shall have a Warrant from the Sheriff or Officer that shall seise or levy the Forfeiture, to pay him out of the Money levied 50 *l.*

Books.

3 Jac. 1. 4.

3 Jac. 1. 5.

No Person shall bring from beyond the Seas, nor print, sell or buy, any Popish Primers, Ladies Psalters, Manuals, Rosaries, Catechisms, Missals, Breviaries, Portals, Legends, and Lives of Saints, containing Superstitious Matter in any Language, nor any Superstitious Books in *English*, upon Pain of 40 *s.* for every Book. A third Part to the King, a third Part to the Prosecutor, a third Part to the Poor, where such Book shall be found, (not bound as in the Print) &c.

Mass.

23 El. 1.

If any Person shall say or sing Mass, being thereof convicted shall forfeit Two hundred Marks, and be committed to the next Gaol for a Year, and from thenceforth till he hath paid the Two hundred Marks. And every Person who shall willingly hear Mass, shall forfeit 200 *l.* and suffer Imprisonment for a Year.

Licence.

Recusants confined to five Miles, may be licensed by any four Justices of Peace, with the Privy and Assent of the Bishop, or Lieutenant, or of any Deputy-Lieutenant, residing in the said County, under all their Hands and Seals, to travel about their necessary Business out of the Compass of five Miles. But such Licences must certify the particular Cause of the said Licence, and the Time of their Absence must therein be limited. And the Party so licensed must first take his Oath before the said four Justices, or any of them, that he hath truly informed them of the Cause of his Journey, and that he shall not make any causeless Stays. See the Form of such Licence *hic postea*, Tit. *Precedents*. See more Tit. *Popish Recusants in the Appendix*, Tit. *Papists*, &c. and a Licence otherwise is void, and going without such Licence, shall forfeit, as by 35 *El.* 2. 3 Jac. 5.

Moor's Rep.
836.

In pleading a Licence, he must shew that he had taken the Oath of Allegiance, and that the Cause of his Licence is true, and that it was granted with the Assent of the Bishop or Lieutenant, &c. And if the same Person be Justice and Lieutenant, that will not serve.

Woman.

3 Jac. 5.

A Woman being a Popish Recusant Convict (her Husband being not convicted) that shall not conform and remain conformed, which shall not go to Church, nor receive the Sacrament a Year before her Husband's Death, shall forfeit to the King two Parts of her Jointure; and two Parts of her Dower, in three Parts to be divided, and be disabled to be Executrix, or Administratrix to her Husband.

Parliament.

30 Car. 2.
It. 2. §. 2.

No Peer of this Realm, or Member of the House of Peers shall vote or make his Proxy in the House of Peers, or sit there during any Debate in the said House; nor any Member of the House of Commons shall vote or sit there after their Speaker chosen, till he first takes the Oaths of Allegiance and Supremacy, and subscribes and repeats this Declaration between the Hours of Nine in the Morning and Four in the Afternoon, at the Tables in the Middle of the said Houses, in a full House, *viz.*

Oaths.

Declaration.

I A. B. do solemnly and sincerely in the Presence of God, profess, testify and declare, That I do believe that in the Sacrament of the Lords Supper, there is not any Transubstantiation of the Elements of Bread and Wine into the Body and Blood of Christ, at or after the Consecration thereof by any Person whatsoever; And that the Invocation or Adoration of the Virgin Mary, or any other Saint, and the Sacrifice of the Mass, as they are now used in the Church of Rome, are superstitious and idolatrous: And I do solemnly in the Presence of God, profess, testify and declare, That I do make this Declaration, and every Part thereof, in the plain and ordinary Sense of the Words read unto me, as they are commonly understood by English Protestants, without any Evasion, Equivocation, or Mental Reservation whatsoever, and without any Dispensation already granted me for this Purpose by the Pope, or any other Authority or Person whatsoever, or without any Hope of any such Dispensation from any Person or Authority whatsoever, or without thinking that I am or can be acquitted before God or Man, or absolved of this Declaration, or any Part thereof, although the Pope, or any other Person or Persons whatsoever, should dispense with, or annul the same, or declare that it was null and void from the Beginning.

Every Peer of this Realm, and Member of the House of Peers, and every Peer of *Scotland* or *Ireland* of twenty-one Years of Age, or upwards, and every Member of the House of Commons, not having taken the said Oaths, and made and subscribed the said Declaration, and all Persons convict of Recusancy, that shall remain in the King's or Queen's Presence, or come into any House where they reside, shall incur and suffer the Penalties hereafter mentioned, unless such Person shall in the next Term after take the said Oaths, and make the said Declaration in the Court of *Chancery*, between the Hours of Nine and Twelve.

King's Pre-
sence.
30 Car. 2.
It. 2. §. 3.

Peers and Members of the House of Commons offending as aforesaid, shall be adjudged Popish Recusants convict, and be disabled to hold any Office in *England* or *Ireland*, or any Islands or Plantations to them belonging, or to sit in Parliament, or make a Proxy in the House of Peers, or to prosecute any Suit, to be Guardian, Executor or Administrator, or to take any Legacy or Deed of Gift, and for every Offence shall forfeit 500 *l.* to him that will sue for the same.

Popish Recu-
sants.
Disability.
Ib. §. 4.

Offenders taking the said Oaths, and making the said Declaration after such Offence committed, shall from thenceforth be freed from all Penalties as Popish Recusants convicted as aforesaid, and from all Disabilities incurred thereby: But not to be restored to any Office supplied upon Voidance, nor to any other till after one Year after taking the said Oaths, and making the Declaration aforesaid, nor discharged of the said Forfeiture of 500 *l.*

Discharge of
Penalties.
Ib. §. 1.

The Lord Mayor of the City of *London*, and every Justice of Peace of the City of *London*, *Westminster*, and Borough of *Southwark*, and of the Counties of *Middlesex*, *Surry*, *Kent* and *Suffex*, may cause to be arrested and brought before him every Person or Persons not being a Merchant-Foreigner within the same Cities, or within twelve Miles of the same as are, or are reputed to be Papists, and tender to them the Declaration mentioned in the Statute of 30 *Car. 2.* intituled, *An Act for the more effectual preserving the King's Person and Government, by disabling Papists from sitting in either House of Parliament*; and if such Person upon Tender refuse audibly to repeat and subscribe the said Declaration, and shall after continue to be within the said Cities, or ten Miles Distance from the same, that the Offender shall forfeit and suffer as a Popish Recusant Convict.

Removing of
Papists.
1 W. & M.
It. 1. c. 9. §. 2.

Every Justice of Peace shall certify every Subscription before him by Virtue of this Act taken; as also the Names of every Person refusing to repeat or subscribe as aforesaid upon Tender, under the Hand and Seal of the said Justice, into the King's Bench the next Term, or else at the next Quarter-Sessions: And if the Person refusing and certified shall not within the next Term or Sessions after such Refusal, appear in the Court of King's Bench or Sessions, where such Certificate shall be returned, and in open Court repeat and subscribe the Declaration, as aforesaid, and indorse and enter his so doing upon the Certificate so returned, he shall be from the Time of such his Refusal adjudged a Popish Recusant Convict.

Subscription
certified.
Ib. §. 3.

This Act shall not extend to any Foreigner that shall be a menial Servant to any Am-
bassador or publick Agent. Ibid.

By this Statute it is enacted, That neither the Statute of 23 *Eliz.* intituled, *An Act to retain the Queen's Subjects in their due Obedience*: Nor the Statute of 29 *Eliz.* intituled, *An Act for the more speedy and due Execution of certain Branches of the Statute made the twenty-third Year of the Queen's Reign*: Nor that Branch or Clause of a Statute made 1 *Eliz.* intituled, *An Act for the Uniformity of Common Prayer, and Service in the Church and Administration of the Sacraments*: Nor the Statute made 3 *Jac. 1.* intituled, *An Act for the better discovering and repressing Popish Recusants*: Nor another Statute made the same Year, intituled, *An Act to prevent and avoid Dangers which may grow by Popish Recusants*: Nor any other Statutes made against Papists or Popish Recusants; except the Statute made 25 *Car. 2.* intituled, *An Act for preventing Dangers which may happen from Popish Recusants*: And except the Statute made 30 *Car. 2.* intituled, *An Act for the more effectual preserving the King's Person and Government by disabling Papists from sitting in either House of Parliament*, shall be construed to extend to any Person dissenting from the Church of *England*, that shall take the Oaths mentioned in a Statute made this present Parliament, intituled, *An Act for the removing and preventing all Questions and Disputes concerning the assembling and sitting of this present Parliament*; and shall make and subscribe the Declaration mentioned in a Statute made 30 *Car. 2.* intituled, *An Act to prevent Papists from sitting in either House of Parliament*; which Oaths and Declaration the Justices of Peace at their General Sessions, are hereby required to tender to such Persons as shall offer themselves to take and subscribe the same, and thereof to keep a Register: And no Per-

Dissenters ex-
empted from
Penalties.
1 W. & M.
c. 18.
23 Eliz.
29 Eliz.
1 Eliz.
3 Jac. 1.

25 Car. 2.
30 Car. 2.

1 W. & M.

son shall pay above 6 *d.* to any Officer of the said Court for entering the said Oaths, and subscribing the said Declaration: Nor above 6 *d.* for any Certificate signed by the Officer of the said Court.

Ibid. All Persons convicted or prosecuted in Order to Conviction of Recusancy by Indictment, Information, &c. or otherwise grounded upon any the aforesaid Statutes, shall take the said Oaths mentioned in the said Statute made this present Parliament, and make and subscribe the Declaration aforesaid in the Court of Exchequer or Assizes, or at the General or Quarter-Sessions, and to be thence certified into the Exchequer, shall be from thence exempted from all Penalties and Forfeitures incurred by Force of any of the said Statutes, without any Composition or Charge whatsoever.

Persons exempted.

1 W. & M.

Any Person refusing to take the said Oaths when lawfully tendered, which every Justice of Peace hath Power to do, such Person shall not be admitted to make and subscribe the two Declarations in this Act mentioned, though required thereunto, either before any Justice of Peace, or at the General or Quarter-Sessions before or after any Conviction of Popish Recusancy, unless such Person can, within thirty-one Days after such Tender of the Declarations to him, produce two sufficient Protestant Witnesses to testify upon Oath that they believe him to be a Protestant Dissenter; or a Certificate under the Hands of four Protestants conformable to the Church of *England*, or have taken the Oaths, or subscribed the Declarations above mentioned; and shall also produce a Certificate under the Hands and Seals of six or more sufficient Men of the Congregation to which he belongs, owning him for one of them. And that until such Certificate under the Hands and Seals of six of his Congregation as aforesaid, be produced, and two Protestant Witnesses to attest his being a Protestant Dissenter, or a Certificate under the Hands of four Protestants as aforesaid, be produced, the Justice of Peace shall take a Recognizance with two Sureties in the penal Sum of 50 *l.* to be levied of his Goods, &c. to the Use of the King and Queen for his producing the same; and if he cannot give such Security, to commit him to Prison, there to remain until he has produced such Certificate, or two Witnesses.

Protestant Dissenters.

Private Meetings.

Ibid.

No Congregation or Assembly for Religious Worship shall be permitted by this Act until such Place of Meeting shall be certified to the Bishop of the Diocese, or the Arch-deacon of that Arch-deaconry, or the Justices of Peace at the General or Quarter-Sessions of the Peace, and registred in the said Bishops or Arch-deacons Court, or recorded at the said General or Quarter-Sessions, and registred by the Register or Clerk of the Peace, for certifying of which he shall not have above 6 *d.*

Two Justices may tender the Declaration to suspected Persons.

1 W. & M.

c. 15.

Two or more Justices who shall know, suspect or be informed that any Person is a Papist, are required to tender such Person the *Declaration made Anno 30 Car. 2. cap. 1.* against *Transubstantiation*; and if he refuse to repeat and subscribe it, or to appear before the Justices (a Summons being left at their usual Place of Abode, by one authorized under the Hands and Seals of the said two Justices) such Person shall be liable to all the Pains and Penalties, Forfeitures, and Disabilities, as follow.

And if he refuse to take and repeat it, shall keep no Arms, if he doth, they may be seized.

He or any other to his Use shall keep no Arms or Gunpowder, other than what shall be allowed him by the Quarter-Sessions for the Defence of himself or House; and any two Justices may by their Warrant empower any Person in the Day-time, with the Assistance of the Constable or his Deputy, or a Tythingman, to search for Arms in the Possession of such Papist, or reputed Papist, and seize the same to the King's Use, to be delivered at the next Quarter-Sessions for that Purpose.

Not delivering his Arms, or hindring the Seizure, shall forfeit them, and be committed.

A Papist refusing to subscribe the said Declaration, and not delivering within ten Days after such Refusal to some Justice, &c. all his Arms, &c. or who shall hinder any Person having Authority as aforesaid to seize, &c. shall be committed by two Justices to Gaol for three Months without Bail, and shall forfeit the Arms, and treble the Value, to the Use of the Crown, to be appraised by the Justices at the next Quarter-Sessions.

Concealer of Arms shall be committed for three Months without Bail.

The Concealer or being privy to the Concealing such Arms, or knowing thereof, and not discovering to some Justice, or hindring any Person authorized to search or seize the same, shall be committed for three Months as aforesaid without Bail, and forfeit treble the Value of the Arms.

Discoverer of Arms shall have the full Value.

The Discoverer of concealed Arms, &c. so as the same may be seized, shall be allowed by the Quarter-Sessions a Sum of Money, amounting to the full Value of the Arms discovered, the same to be assessed by the Sessions, and to be levied by Distress and Sale of the Goods of the Offender.

The Person refusing shall be charged.

If such Refuser shall desire to subscribe and conform, and shall at the Quarter-Sessions where his Refusal was certified in open Court, make and subscribe the said Declaration against

against Transubstantiation, he shall from thenceforth be discharged of all Disabilities and Forfeitures, &c.

Such Refuser, &c. shall not keep a Horse above the Value of 5*l.* if he doth, two Justices may by Warrant give Power to any Person with the Assistance of the Constable, &c. to search for and seize all Horses above that Value, which shall be forfeited to the Use of the Crown, the Concealer or he who assists to conceal such Horses, shall by Warrant as aforesaid, be committed for three Months, and forfeit treble the Value of the Horses, to be settled by the Sessions. *Refuser shall not keep a Horse above the Value of 5*l.**

Every * *Papist convicted* being disabled by the Statute 3 *Jac.* 1. *cap.* 5. to present to any *Benefice, School, Hospital, or Donative,* or to grant any *Avoidance* thereof, 'tis now by the Statute 1 *Will.* enacted, that the *Refuser or he who neglects to make and subscribe the Declaration against Transubstantiation* when tendered to him by two Justices, or not appearing before them upon Notice, &c. and having his Name certified (as in that Statute is required) and recorded at the Quarter-Sessions, shall be disabled to present, collate or grant any *Avoidance* of any *Benefice,* as fully as if he was a *Popish Recusant Convict,* and the University shall have the Right of Presentation to every such *Benefice* lying within their respective Limits, as appointed by that Act. ** See the Stat. 12 Ann. c. 14. postea. 1 W. & M. c. 26. Disabled to present to any Benefice.*

Trustees of Recusants disabled to present, &c. by the Statute 3 *Jac.* or by this Act 1 *Wil.* shall likewise be disabled, &c. and their Presentations and Grants shall be void, and the Universities, &c. shall present. *Trustees are disabled.*

Trustee, Mortgagee, or Grantee of any *Avoidance* who shall present to any Ecclesiastical Living where the Trust, &c. shall be for any *Recusant* convicted or disabled, without giving Notice of the *Avoidance* in Writing to the Vice-Chancellor of the University to whom it belongs, within three Months after the *Avoidance* shall forfeit 500*l.* to such University, to be recovered by Action of Debt, &c. *Trustee for a Recusant must give Notice to the University of the next Avoidance.*

If a Person disabled, &c. shall at the Quarter-Sessions make and subscribe the Declaration, &c. and take the Oaths appointed by 1 *Will. cap.* 8. he shall be discharged from all Disabilities, &c. *Person disabled and conforming shall be discharged.*

He who apprehends one, or more, Popish Bishop, Priest, or Jesuit, and prosecutes him so as he is convicted of saying Mass, or executing any other Parts of the Office of a Priest, shall within four Months after such Conviction receive of the Sheriff of the County 100*l.* upon Demand, for every Offender so convicted, he tendering a *Certificate* of the Conviction under the Hand of the Judge or Justices before whom the Party was convicted, and that such Popish Priest was taken by the Person claiming the said Reward; and the Judge shall by his *Certificate* direct in what Proportions the Reward shall be paid among the Persons claiming the same. *Apprehending a Popish Bishop, Jesuit or Priest, shall after Conviction have 500*l.* 11 & 12 W. c. 4.*

The Sheriff dying, or being removed within four Months after Conviction, then the succeeding Sheriff shall pay the said Reward within two Months after a Demand, producing such *Certificate* as aforesaid, and if he makes Default in paying it, he shall forfeit to the Person to whom 'tis due the Sum of 200*l.* to be recovered by Action of Debt with full Costs; and the Sheriff producing the said *Certificate,* or the Duplicate thereof, shall be paid out of the Treasury. *To be paid by the Sheriff or his Successor.*

Popish Priest being convicted of saying Mass, or exercising any Part of his Office in the King's Dominions, or keeping School, or taking upon him the Education, Government, or Boarding of Youth, shall be adjudged to perpetual Imprisonment, in such Places within this Kingdom, as the King by Advice of his Council shall appoint. *Priests, &c. teaching Sch. ol. &c. shall be imprisoned during Life.*

This Act shall not extend to a Popish Priest, officiating in the Dwelling-house of any Foreign Minister residing here, if he is not a Subject of these Realms, and so as his Name and the Place of his Birth, and the Foreign Minister to whom he belongs, is entered in the Secretary's Office. *Not to extend to a Priest of any Foreign Minister.*

He who discovers and convicts another of sending a Child beyond Sea, to be educated in the Romish Religion, shall have the 100*l.* forfeited by the Person so sending such Child. *Sending a Child beyond Sea, &c. forfeits 100*l.* to the Discoverer.*

And where a Popish Parent shall refuse a fitting Maintenance for a Protestant Child suitable to the Ability of the Parent, the Court of Chancery shall make such Order therein as shall be agreeable to the Intent of this Act. *Popish Parent must allow fit Maintenance for Protestant Child.*

By the former Statutes, the Papists disabled to present to a Living, must be *convicted of Recusancy, &c.* but now by the Statute 12 *Annae,* 'tis enacted, That every Papist or Person professing that Religion, and every Child not being a Protestant (and under 21 Years

Papists tho' not convicted shall not present to a Living.

Years old) of any Papist, and every Trustee or Mortgagee, or Person any ways intrusted by or for any Papish, shall be disabled to present to any Ecclesiastical Living, &c. and if he doth every such Presentation, and Admission, Institution, and Induction thereon shall be void, and the Universities respectively shall present.

The Ordinary must tender the Declaration to him who brings the Presentation.

When the Presentation of a reputed Papist or of his Trustee, or of one who is suspected to be so, shall be brought to the Ordinary, he is required to tender such Person the Declaration against Transubstantiation, if present, and if absent, then the Ordinary shall by Notice in Writing appoint some Time and Place for the Person to appear before him or before some Person commissioned by him, and upon such Appearance shall tender the Declaration to him, and if he refuseth to make and subscribe it, or to appear upon Notice, &c. such Presentation shall be void, and the Ordinary shall, within ten Days after, certify such Neglect or Refusal, under the Seal of his Office, to the Vice-Chancellor, &c. to whom such Presentation would belong, if the Patron was a Popish Recusant, which shall be vested in the said University for that Turn only.

And shall examine the Presentee on Oath.

The Ordinary shall likewise examine the Presentee on Oath before he gives Institution whether the Person who presented him is the real Patron to the best of his Knowledge or Belief, or whether he made it in his own Right, or as Trustee for some other, and for whom, &c. and upon his Refusal to answer directly, the Presentation shall be void.

The Universities, &c. may file a Bill to discover secret Trusts.

The Universities and their Presentees or Clerks, may exhibit a Bill in Chancery, for the better Discovery of secret Trusts created by Papists against the Person presenting, and against such Persons whom they have Reason to suspect to be the Trustees of the Ad vowson, or against any other Person who may be able to discover the same, and if the Defendants shall not put in their Answer according to the Time allowed by the Court, the Bill shall be taken *pro confesso*, and may be given in Evidence against the Person neglecting to answer his Trustees and Clerks.

Provided that the Defendants having fully answered, and not knowing any such Trust, shall have Costs.

Where the Patron is a Trustee.

Where any *Quare Impedit* shall be depending, the Chancellor and Scholars of either University, or their Clerks, being Plaintiff or Defendant, the Court where 'tis depending, shall upon Motion make a Rule that the Patron and his Clerk who shall contest the Right with the University, shall give Satisfaction on Oath, being either examined in Court, or by Commission under the great Seal, or upon an Affidavit in Order to discover any secret Trust relating to the Presentation, and if upon such Examination, &c. it appears that the Patron is but a Trustee, then they shall discover who such Persons are, and where they dwell; and upon Refusal to make such Discovery, they shall be punished for a Contempt; and if such Patron or his Clerk discover such Person for whom he is Trustee, then the Court shall make a Rule upon a Motion that the Person for whom he is Trustee, shall in the said Court or before Commissioners, make and subscribe the Declaration against Transubstantiation, and give such farther Satisfaction on Oath, concerning the Trust, as the Court shall think fit, upon Pain of incurring a Contempt, and if he refuse to make the said Declaration, &c. he shall, in respect of such Presentation, be taken to be a Popish Recusant convict.

The Answer, &c. shall be allowed in Evidence.

The Answer of such Patron and of him for whom he is intrusted, and of his and their Clerks, and their Examinations and Affidavits as aforesaid, taken either by the Court or the Ordinary, shall be allowed as Evidence against the Person presenting and his Clerk.

The Person discovering shall only lose the Presentation. No Lapse shall incur.

No Discovery made by such Answer to a Bill exhibited, or to any Examination, shall subject the Person making the Discovery, or not answering, to any other Penalty, than the Loss of the Presentation.

And no Lapse shall incur, or Plenarty be a Bar to any Bill exhibited as aforesaid, till after three Months after the Answer is put in, or the Bill taken *pro confesso*, or the Prosecution deserted, so as such Bill is exhibited before any Lapse incurred.

Quare Impedit by the University.

The *Quare Impedit* must be brought by the Chancellor and Scholars of, &c. or by their respective Names of Incorporation.

Where a Trust is discovered, the Court may enforce the producing the Deed.

Where any Trust for a Papist is confessed or discovered by any such Answer or Examination, the Court where 'tis made may enforce the Producing the Deeds relating to the said Trust, by such Methods as they shall judge proper.

Papists not having taken the Oaths must register their

Papists, or he whose Parent shall be a Papist, and having an Estate or Interest in any Lands, Tenements, &c. and not having taken the Oaths before the last Day of *Trinity*

Namts, &c. 1 Geo. 1. c 55.

Term 1716, shall take the Oaths appointed by 1 Geo. cap. 13. and make and subscribe the Declaration against Transubstantiation in one of the Courts at *Westminster*, or at the Quarter-Sessions where such Lands or Part of them lie on or before 20 *January* 1716, and in Default thereof shall from Time to Time, within six Months after they, or any Trustees for them or for their Benefit, shall be in Possession of the Rents and Profits of any Lands, &c. register their Names, and all Lands, Tenements, &c. whereof they, or any in Trust for them, shall be in Possession, or receive the Rents and Profits; and shall express in such Register in what Parish or Place such Lands, &c. lie, and who are the Possessors thereof, and what Estate or Interest the Person registering hath therein, and if let, then for what yearly Rent, and if let upon Lease, then by whom such Lease was made, what Rent reserved, and what Fine was paid for the same, if it was made by himself; or by any Person in Trust for him, or he was Party or Privy thereunto; all which he is to do in a Parchment Book, to be kept by the Clerk of the Peace in the County where the Lands lie.

Register their Lands.

The Person whose Estate is registred, must take care that his Name is subscribed to the Register, in the Presence of two or more Justices, either by himself or by any other whom he shall empower by a Warrant of Attorney, executed in the Presence of two or more Witnesses, who shall prove upon Oath at the Quarter-Sessions the Execution thereof; and two Justices then present, shall subscribe their Names as Witnesses to every such Entry, that the same was duly made, on Pain of 20*l.* and the Clerk of the Peace shall keep Parchment Books, or Rolls, and to make Entries therein upon Request of the Party desiring it, and delivering to him the Words in Writing which he desires to be registred ten Days before the Quarter-Sessions, where the Entries are to be subscribed, and paying for such Registry 3*d.* for every 200 Words, and no more, and the Clerk of the Peace shall keep alphabetical Tables of the Names of the Persons and Lands registred, and may take 4*d.* for every Search for the Name or Estate of any Person.

Must subscribe his Name to the Register.

The Clerk of the Peace shall give Copies of such Registry subscribed by himself or Deputy, to any Person desiring the same, and tendering his Fees, and to examine the same for which he shall have 3*d.* for every 200 Words, and if he neglect or refuse to do it, he shall forfeit his Office.

Clerk of the Peace shall give Copies of the Registering.

A Person required to take the Oaths and to subscribe the Declaration, or in Default thereof, to register his Name and Estate, as aforesaid, and neglecting or refusing so to do, or fraudulently registering it, shall forfeit the Inheritance of all his Lands, &c. not registred or fraudulently registred; whereof he or she, or any Trustee for them were seized in Fee at that Time, and the full Value of all such Lands, &c. not registred or fraudulently registred, of which they were not seized in Fee, &c. Two Thirds to the Crown, the other Third to him (being a Protestant) who shall sue for the same; and the Person so suing in Chancery, may demand all such Discoveries as if he was a Purchaser, to which Bill no Demurrer shall be allowed, but the Defendant shall sufficiently answer it, and the Person suing for any such real Estate, may bring an Ejectment upon his own Demise, and give this Act in Evidence, together with the Special Matter; and if the Defendant shall not prove that he hath taken the Oaths, or registred his Name and Estate, a Verdict shall be given for the Lessor of the Plaintiff, with Judgment thereon, and full Costs; and one Third of the Lands recovered shall be vested in him, and the other two Thirds in the Crown.

Neglecting to register, or fraudulently registering, forfeits the Inheritance of all Lands, &c. not registred.

The Person suing in Chancery may demand a Discovery as if he was a Purchaser, and no Demurrer shall be to the Bill.

Provido that a Purchaser *bona fide* for a valuable Consideration, or a * Mortgagee, not knowing the Default or Fraud in registering by the Seller, and before Conviction, or any Suit brought for the said forfeited Lands, shall not be prejudiced in his Estate or Interest therein, but the Defendant shall forfeit the Value of the Inheritance of such Lands, to be divided as aforesaid.

** Like Clause for a Mortgagee, and that the Offender shall forfeit the Value of the Incumbance.*

None shall be obliged to register, until he or his Trustee shall be actually seized, or be possessed, &c. for six Months, and have Notice thereof.

He who registers must be actually seized or possessed for six Months.

And no Tenant at Rack-Rent, or who shall hold a Lease whereupon two Thirds of the full Value shall be reserved, shall be compelled to register.

Tenant at Rack Rent, &c. shall not register.

No Action shall be brought for not registering, &c. above two Years after the Offence committed.

Action for not registering must be brought

within two Years, &c. 3 Geo. 1. c. 18.

*Manors, Lands
or Farms lying
in two Coun-
ties.*

And where any Manors or other Lands or Farms lie in two or more Counties, the Registring shall be in the County where the Manor is, or where the House to the said Farm doth lie, taking Notice that the same doth extend to other Counties, and that, and no other, shall be a sufficient Registring.

*Sale of a Pa-
pist's Lands to
a Protestant
Purchaser
shall not be
void, &c.*

No Sale of a Recusant's Lands to a Protestant Purchaser, or for his Benefit, shall be avoided, by Reason of any Disabilities or Incapacities in the Acts 1 Jac. 1. or 11. & 12 W. incurred by the Seller, unless before such Sale the Person intitled to take Advantage of such Disabilities shall have recovered such Lands, &c. or have given Notice of his Title to such Purchaser, or have claimed the Lands before the Contract made for such Sale, &c. and have entered his Claim in open Court at the Quarter-Sessions where the Lands lie, and have *bona fide* with due Diligence pursued his Remedy to recover the same.

The Clause in the Act 11 & 12 W. by which 'tis enacted, That after 10 April 1700 every Papist shall be disabled to purchase any Lands, and that all Purchases made to or for his Use, or upon Trust for him, should be void, shall remain in Force.

Rents. (a)

11 G. 2. c. 19.
§. 4.

IT frequently happening that Tenants or Lessees of Lands or Tenements, fraudulently or clandestinely carry off their Goods, to prevent the Landlord from distraining: For Remedy thereof, it is among other Things enacted by 11 Geo. 2. cap. 19. That,

Where the Goods carried off shall not exceed the Value of 50 *l.* it shall be lawful for the Landlord, his Bailiff, Servant or Agent, to exhibit a Complaint in Writing against such Offenders before two Justices of Peace residing near the Place, not being interested in the Tenements, who may summon the Parties, examine the Fact, and all Witnesses upon Oath, or if Quakers, upon Affirmation; and in a summary way, determine whether such Persons be guilty of the Offence, and inquire of the Value of the Goods by them fraudulently carried off or concealed; and upon Proof of the Offence, by Order the said Justices may adjudge the Offenders to pay double the Value of the Goods to such Landlord, his Bailiff, Servant or Agent, as the Justices shall appoint; and in case the Offenders having Notice of such Order shall neglect so to do, shall by Warrant levy the same by Distress and Sale of Goods; and for want of Distress may commit the Offenders to the House of Correction, to be kept to hard Labour for six Months, unless the Money be sooner satisfied.

Ib. §. 5.

It shall be lawful for any Person aggrieved by such Order of the two Justices to appeal to the next Quarter-Sessions, who shall hear and determine such Appeal, and give Costs to either Party.

Ib. §. 6.

Where the Party appealing shall enter into a Recognizance with Surety in double the Sum ordered, with Condition to appear at such Quarter-Sessions, the Order of the two Justices shall not be executed in the mean Time.

Ib. §. 7.

Where any Goods fraudulently carried away by any Tenant, his Servant or Agent, or other Person assisting, shall be put in any Place locked up or secured, so as to prevent such Goods from being seized for Rent, it shall be lawful for the Landlord, his Steward, Bailiff, Receiver or other Person impowered, to seize for Rent such Goods (first calling to his Assistance the Constable, Headborough, Bortholder or other Peace-Officer, of the Place where the same shall be suspected to be concealed, who are required to assist; and in case of a Dwelling-House, Oath being also made before some Justice of Peace of a reasonable Ground to suspect that such Goods are there) in the Day-time to break open such House, &c. and seize such Goods for the Rent, as they might have done if such Goods had been put in any open Place.

Ib. §. 16.

If any Tenant holding Tenements at a Rack-Rent, or where the Rent reserved shall be full three Fourths of the yearly Value of the Premises, who shall be in Arrear for one Year's Rent, shall desert the Premises, and leave the same uncultivated or unoccupied, so as no sufficient Distress can be had to countervail the Arrears; it shall be lawful for two Justices of Peace (having no Interest in the Premises) at the Request of the Landlord, his Bailiff or Receiver, to go upon and View the same, and to affix on the most notorious Part, Notice in Writing, what Day (at the Distance of fourteen Days at least) they will return to take a second View; and if upon such second View the Tenant, or some Person on his Behalf, shall not appear and pay the Rent in Arrear, or there shall not be sufficient Distress upon the Premises, the Justices may put the Landlord

into

into Possession, and the Lease to such Tenant, as to any Demise therein contained only, shall become void.

Provided, That such Proceedings of the Justices shall be examinable into in a summary Ib. §. 17. Way by the next Justices of Assize; and if they lie in *London* or *Middlesex*, by the Judges of the Courts of King's Bench or Common Pleas; and if in the Counties Palatine, then before the Judges thereof; and if in *Wales*, before the Courts of Grand Sessions; who are impowered to order Restitution to be made to such Tenant, together with his Costs to be paid by the Landlord, if they shall see cause for the same; and in case they shall affirm the Act of the Justices, to award Costs not exceeding 5*l.* for the Appeal.

C H A P. LXXXII.

Riots. Routs.

ANY one Justice of Peace alone, may use Means to prevent a Riot or Rout before it be done, and to stay it whilst it is in Doing, and may take and imprison the Rioters, or bind them to their Good Behaviour. But being once done, and committed, one Justice of Peace cannot make Inquiry thereof, nor assess any Fine, nor award any Process, nor otherwise punish it in the Nature of a Riot or a Rout, but only as a Trespass against the Peace, or upon the Statutes of *Northampton*, or of Forcible Entries; whereof see the Title *Forcible Entry*. One Justice preventing. Lamb. 184. 34 E. 3. 1. P. Jul. 18. Crom. 63. 14 H. 7. 8. 9. Br. Peace 7.

And yet, if one Justice of Peace, sitting in a judicial Place (as in the Sessions) shall see a Riot, he may command them to be arrested, and may make a Record thereof, and the Offenders shall be concluded thereby: But if one Justice of Peace shall see a Riot in another Place, and shall command them to be arrested, and shall make a Record thereof, the Offenders shall not be concluded thereby, but may traverse it. Crom. 65.

(a) And yet the Justice may record it, and certify the same to the next Sessions, &c. Cro. 41.

(d) If a Justice of Peace will commit a Man, pretending untruly that he did a Riot, where he did none, the Party may have an Action of Trespass against him. Ibid.

(a) *Fitz. Just. 9. tamen vide Co. 8. fol. 121. a.* That the Record of a Force made by a Justice of Peace is not traversable, for that he doth it as a Judge; and so the Justices Record of a Riot is not traversable. See *hic postea*; also see *Br. Judges 2 & 10.* That an Action will not lie against a Justice or Judge of Record, & 2 *R. 3. 10. hic, c. 120. scil. pro re facta judicialiter.*

(d) Every Justice of Peace (being of and in the County, and having Notice of any Riot, Rout, or unlawful Assembly) ought to have a Care of the Execution of the Statute made 13 *H. 4. cap. 7. (viz. that the Rioters, &c. be arrested and removed)* for if that Statute be not executed in every Part thereof, by some of the Justices, the two next Justices of Peace shall forfeit each of them 100*l.* and every other Justice of Peace within that County, in whom there shall be any Default, shall be finable. Forfeiture. Dyer 210. Lamb. 521.

And therefore every Justice of Peace of the County, hearing of any Rout, or of any Intention of a Riot (without making any Precept, or tarrying for his Fellow Justice, or for the Sheriff) shall do well to go himself (if he be able) with his Servants, or other *Power of the County* (if need be) to the Place where such Persons be assembled, and to suppress them, and all such as he shall find and see riotously assembled, (and armed) to arrest them, and to force them to put in Surety for the Peace, or for their Good Behaviour: And for refusing to give such Surety, or in Default of Surety, to imprison them. And also he may take away their Weapons and Armor, and seize and prize them for the King. *Vide Tit. Armor and Forcible Entry.* 14 H. 7. 9. b. Lamb. 185. Br. Peace 7. Lamb. 79. 124.

(a) So that one Justice of Peace seeing a Riot may and ought to record it, and to attach the Rioters, and to commit them, or bind them over to the Good Behaviour; but he may proceed no further therein. For he cannot Fine them without Inquiry, which Inquiry must be by a Jury, and before two Justices of Peace, at any Time within the Month; otherwise, for omitting of attaching or arresting the Offenders at the first, the Justice who saw the Riot is punishable; but the Inquiry by a Jury must be within one Month, *sub pena* 100*l.* to the two next Justices, &c. See *hic postea.* Fine.

(d) And if the Justice (being come to the Place) shall not find the Rioters there, he may leave his Servant with his Warrant in Writing, or without Warrant, to restrain them, Servant. 14 H. 7. 10. Br. Peace 7.

them, or else to arrest such Offenders when they shall come, if they shall offer to commit any Riot, or to break the Peace.

So if the Justice be sick, he may send his Servants, or other Power of the County, if need be, to the Place to repress it, or to arrest such Offenders, and to bring them before him, to find Sureties for the Peace. And all this he may do, and command by Word of Mouth, without any Warrant in Writing, and without expecting the Coming of any his Fellow Justices, or of the Sheriff, or Under-Sheriff.

Also any one Justice of Peace (by the first *Affignavitimus* in the Commission) may cause to be kept and put in Execution, all other Statutes made for the repressing Riots Force and Violence: But therein he must pursue the Form and Order in such Statutes prescribed.

Two Justices.
13 H. 4. c. 7.
P. 5.

Dy. 210.

Crom. 63.
Lamb. 322.

But the ordinary Power of punishing Riots belongeth unto *two Justices of Peace* at least; and therefore the two next Justices of Peace who dwell nearest in the County where any Riot, Assembly or Rout of People shall be against the Law, together with the Sheriff or Under-Sheriff of the County, upon Complaint or other Notice of the Riot, shall execute the Statute 13 H. 4. 7. (*sc.* all and every Part thereof respectively, as to them is appointed) every one of them, upon Pain of 100 *l.* And in Default of the two next Justices, the other Justices of Peace of and within the County (upon Notice of such Riot) ought to do Execution thereof, every one upon Danger to be fined: But the Penalty of 100 *l.* is only to be laid upon the *two next Justices*.

(a) See the Case of *Drayton Bassett*, *hic antea*, Tit. *Forcible Entry*; where certain Justices of Peace, who did not dwell nearest to the Place where the Riot was committed, yet were fined upon the Statute 17 R. 2. cap. 1. But that Riot was notorious, for there were a great Number assembled in the Manor-House of *Drayton Bassett*, who did detain the same forcibly.

Ex Officio.
Dyer 210.

(d) And if the Riot, &c. be great and notorious, whereof by common Intendment every Person may take Knowledge, it is not safe for the Justice or Sheriff, &c. to expect and stay till Complaint thereof shall be made unto them, or that they shall have Information or Notice given them thereof, lest they incur thereby the said Penalty of 100 *l.*

If any one other of the Justices of the Peace of the County (besides those two which are next) shall execute this Statute, that shall excuse the two next Justices, for that the Statute giveth Power herein to all Justices.

Sheriff.
P. R. 30.

If one, or the two next Justices shall come, and not the Sheriff or Under-Sheriff, such Justices who come shall be excused of the Forfeiture of 100 *l.* but yet if there comes but one Justice of Peace, he ought to arrest the Rioters, and to remove the Force, and commit or bind over the Rioters; otherwise he is finable, &c.

Lamb. 322.

And if there shall be two Justices present, and neither the Sheriff nor Under-Sheriff, yet those two Justices are finable, if they shall not do all which (without the Sheriff or Under-Sheriff) they are authorized to do by the Statute.

Lamb. 321.

But no Justice of Peace who dwelleth in another County is bound upon the said Penalty of 100 *l.* to execute the said Statute of 13 H. 4. although he dwelleth next to the Place where the Riot is, and although he be in Commission of the Peace for the County where the Riot is; for the Words of the Statute are, *The Justices which dwell nearest in every County where the Riot shall be*, and not which dwell nearest to the Place where the Riot shall be; and yet it is safe, that such Justice dwelling out of the County, upon Notice of such Riot do come into the County, and do his Endeavour to suppress the same Riot, and to execute the Statute, for that he is one of the Justices of the County.

P. 5.

If the Sheriff or Under-Sheriff do not come, the Justices ought to send for them, as Mr. *Marrow* thinketh.

P. R. 30.

And some are of Opinion, that if the Sheriff or Under-Sheriff shall not come to the Justices, being sent for to assist them, that then all the Justices of Peace dwelling near or remote, shall be excused of the same Penalty of 100 *l.* or of any other Penalty or Fine; for that the said Statute giveth the Sheriff or Under-Sheriff equal Authority, and, as it were, join him in Commission in the Copulative with the Justices of Peace. But others are of another Opinion, *viz.* That if the Sheriff or Under-Sheriff shall not come, yet the Justices of Peace shall be fined if they come not and arrest the Rioters, and do not moreover proceed to do therein that which (without the Sheriff or Under-Sheriff) they are in any Way authorized to perform.

Lamb. 322.
Cromp. 63.

*What the Ju-
stices may do
out at the
Sheriff.*
13 H. 4. 7.

Now what the Justices of Peace may or ought to do therein (by Force of this Statute of 13 H. 4. cap. 7.) without, or in the Absence of the Sheriff and Under-Sheriff, is worthy Consideration, as being needful for the Justices of Peace to know, and safe for them

them to perform, as well for the speedy Preventing of such present Mischiefs as may happen by such dangerous Assemblies, as also for their saving the Penalty of the Law.

But herein I dare not determine, finding that others of good Judgment and Experience) who have written hereof, have seemed to doubt. Lamb. 313.
322.

And yet there is no Doubt, but that the Justices of Peace (without the Sheriff or Under-Sheriff) upon all Riots, may and ought first to go to the Place, and such Rioters as they shall see or find riotously assembled, they may and ought to arrest, and to take away their Armour and Weapons, and to remove and *commit the Rioters*, or may cause them to find Sureties for the Peace or Good Behaviour; and for want of such Sureties, may commit them to the Gaol. All which any one Justice of Peace may do.

Also two Justices of Peace after the Riot committed (without the Sheriff or Under-Sheriff) may and ought to inquire of the Riot; and if upon such Inquiry the Riot be found, the said Justices may fine and imprison the Offenders, as hereafter appeareth. Inquiry.
P. Riots 2.
Cromp. 67. b.

But whether two Justices of Peace seeing a Riot, may record the same upon their own View, without the Sheriff or Under-Sheriff, and thereupon (without any Inquiry) may fine them for the same, and may commit them to Prison till they have paid the same Fine, is to be considered. I know the common Opinion to be, that they cannot record the Riot (without the Sheriff, or Under-Sheriff) for, say they (by the Statute) the Sheriff or Under-Sheriff are associated to the Justices of Peace, and have equal Authority with them therein; and then consequently the Justices of Peace alone upon their own View, without Inquiry, can neither fine them, nor imprison them for their Fine. View Sheriff.

Yet *Fineux*, Chief Justice, saith, that this * Statute of 13 H. 4. was made for the common Profit of the Realm, and for a hasty Remedy, and to avoid a present Mischiefe like to happen; and therefore shall be construed largely for the common Good, and in Furtherance and Advancement of Expedition of Justice. 14 H. 7. 9. b.
See Co. 10.
103. b. such
a Matter.
* Mr. Lamb.
thinketh it to be

the Statute of 34 E. 3. 1. that Fineux meant, rather than the Statute of 13 H. 4.

Also we see, that any once Justice of Peace may do all these Things, in Case of a Forcible Entry, *sc.* he may come with the Power of the County, if need be, and may arrest the Offenders, and may record the Force by him viewed: And this Record shall be a sufficient Conviction, so that he may thereupon commit the Offenders to the Gaol, and may fine them. 21 P. 6.
f. 5.

Also this Statute of 13 H. 4. doth relate to the said Statute of Forcible Entries, 8 H. 6. P. 1. touching the Conviction of Offenders by the Record of the Justices.

Also by some good Authorities, if two Justices of Peace (without the Sheriff) shall see a Riot, they may arrest them and make a Record thereof, and the Offenders shall be concluded by such Record, for that the View of the Riot is not to be traversed. Fitz. Just. 9.
17.
13 H. 7. 3.
Cromp. 65,
196.
P. Just. 11.
34 Ed. 3. c. 1.

Also the Statute of 34 E. 3. 1. makes two Justices of Peace to imprison and fine Rioters, and that without Inquiry, and then consequently, it seemeth they are to make a Record of the Riot. See *Lamb.* 291, 292.

Ideo quære, Whether two Justices of Peace (upon the Statute of 13 H. 4. 7.) without the Sheriff, may not, nay ought not, upon the Penalty of 100 l. upon their View of a Riot, record the Riot, and fine the Offenders, and imprison them till they have paid their Fine (as Convict by their View and Record) which also seems to be more for the King's Advantage than to hazard the Fine upon finding it by Inquiry.

(a) But it rather seemeth, that the Justices upon their own View of a Riot, may record it, and commit the Offenders, and then to certify or send the Record into the King's Bench, where the Offenders shall be fined. And this I take to be more warrantable, and safer for the Justices, if they shall not inquire thereof.

(d) And now to the Particulars of that which the two next Justices, with the Sheriff or Under-Sheriff, must do in Execution of this Statute of 13 H. 4. 7. every one upon Pain of 100 l. Two Justices
and the Sheriff.

1. First, They shall go to the Place in Person, if they be able, where the Riot, &c. shall be. To go in Person
with posse
Comitatus.

2. And they shall take the Power of the County (if need be) *sc.* they shall have the Aid of all Knights, and other temporal Persons under that Degree, that be above the Age of fifteen Years, and be able to travel: For all the King's Subjects that are in the County where a Riot, &c. shall be, being able to travel, must be aiding and assistant to the Justices of Peace, Sheriff, or Under-Sheriff, (or other Commissioners) when they shall be reasonably warned to ride or go with the said Justices and the Sheriff, &c. in Aid to resist such

such Riots, &c. upon Pain of Imprisonment, and to make Fine and Ransom to the King; which Ransom shall be treble so much at the least as the Fine. *Dyer* 232.

Ransom.

2 H. 5. 8.

P. 12.

Fine and Ransom.

Lamb. 309.

Crompt. 64.

(a) Yet by others, by Ransom, is intended, that the Party is to make his Agreement with the King, *Ad verum valorem omnium bonorum suorum mobilium*; but Sir *Edward Coke*, L. 127. saith, that in legal Understanding, a Fine and Ransom are all one.

(d) But it is referred to the Discretion of these Justices, how many, or few, they will have to attend them in these Businesses; and in what Sort they shall be armed, weaponed, or otherwise furnished for it.

Lamb. 310.

Crompt. 62.

Again, it is not good for the Justices to assemble the *Power of the County*, without certain Information, or Knowledge of such riotous Assembly; yet if upon false Information of a Riot to be at such a Place, the Justices shall cause the *Power of the County* to be assembled, the Justices shall be excused by Reason of the Information; and if without Information, the Justices shall think that such a riotous Assembly is made in such a Place, and shall assemble the *Power of the County* to go thither and arrest the Rioters, and when they come to the Place they find a Riot there indeed, they must arrest and imprison the Offenders, and shall be excused of the Assembly made by them: But if they shall find no Riot there, then shall they be punished for making such an Assembly of their own Heads, without Information.

Arrest.

3. All such Offenders as they shall find there present, they shall arrest them, or cause them to be arrested, and shall remove the Force, *ſc.* shall commit to Prison all the Rioters, and take away their Weapons.

Also all such as came in Company with such Rioters, or in the Company of any of them, if the Justices shall find them there present, though they do nothing, and though they came without any Intent to commit any Riot, yet they shall be arrested, imprisoned and fined. See to this Purpose in the Title *Forcible Entry*.

Mar. Lec. 8.

Crompt. 63.

Also all such Rioters as the Justices shall meet in their Way (riotously arrayed, and coming from the Place) they may arrest and imprison them, for that they found them unlawfully assembled; but they cannot record any Riot by them done, for that they *saw it not*, yet they must afterward *inquire thereof by a Jury*, that so the Offenders may be fined, &c. See more in this Title.

Record.

But if the Justices do *see the Riot committed*, and after the said Rioters shall escape at that Time, yet the said Justices shall record it; but they cannot arrest them at any other Time, except it be presently after, and in fresh Suit; neither can they fine the Offenders, nor award any Process against them upon that Record which they shall make; and yet for that they saw the Riot (and these Rioters that be escaped, committing the Riot) they shall record it. But that Record shall not be kept amongst the Records of the Peace, but the said Justices shall send the said Record to the King's Bench, that Process may from thence be made upon it, against those Rioters that escaped; where also the said Offenders shall not be admitted to any *Traverse*, but must of Necessity make Fine for their said Offences.

Lamb. 312.

Escape.

(a) If after the Justices and Sheriff shall *see the Riot*, the said Rioters shall escape, and the Justices and Sheriff shall record the same Riot, and then one of the Justices be put out of the Commission; or the Sheriff, or one of the Justices shall happen to die, yet shall that Record be sent or certified into the King's Bench, by the other Justice and Sheriff. *Lamb.* 320.

Certificate.

But if (after the Inquiry, and before the Certificate) the Sheriff, or the Justices shall die, or be put out of the Commission, or that their Authority doth cease by the Death of the King, or otherwise, such Record cannot be certified without the King's Writ of *Certiorari*. *Br. Record.* 17. 64. and *Lamb.* 320.

Good Behaviour.

13 H. 7.

Crompt. 196.

(d) Also such Offenders, as the Justices saw committing the Riot, though they shall escape from the Justices, yet the said Justices may after grant out their Warrants for them, and send them to the Gaol, till they shall find Surety for their Good Behaviour.

34 E. 3. c. 1.

P. Juil. 18.

If such Offenders shall depart before the Coming of the Justices, (yet upon certain Information of their being there) the said Justices may also grant out their Warrants for them, and may commit them, till they find Sureties for their Good Behaviour: Or rather the Justices shall do well to proceed against them, by *Inquiry*, and so to *fine* the Offenders for the King, &c. See more in this Title.

Resistance.

Lamb. 310.

Crompt. 62,

158.

Also in the Execution of this Arrest of the Rioters, the said Justices, &c. may justify the *Beating*, *Wounding*, or *Killing* of any of the Rioters that shall resist them, or that will not yield themselves to them. *Vide Tit. Homicide, bis.*

Also the said Justices may take from such Rioters their Armour and Weapons, and shall cause the same to be prized and answered to the King, as forfeited. *Armour.*

4. After the Arrest made, the said Justices, and Sheriff or Under-Sheriff, shall make a Record in Writing of the said Riot (*scil.* of all that which they shall see, and find done in their Presence against the Law) without any other Inquiry. *Record.* 13 H. 4. c. 7. p. 1.

(a) If two Justices of Peace shall see any making a Riot, they may command others to arrest the Rioters, and then make their Record thereof, and the Offenders shall be concluded thereby. *Fitz. Just. of Peace, fol. 17.* *View.*

(d) But if the Justices of Peace do not themselves see the Riot, they cannot make a Record thereof; but then they must inquire thereof.

If the Justices of Peace, &c. going to see a Riot, another Riot shall happen in their Presence; they may record this, and arrest and imprison the Offenders.

So if the Rioters shall make a Riot upon the Justices (and Sheriff) that do come to arrest them for their former Riot, they may record that also. *Other Riot.*

So if two Justices of Peace (and the Sheriff or Under-Sheriff) shall meet for any other Cause, or for any private Business (as upon an Arbitrament, or other like Matter,) and a Riot shall happen to be done upon themselves, or in their Sight, they may record it, and may arrest and imprison the Offenders.

And if the Justices of Peace shall record a Riot, and upon Examination of the Matter after, it shall appear to be no Riot; or that they saw it not, or that there was no Riot at all; yet the Parties shall be concluded thereby, and have no Remedy, and therefore the Justices shall do well to be advised what they record. See 9 H. 6. f. 60. *Br. Judges 2.* *Conclusion.* 9 H. 6. fol. 60. *Cromp. 63.* *Fitz. Just. of P. f. 17.* 65.

And again, for that this Record of the Justices and Sheriff, is a sufficient Conviction in it self against the Offenders, therefore it ought to be formal and certain as well for the Time and Place, as also for the Number, Weapons, Manner, and other Circumstances, because the Parties be concluded thereby, and shall not be received to Traverse, or deny it in any Point. *Lam. 311.*

The Form of the Record *vide Tit. Precedents.*

This Record ought to remain with one of the said Justices of Peace; and shall not be left amongst the Records of the Sessions of the Peace, it being made out of the Sessions, and not appointed to be certified thither. *Lam. 312 & 365, 375.*

5. Also the said Justices of Peace (and none other) shall commit such Offenders to the Gaol, there to remain convict by their View, Testimony and Record, (as in Case of Forcible Entry) until they have paid a Fine to the King. *Imprisonment.* *Gaol.* P. 1. 11. *Lam. 312.*

Also such Commitment of the Offenders to the Gaol ought to be done presently. *Co. 8. 120.*

And the Power of the County ought to be aiding to the Sheriff or Under-Sheriff, for the conveying of them to the Gaol. *Lam. 310.*

If the Justices of Peace, and Sheriff or Under-Sheriff, shall record the Riot, and shall not presently commit the Rioters to Prison; or if they shall commit them to Prison, and shall not record the Riot, they shall forfeit every of them 100 l. by the Statute of 13 H. 4. for that they have not done Execution of the same Statute: For by the Statutes they shall record and commit; and again, by the same Statutes the Offenders must be as well imprisoned as fined. *Cromp. 61.* *P. Force 2.* *P. Riots 1*

6. Also the said Justices of Peace (and none other) shall assess the Fines upon the said Offenders; for they have best Knowledge of the Matter, &c. *Co. 8. 41. a.* Which Fines by the Stat. of 2 H. 5. 8. ought to be of good Value, that out thereof the Charges of the said Justices and other Officers may be born, *sc.* their Charges in going, tarrying and returning, &c. about the Suppressing and Inquiry of such Riots; of which Charges Payment shall be made by the Sheriff, by Indenture thereof made between him and the said Justices. *Fine.* *Lam. 312.* *557.* *Cro. 161.*

And yet such Fines must be reasonable and just, and *secundum quantitatem & qualitatem delicti*, and not unreasonable and excessive (for *excessus in re qualibet jure reprobatur communi*, *Co. 11. 44.*) And so it is commanded by the Statutes 18 E. 3. 2. and 34 E. 3. 1. *P. Just. 1. & 18.* *Fines.*

Note also, that the Fine assessed in this, and such like Cases, must not be imposed upon all the Offenders jointly, but must be assessed upon every Offender severally. *Co. 11. 43, 44.*

(a) And yet note, that in some Cases a Fine or an Amercement shall be imposed upon divers jointly; (*sc.* sometimes upon a whole County, sometimes upon a Hundred, and sometimes upon a Town, as for an Escape of a Murderer, &c. whereof see *hic post.*) but that

that is by Reason of the Incertainty of the Persons, and for the Infiniteness of their Number. *Co. 11. 43.*

Ejtreatr. (d) And the said Justice shall cause the said Fine to be estreated into the *Excbequer*, that so the said Fines may be levied to the King's Use; and then they are to deliver the Offenders again: Or else the said Justices may record such Riot by them viewed, and commit the Offenders, and after certify the Record to the Assizes or Sessions, or into the *King's Bench*, as in Case of Forcible Entry.

Inquirers. 7. But if the Riot was not committed in the *Presence of the said Justice*; or that the Offenders be *departed before the coming of the said Justices, and Sheriff or Under-Sheriff*, then the said Justices, or two of them at the least, *within one Month*, immediately after such Riot, Assembly, or Rout, shall *inquire* thereof by the Oaths of a sufficient *Jury* to be returned by the Sheriff. * And the same Riot, &c. being found by such Inquisition, the Justices must make or cause to be made a Record in Writing, of such their Inquiry or Presentment found before them; which Record also is to remain with one of the said Justices. *P. R. 29.*

* *Who shall return upon every Person so by him impanelled in Issues at the first Day, 20 s. at the second 40 s.*

The Form of such Inquiry or Presentment. See also the Title *Precedents, hie postea.*

Cromp. 62. This *Inquiry* shall not be, but where the *Rioters are gone* before the coming of the Justices.

It is not necessary that one of the Justices of Peace (which shall make Inquiry of a Riot) be of the *Quorum*.

Lam. 316. Although the Words of the Statute are, the same Justices (*sc.* which came to see the Riot) shall inquire; yet if any other two Justices of Peace of that County shall do it, that will suffice.

Also the Justices of Peace although they go not to see the Riot, yet they may *inquire* thereof *within the Month* after.

Time. Neither is it of such Necessity, to have the Inquiry within the Month, that for Default thereof the Presentment shall be void; for the Justices of Peace may inquire thereof at any Time by Force of their Commission; but if it be not within the Month, then every of the two next Justices are in Danger to lose 100 *l.* for it. And yet if these Justices do charge the Jury within the Month, and do give Day unto them to yield their Verdict and Presentment after the Month, the Statute is not offended.

Lam. 317.

(a) But yet it seemeth that the Justices of the Peace are not bound upon the Penalty of 100 *l.* to inquire *within the Month* of all *Petty Riots*, but only of such Riots as are *notorious and dangerous*, and in the Nature of *Insurrections or Rebellions*.

Sheriff. (d) At this Inquiry, the Sheriff or Under-Sheriff ought to be present with the Justices of Peace, as Ministers only for the Returning the Jury, and be not herein associated with the Justices, as they were before in arresting the Rioters, and recording their Disorder: But by their Presence, they may help to espy the Evil; and besides, it addeth Force and Credit to the Certificate.

Lam. 318.

Ex Officio. If the Justices do assemble themselves, the Sheriff and the Jury, to make Inquiry of a Riot within the Month, and the Parties be agreed amongst themselves; so as none will sollicite the Inquiry, nor give in Evidence for the King upon that Riot, yet ought the Justices to proceed (*Ex Officio*) to make Inquiry of that Riot, seeing it may be that some of the Jury may have Knowledge of it.

Lam. 317.
Crom. 62.
P. R. 29.

Evidence. And also the Justices ought to make Proclamation, That if any Man will give Evidence for the King concerning that Riot, or (generally) will inform the King's Justices of any Riots, Routs, &c. And thereupon some other Persons may perhaps come forth to inform him therein.

P. R. 29. But if (at the Party's Request) the Justices shall dismiss the Jury without Inquiry, they are finable.

Ciom. 62.

And if the Justices shall not proceed herein (*Ex Officio*) without some Evidence for the King; *quare*, if they shall not be hereby in Danger to lose the hundred Pounds upon this Statute, for the Reasons above said.

Complaints without Cause. And it seemeth, that the Justices of Peace may justly bind to their Good Behaviour, the Parties that first complained to them of this Riot, and have caused them to meet, and now will not prosecute the same for the King, but have agreed it.

Hear and determine. After such *Inquiry* had, and the Truth of the Riot found, the said Justices have Authority (by the said Statute) to hear and determine the same according to the Law, *viz.* They may make out Process against the Offenders under their own *Teste* (thereby to cause the

Lam. 317.
p. 2.

Offen-

Offenders to come in and answer) and upon their Appearance the said Justices may assess the Fine, and may commit them to Prison till they have paid it, and may deliver them after Payment, or upon Sureties taken for it (which Sureties ought to be bound by Recognizance;) or otherwise they may receive their Traverse, and thereupon (if the Matter will so serve) to discharge and dismiss them: But then the said Justices shall do well to send such Indictment or Inquisition found (and such Traverse) to the next Quarter-Sessions, or into the *King's Bench*, and there the Traverse shall be tried and determined according to Law. *P. R.* 30. Br. Imp. 100.

(a) Note, that all *Indictments*, *Inquisitions* or *Presentments*, taken and found before *Justices of Peace*, of any *Riot*, *Forcible Entry*, or other Thing against the Peace, may be delivered into the *King's Bench*, by the Hands of the same Justices of Peace, before whom the same was found, or otherwise may be removed from the said Justices of Peace, before the Justices of the *King's Bench*, by a *Certiorari*: In both which Cases the Justices of the *King's Bench* may proceed to hear and determine the same. Removal.

Now by the Statute made 2 *H. 5. cap. 8.* the King is to bear the Charges of the Justices of Peace, which shall execute the Statute of Riots. And therefore, 2 H. 5. c. 8.

Concerning the Fine so assessed by the Justices of Peace, they may thereout pay the Charges of the said Justices, and of the Jury (who made the Inquiry, and by whom the Riot was found) *sc.* For their Diet, and the Sheriff's Fees, &c. And then they may bring the Record of this Inquiry to the next Quarter-Sessions, and there deliver the same to the Clerk of the Peace, together with the Residue of the Money remaining of the Fine, &c. Charges.

Also the Clerk of the Justice who maketh up the Record of this Inquiry, may have his Fees out of that Money; or else he may take of every Offender twelve Pence, when they have paid their Fine: For so the Clerks of the Peace use to do.

Or rather the said Justices are to be paid their Charges by the Sheriff, by Indentures made between him and the said Justices; whereof the Sheriff, upon his Account in the *Exchequer*, may have due Allowance. 2 *H. 5. cap. 8.* The Justices Charges.

(d) But when Men are indicted for Riots (or the like) they will usually yield themselves, and pray to be admitted to their Fine (in which Case the Justices of Peace commonly do assess but some small Sum or Fine) and upon the Payment thereof, do discharge the Offender; and hereby the Offenders are not imprisoned, (which would work more Fear in such Offenders, than such Fine) and therefore it is behoveful for the Justices of Peace to use good Care and Discretion herein; for by the Statute 2 *H. 5. cap. 8.* the Offenders are as well to be *imprisoned as fined*, and this is much more serviceable, and more agreeing with the Intent of the Law. Besides, this Fine is called in divers Places in the * old Statute, (*Ransom*, or *Redemptio* in *Latin*) and seemeth by the Propriety of this Word to imply, That the Offenders ought first to be imprisoned, and then to be ransomed, and delivered in Consideration of this Fine. Fine.

And the Justices of Peace are enjoined by the Statute (2 *H. 5. cap. 8.*) to put in greater Sums in these Fines than they were wont in such Cases, for the bearing of the Charges of the Justices and other Officers, &c. as is before said.

At the Common Law, a *Riot* was punishable as a *Trespass*, and as well the *Fine*, as the *Imprisonment* were at the Discretion of the Judges; and in the same Manner the Statute of 13 *H. 4.* inabled the Justices of Peace to punish such Offenders. But now as well the Imprisonment, as the Fine of such Offenders are to be increased by the said Statute 2 *H. 5. cap. 8.*

And therefore where the Justices of Peace are remiss herein (*scil.* in not sufficiently punishing such Offenders by due *Fine and Imprisonment*) the Lords in the * *Star-chamber* have often assessed upon Rioters for the same Riot (for which the Justices of Peace have formerly assessed a Fine in the County) a greater Penalty, if they see Cause: And yet in this Case the Offenders are not twice punished for one Offence, but that one Part of the due Punishment is inflicted at one Time, and Part at another. Lam. 559.
* Marl. c. 1,
2, 3, 4.
Ransom, what.
Lam. 556.
See Mir. of
Just. 1. 3.
Crom. 63.
P. R. 34.
* The Court of
King's Bench
hath the same
Power, the
other Court be-
ing abolished.

8. Lastly, if the Truth of a Riot cannot be found by the Justices of Peace upon such Inquiry, being hindered by the *Perversejess* of the *Jurors*, or by the unlawful *Maintenance*, *Countenance*, or *Embracery of others*, then within one Month next after the Inquiry, the same Justices, and Sheriff and Under-Sheriff, shall certify before the King and his Council, or into the * *King's Bench*, the whole Fact and Circumstances thereof, with the Certainty of the Names of the principal Offenders, and of the Names of such *Maintainers* and *Embracers*, with their *Misdemeanors*; and of the *Time, Place and other Circumstances*, and Impediments, yet the not certifying of the *Maintenance* or *Embracery*, is but a For- Certificate.
13 H. 4. 7.
19 H. 7. 13.
P. 3. 15.
Lam. 319.
* Br. Præmu-
nire 1.
Cromp. 63

feiture of 20 *l.* a-piece, to every of the Justices and Sheriff; the not certifying the rest, is a Forfeiture of 100 *l.* *Cromp.* 63. *b.* & 199. *b.*

Lam. 318.

The End of this Certificate is but only to force the Offenders to answer thereto before the King and his Council: And though the Words of the Statute make this Certificate to be of the Force of a *Presentment* of twelve Men against the Offenders; yet such Certificate is no Conviction, but that the Offenders may * traverse it, by the Words of the same Statute. And so this Certificate is in Nature of a *Declaration*, or Indictment at the Common Law; and therefore it ought to comprehend the Certainty of the *Time*, *Place*, *Persons*, and other material Circumstances.

* But such Traverse and Certificate shall be sent into the King's Bench, and there be tried. P. 3.

If this Certificate be not made within *one Month after the Inquiry*, then it is not according to the Statute, and so not good to force the Offenders to answer.

If two Justices, and the Sheriff, shall see a Riot, yet any other two Justices of the County may make the *Inquiry*, and then they all together, or the first Two; or the last Two (with the Sheriff or Under-Sheriff) may make *Certificate* thereof within the Month after that Inquisition taken.

Lam. 320.
Cromp. 63.

Where there be several Certificates made, or that the Certificate and the Inquiry do disagree, then that shall be preferred which is best for the King.

If there shall be twenty Persons in a Riot, and the Jury shall find but ten of them guilty, yet the Justices may certify that twenty committed that Riot; and this Certificate shall stand good.

Also if any Thing material should be omitted, or left out of the Inquisition, yet it may be supplied by this Certificate; and it shall stand good.

Lam. 320.

If after the *Inquiry*, and before the *Certificate* made, the Sheriff shall die, or one of the Justices be put out of the Commission, no Certificate can then be made, by the Opinion of *M. Marrow*. But *quære*, if the Residue shall not do well to certify, in Regard of the Penalty.

For the Form of such Certificate, see *Tit. Precedents*.

Commission out of Chancery.
2 H. 5. 8.
P. 6.

Upon the Default of the *two next Justices, Sheriff or Under-Sheriff* for not executing the said Statute of 13 *H.* 4. 7. the Party grieved may have *Commission out of the Chancery*, to inquire as well of the Riot, as of the Default of the said *Justices*, and *Sheriff* or *Under-Sheriff*.

2 H. 5. 8.
P. 9.

Also the Lord Chancellor of *England*, if he shall have Notice of such a Riot, shall send the King's Writ to the Justices and Sheriff, commanding them to execute the said Statute of 13 *H.* 4.

And although that such Writ come not to the said Justices, Sheriff or Under-Sheriff, yet they shall not be excused of the Penalty of 100 *l.* aforesaid, if they make not Execution of the said Statute. *Ibid.*

Capias.
2 H. 5. c. 9.
8 H. 6. c. 14.
Rast. 374.

Also, if any Assemblies of People in great Number, in Manner of Insurrection, or other rebellious Riots, shall be done and committed, and that such Offenders shall withdraw themselves, to avoid the Execution of the Law, then upon Certificate by two Justices of Peace, and the Sheriff of that County, by Letters under their Seals to the Lord Chancellor of *England*, of the same Riot, and that the common Voice and Fame thereof runneth in the said County, the Lord Chancellor may make a *Capias* to the said Sheriff, for the apprehending such Offenders; and after, if need be, a *Proclamation*, That the said Offenders yield themselves in the *King's Bench*, at a certain Day, upon Pain to be convicted thereof.

Corporation.

(a) Note, That for Riots in Cities or Corporations which are armed with Power of Government within themselves, the Franchises may be seized, or the Corporation fined, as it happened in the Case of the Riot where *Dr. Lamb* was slain; the City of *London* upon an Information in the *King's Bench*, was fined 1000 Marks. *Pajch.* 8 *Car.* 1. See more *Chap.* 135, 136.

1 G. 1. c. 5.
§. 1.

Where Twelve, or more, are unlawfully, riotously and tumultuously assembled together to the Disturbance of the Peace, and being required by a Justice, Sheriff or Under-Sheriff, Mayor, or other Head Officer, by Proclamation in the King's Name (herein after mentioned) to disperse themselves, and shall to the Number of Twelve, or more, unlawfully, riotously, and tumultuously continue together one Hour, they shall be adjudged guilty of Felony without Benefit of Clergy.

Ib. §. 2.

The Justice, Sheriff, or other Head Officer, shall come as near the Rioters as he can with Safety, and with a loud Voice command Silence whilst the Proclamation is making, and he n read or cause it to be read in these Words, or to the like Effect.

ff. **O**UR Sovereign Lord the King chargeth and commandeth all Persons being assembled, *The Proclamation.*
 immediately to disperse themselves, and peaceably to depart to their Habitations or
 lawful Business, upon Pain contained in the Act made in the first Year of King George,
 for preventing Tumults and Riotous Assemblies.

God save the King.

If after Proclamation made the Offenders shall continue together one Hour, and not *Ib. §. 3.*
 disperse themselves, it shall be lawful for any Justice, &c. or other Peace Officer, and all
 Persons whom they shall command, to assist them to apprehend such Offenders and carry
 them before a Justice of Peace; and where any of them are killed in resisting the
 Person endeavouring to apprehend them, that Person shall be indemnified in so doing.

Any Rioters demolishing or pulling down, or beginning to demolish, &c. any Church, *Pulling down
 any Place of
 Religious Wor-
 ship, &c.*
 Chapel or Building for Religious Worship, certified and registred according to the Sta-
 tute 1 W. & M. cap. 18. or any Dwelling-house, Barn, Stable or Out-house, shall be *Ib. §. 4.*
 a Felon without Benefit of Clergy.

Any Person with Force wilfully obstructing another to make Proclamation, whereby *Obstructing the
 Reading of the
 Proclamation.*
 such Proclamation shall not be made, shall be a Felon without Benefit of Clergy; and
 Rioters knowing such Hindrance and Obstruction, and continuing together to the Num-
 ber of Twelve or more afterwards, for the Space of an Hour, shall be Felons without Be-
 nefit of Clergy. *Ib. §. 5.*

Where any Building is demolished in Part or in Whole by the Rioters, the Inhabitants *Buildings de-
 molished, the
 Hundred shall
 be liable to the
 Damages.*
 of the Hundred shall answer the Damages to the Persons injured, to be recovered in the
 Courts at *Westminster* against any two or more of the Inhabitants thereof, to be levied
 and paid in such Manner as provided by the Statute 27 Eliz. cap. 13. And if the Ac-
 tion is brought for Damages done to a Church or Chapel, it must be in the Name of *Ib. §. 6.*
 the Rector, Vicar, or Curate, and when recovered, it must be applied to the Rebuilding
 or Repairing such Church.

This Act shall be read at every Session and every Leet. *Ib. §. 7.*

Prosecutions upon this Act must be commenced within one Year after the Offence *Prosecution
 must be within
 a Year.*
 committed. *Ib. §. 8.*

See also Chap. 183. *infra.*

C H A P. LXXXIII.

Rogues and Vagabonds.

(a) **T**HE Laws relating to Rogues and Vagabonds, viz. 39 Eliz. cap. 4. 1 Jac. 1.
 cap. 7. and so much of the 7 Jac. 1. cap. 4. as relates to a Privy Search, as also
 the 12 Ann. st. 2. cap. 23. mentioned in the former Editions of this Book, being now re-
 pealed by 13 Geo. 2. cap. 24. and the Laws relating to Vagabonds reduced into one Act,
 and many Doubts and Difficulties being thereby cleared, it will be sufficient to give an Ab-
 stract of this Statute, for which the Reader is desired to turn to Chapter 196, where he
 will also find the 14 Geo. 2. cap. 33. for providing Houses of Correction and passing
 Rogues and Vagabonds.

Note, That by 6 Geo. 1. cap. 19. Justices of Peace may commit Vagrants and other *6 G. 1. c. 19.
 §. 2.*
 Criminal Persons charged with small Offences, either to the Common Gaol or House
 of Correction, as they shall think proper.

See also Chap. 53. Tit. House of Correction, and Chap. 73. Tit. Poor.

C H A P. LXXXIV.

Robbery.

One Justice.
27 El. 13.
P. Hue &
Cry 8, 10.
Co. 7. 7.

AFTER a Robbery committed, the Party shall not have his Action upon the Statute against the Hundred, except he shall with all Speed convenient give Notice of the said Robbery to some of the Inhabitants dwelling in some Town, Village, or Hamlet, near to the Place where such Robbery was committed; and also except he shall commence his Action within one Year next after such Robbery committed; and also except he shall first be examined upon his Oath within twenty Days next before such Action brought, by some one Justice of Peace (of the County where the Robbery was committed) dwelling within or near to the said Hundred where the Robbery was done, whether he doth know the Parties that committed the said Robbery, or any of them: And if he knoweth any of them, then also (before such Action brought) he shall be bound before the same Justices by Recognizance, to prosecute effectually the said Offenders by Indictment or otherwise, according to the due Course of Law.

27 El. 13.
P. Hue &
Cry 4, 5.
Stat. Winton.
13 Ed. 1. St. 2.

After a Robbery committed, and Notice thereof given, as aforesaid, the whole Hundred must answer the Loss, if the Robbers be not taken within forty Days.

(a) And if the Robbery be done in the Division of two Hundreds; both the Hundreds, and the Franchises within them, shall be answerable for the Robbery done, and also for the Damages.

Contribution.
27 El. 13.

(d) And yet because the Party robbed hath his Recovery and Execution against *some one or few Persons of that Hundred*, therefore for Contribution to be yielded from the Residue of the said Hundred, upon Complaint made by the Parties against whom such Recovery and Execution is had; any two Justices of Peace (the one being of the *Quorum*) being of the same County, and inhabiting in or near the said Hundred where such Execution shall be had, may assess and tax according to their Discretions, proportionably all and every the Towns, Parishes, and Hamlets, as well of the same Hundred (where the said Robbery was committed) as also of the Liberties within the said Hundred, towards an equal Contribution to be had for the Relief of the Parties charged: The which Money the Constables of every Town shall levy and deliver over to the same Justices, or to one of them within ten Days after Collection. And which the said Justices shall deliver over (upon Request) to the Parties charged, to whose Use the same was collected.

(a) Note, A Person coming to *inhabit after the Robbery and Judgment* given is not chargeable to be taken in Execution; and so was the Opinion of the Court in one *Dean's Case*, Mich. 10 Car. in the Common Bench.

But a Person coming *after* thither to inhabit is assessable, because the Country is chargeable at the Time of the Assessment, and not the Persons which were there at the Time of the Robbery committed, as Justice *Barkley* said, and the Court seemed to agree in Sir *Jo. Compton's Case*, Pas. 15 Car. in the King's Bench. *Quare* the Difference.

Note, That the Inhabitants of any other Hundred (within the same County where the Robbery was committed, or within any other County, with the Franchises within the Precincts of such Hundred) wherein Negligence, Fault or Defect of Pursuit, and fresh Suit after Hue and Cry made, shall happen to be, shall answer and satisfy the one Moiety of all and every such Sums of Money and Damages as shall be recovered or had against the Hundred in which the Robbery was done.

And the Recovery of such Moiety shall be in the Name of the Clerk of the Peace, where such Robbery and Recovery is, without naming his Christian or Surname: And such Suit shall not abate by the Death or Removal of such Clerk of the Peace.
27 El. 13.

27 El. 13.
P. Hue &
Cry 6.

(d) And the like Taxation, Assessment, Levying and Payment, as aforesaid, shall be had and made for a *Contribution within every Hundred* where there was any Negligence, Fault or Defect of Pursuit, and fresh Suit after Hue and Cry, *viz.* If upon Suit any Recovery and Execution of any Money, or any Damages shall be had against some one or few Persons of that Hundred where such Default was (towards the Ease of that Hundred where the Robbery was done) upon Complaint made by the Parties so charged, to any two such Justices of Peace, the said Justices may make the like Assessment, &c. toward the Relief of the said Parties so charged.

Note,

Note, That if any Man be robbed *in his House*, the Hundred shall not be charged therewith, whether it were done in the Day or in Night. Co. 7. 6.

Also a Robbery done *in the Night* shall not charge the Hundred; but yet if it be in the Day-time, or by Day-Light, though it be before the Sun-rising, or after the Sun-setting, the Hundred shall answer for it. *When the Hundred is not charged.* Ibid.

If upon Pursuit any one of the *Offenders be apprehended*, the Hundred shall not be charged, although the Residue of the Offenders happen to escape; but Pursuit without apprehending some one of the Robbers is no Excuse. 27 El. 13; P. Hue & Cry 7. Co. 7. 7. Cromp. 179

If the Party that was robbed shall himself take any of the Thieves after Hue and Cry made, this shall excuse the Hundred.

(a) Although one of the Thieves be taken, yet if Hue and Cry be not duly made, the Town where the Default is, shall be amerced: But the Party robbed shall have no Remedy for his Money (of the Hundred) in regard that one of the Thieves is taken. And this is by Force of the Statute 27 *Eliz.* whereas the Amerciament is by Force of the Statute of *Winchester*.

(d) It seemeth by my Lord *Dyer*, *Ann. 22 Eliz.* that the Statute is satisfied, if the Names of the Offenders be described; so that they may be indicted and outlawed. *Quere inde*, for the Words of the Statute of 13 *Edw. 1.* are that the County must answer for the *Bodies* of such Offenders. *Dyer* 370. Pl. 9. P. R. 155.

Nota; The Party robbed must bring and commence his Action within 20 *Days next* after his Examination taken before the Justice of Peace.

Also the Justice of Peace must be abiding within the County, at the Time of Examination taken by him, as it seemeth. See the Title *Justices of Peace*, Chap. 6. *supra*.

(a) If a Man be robbed in *Middlesex*, and make Hue and Cry freshly into *Essex*, if the Towns adjoining do not according to the Statute of *Winchester*, the Party robbed may have his Action of Debt in the one County or the other, by *Fincham*. 15 *Edw. 4.* 18. *Br. Ditt* 104.

Highways leading from one Market-Town to another, shall be enlarged, so that there be neither Dike, Underwood, nor Brush, whereby a Man may lurk to do hurt, within two hundred Foot of the one Side and of the other; and if by Default of the Lord that will not amend the Ways as aforefaid, any Robberies be done therein, the Lord shall be answerable for the Robbery: And if a Park be near the Highway, the Lord must set his Park two hundred Foot of each Side from the Way as aforefaid; or else must make such a Wall, Dike, Hedge, or Pale, that such Offenders may not pass to and fro there. *Winch. 13 Ed. 1. cap. 5.* *Highways.*

Every Justice of Peace may cause such Highways to be enlarged and cleansed as aforefaid. See *hic antea* Tit. *Highways*.

If any Person shall with offensive Weapon unlawfully and maliciously assault, or shall by Menaces, or in any violent Manner, demand Money or Goods from any Person, with a felonious Intent to rob such Person, he shall be guilty of Felony, and shall be transported for seven Years. *Attempt to rob.* 7 *Geo. 2. c. 21. §. 1.*

If any such Offender, who shall be ordered for Transportation, shall break Gaol or escape, or shall return into *Great Britain* or *Ireland*, before the Expiration of seven Years, he shall suffer Death without Benefit of Clergy. *Ib. §. 2.*

No Person shall maintain any Action against any Hundred, by Virtue of the Statutes 13 *Ed. 2. Stat. 1.* and 27 *Eliz. cap. 13.* unless he shall, besides the Notice already required, with as much convenient Speed as may be after any Robbery on him committed, give Notice thereof to one of the Constables of the Hundred, or to some Constable, Borsholder, Headborough or Tithingman, of some Town, Parish or Tithing, near the Place wherein such Robbery shall happen, or shall leave Notice in Writing at the Dwelling-House of such Constable, &c. describing in such Notice, so far as the Circumstances of the Case will admit, the Felons, and the Time and Place of the Robbery; and also shall within twenty Days cause Notice to be given in the *London Gazette*, therein likewise describing the Felons, and the Time and Place, together with the Goods whereof he was robbed; and shall also, before Action commenced, go before the chief Clerk or Secondary, or the Filazer of the County wherein such Robbery shall happen, or the Clerk of the Pleas, of that Court wherein such Action is intended to be brought, or before the Sheriff of the County, and enter into a Bond to the High Constable of the Hundred in the Sum of 100 *l.* with two Sureties, to be approved of by such chief Clerk, &c. with Condition for securing to such High Constable (who is required to enter an Appearance,

ance, and defend such Action) the Payment of their Coſts, in caſe Judgment ſhall be againſt ſuch Plaintiff.

- Ib. §. 2. When ſuch Bond ſhall be entered into before the Sheriff, ſuch Sheriff ſhall certify the ſame to the chief Clerk or Secondary in the Court of King's Bench, or to the Filazer of the County in caſe the Action be intended to be brought in the Common Pleas; or, if in the Court of Exchequer, to the Clerk of the Pleas; which Certificate ſhall be delivered by the Party robbed to the ſaid chief Clerk or Secondary, or to ſuch Filazer, or Clerk of the Pleas, before any Proceſs ſhall iſſue; and ſuch chief Clerk, &c. ſhall not take any greater Fee for making ſuch Bond than 5 s. above the Stamp-Duties; nor ſhall any Sheriff take any greater Fee for making, nor ſhall ſuch chief Clerk, &c. take any greater Fee for filing ſuch Certificate than 2 s. 6 d. and ſuch chief Clerk, &c. are to deliver over *Gratis* all ſuch Bonds to the High Conſtables.
- Ib. §. 3. No Hundred ſhall be chargeable, if one of the Felons be apprehended within forty Days next after Notice in the *Gazette*.
- Ib. §. 4. No Proceſs for Appearance ſhall be ſerved on any Inhabitant, ſave only upon the High Conſtable of the Hundred, who is required to cauſe publick Notice to be given in one of the principal Market-Towns on the next Market-Day; or if there be no Market-Town, then in ſome Pariſh Church immediately after Divine Service on the *Sunday* next after his being ſerved with Proceſs, and he is to enter an Appearance in the Action, and defend the ſame as he ſhall be adviſed; and in caſe the Plaintiff recover, no Proceſs of Execution ſhall be ſerved on any particular Inhabitant; but the Sheriff ſhall upon Receipt of any Execution cauſe the ſame to be ſhewn to two Juſtices of Peace (one of the *Quorum*) reſiding within the Hundred, or near the ſame, who ſhall cauſe ſuch Aſſeſſment to be made and levied, as by the Statute 27 *Eliz. cap. 13.* in which Aſſeſſment there ſhall be included, over and above the Coſts and Damages recovered by the Plaintiff, all neceſſary Expences which any High Conſtable hath been at, in having defended ſuch Action, Claim being made thereto by ſuch High Conſtable before the Juſtices, upon Notice given him by the Juſtices; and the Money ſo levied ſhall be paid over (by ſuch Officers as by the Statute 27 *Eliz.* are to levy the ſame) within ten Days, to the Sheriff of the County, to the Uſe of the Plaintiff for ſo much as the Coſts and Damages by him recovered ſhall amount to, and to the Uſe of the High Conſtable for ſo much as his Expences ſhall amount to, of which the High Conſtable ſhall give in an Account, and make Proof upon Oath, to the Satisfaction of the Juſtices, before any Taxation ſhall be made for reimbursing ſuch High Conſtable, and ſhall have no further Allowance toward paying an Attorney, than what ſuch Attorney's Bill ſhall be taxed at.
- Ib. §. 5. The Money which ſhall be paid over to the Sheriff, ſhall (upon Requeſt) be by him paid over to the Parties intitled without Deduction.
- Ib. §. 6. No Sheriff ſhall be called upon to return ſuch Writ of Execution, until ſixty Days after the Writ ſhall be delivered to the Sheriff, who is to indorſe the Day on which he received the ſame.
- Ib. §. 7. If any Plaintiff, in any Action to be brought againſt any Hundred, ſhall be Non-ſuited, or diſcontinue, or have Judgment given againſt him, it ſhall be lawful for any two Juſtices (ſuch as are beforementioned) upon Complaint, and upon an Account given in by ſuch High Conſtable, and Proof made upon Oath to the Satisfaction of the Juſtices, of Expences neceſſarily laid out, to make ſuch Taxation, in order to reimburse ſuch High Conſtable what he ſhall have neceſſarily expended in defending ſuch Action, over and above the Coſts taxed; and in caſe it ſhall appear upon Oath to the Juſtices, that ſuch Plaintiff and his Sureties are inſolvent, it ſhall be lawful for ſuch Juſtices to make a Taxation, in the Manner directed by the Statute 27 *Eliz. cap. 13.* to reimburse ſuch High Conſtable ſuch taxed Coſts, as by reaſon of ſuch Inſolvency he ſhall not be able to recover from the Plaintiff.
- Ib. §. 8. The Money rated for the Reimburſement of the High Conſtable, in caſe of Judgment given againſt the Plaintiff, ſhall be paid within ten Days after Collection to the Juſtices, or one of them, to the Uſe of ſuch High Conſtable.
- Ib. §. 9. Any Perſon who ſhall apprehend ſuch Felons within the Time herein limited, whereby the Hundred hath been diſcharged, ſhall upon Proof upon Oath made before ſuch two Juſtices be intitled to 10 l. (which ſhall be raiſed upon the Hundred by a Taxation) and ſuch Sum of 10 l. ſhall be paid unto ſuch two Juſtices, within ten Days after the ſame ſhall be collected; and ſuch Juſtices ſhall pay over the ſaid Sum to ſuch Perſons, in ſuch Shares as the ſaid Juſtices ſhall think reaſonable; provided that ſuch Perſon ſhall not be thereby incapable to be a Witneſs in ſuch Action.

The Justices, by whom such Taxations shall be made, shall appoint some reasonable Time, within which such Taxations shall be levied, which Time shall not exceed thirty Days; and if any Officers, who are to levy such Taxations shall neglect to levy the same, or shall neglect to pay over the Money to the Sheriff and Justices, such Officer shall for every Neglect forfeit double the Sum. Ib. §. 10.

Every Constable, Borsholder, Headborough or Tithingman, to whom Notice shall be given, and every Constable of the Hundred, and every Constable, &c. within the Hundred or the Franchises within the Precinct thereof, wherein such Robbery shall happen, as soon as the same shall come to his Knowledge, shall with the utmost Expedition make fresh Suit and Hue and Cry after the Felons; and if any Constable, &c. shall offend in the Premises, he shall forfeit 5*l*. Ib. §. 11.

Every Forfeiture hereby incurred shall be recovered with Costs, and shall be one Moiety to the King, and the other Moiety to such Persons as shall sue for the same within six Months after such Forfeiture incurred. Ib. §. 12.

If any Action shall be commenced for any Thing done in Pursuance of this, or either of the recited Statutes, the Defendant may plead the General Issue. Ib. §. 13.

No such Action shall be brought but within six Months after the Thing done. Ib. §. 14.

In any Action against any Hundred, any Person inhabiting within the Hundred shall be admitted a Witness for the Hundred. Ib. §. 15.

C H A P. LXXXV.

Sacraments.

IT seemeth that three Justices of the Peace (one of them being of the *Quorum*) may, out of the general Sessions, take Information and Accusation (by the Oaths of two honest Persons) against such as shall *deprave* the Sacrament of the Body and Blood of our Lord and Saviour *Jesus Christ*, against the Statute, &c. and may bind the Accusers and Witnesses by Recognizance (in five Pounds apiece) to give in Evidence at the Trial. But Mr. *Lamb*. maketh a *Quære* hereof. *Three Justices.*
1 Ed. 6. 1.
revised 1 El. 2.
P. Just. 8.

(a) And such Person, being indicted at the Sessions, and found guilty of depraving, despising, or contemning the Blessed Sacrament, by Words or otherwise, he shall suffer Imprisonment, and make *Fine and Ransom* at the King's Pleasure. *Penalty.*
Lam. 352.
1 E. 6. 1.

The Justices of Peace in Sessions may hear and determine Offences and Contempts against that Act, so as the Parties offending be informed of, or presented within three Months after the Offence committed. *Power.*
Ib. §. 1. & 5.

The Justices of Peace may make Process by two *Capias* and one *Exigent*, and by *Capias Utlegatum*, into that or any other County, and three of them may bail the Offender in order to his Trial. *Process.*
Ib. §. 3.

The Justices of Peace in Sessions may award a Writ to this Effect :

THE King to the Bishop of L. Greeting: We command you, that you, your Chancellor, or other your sufficient Deputy learned, be with our Justices assigned to keep the Peace in our County of B. at D. such a Day, at our Sessions then and there to be held, to give Counsel and Advice to the same our Justices of the Peace, upon the Arraignment and Delivery of Offenders against the Form of the Statute concerning the Holy Sacrament of the Altar. Which Writ must be directed to the Bishop of the Diocese. *Writ to the Bishop.*

The Party indicted may purge and try his Innocency by Witnesses. Ib. §. 6.

Of the Uniformity of Common Prayer and Sacraments, see the Statute 14 Car. 2. 14 Car. 2. c. 4. cap. 4, at large, and 25 Car. 2. cap. 4.

See for the Process against such as deprave the Sacrament, *hic* Tit. *Process*.

C H A P. LXXXVI. (a)

Sabbath-Day, or Sunday.

Penalty. 3 Car. 1. c. 2. **N**O Carrier with an Horse, nor Waggoner, Carter, nor Wainman, with any Waggon, Cart, or Wain, nor any Drover, with any Cattle, shall by themselves, or any other, travel upon the Sunday, upon Pain that every Person so offending, shall forfeit twenty Shillings for every such Offence.

Butcher. If any *Butcher*, by himself, or any other for him, by his Privity or Consent, shall kill, or sell any Victual upon the Sunday, he shall forfeit for every such Offence, 6 s. 8 d.

Punishment. Any one Justice of Peace (Mayor, or Head-Officer of any City or Town Corporate) within their Limits, upon their own View of any the said Offences, or upon Proof thereof upon Oath, by two or more Witnesses, or upon the Confession of the Party offending, may make their Warrant to any Constable or Church-warden (within their several Limits, where such Offence shall be done) to levy the same Forfeitures by Distress and Sale of the Offender's Goods, rendring to the Party the Overplus: Or it may be sued for in any Court of Record, in any City, or in the Sessions.

Every Justice, and Head-Officer aforesaid, hath Power to minister an Oath to such Witnesses.

Forfeitures. All the said Forfeitures shall be employed to and for the Use of the Poor of the Parish where the Offence shall be committed.

And yet any such Justice, or other Head-Officer, out of the said Forfeitures, may reward any Person or Persons that shall inform, or otherwise prosecute any such Offender according to their Discretions, so that such Reward exceed not the third Part of the Forfeiture.

Provided, that no Person shall be impeached by this Act, unless he be questioned thereof within six Months after the Offence committed.

There shall be no *unlawful Exercises*, &c. used upon the Sabbath-Day. *Vide Tit. Games.*

Against *Fairs*, and Buying and Selling upon the Sabbath-Day, *hic Tit. Market.*

Shoemakers. Any *Shoemaker* that shall shew, with an Intent to sell any *Shoes, Boots, Buskins, Stirrups, or Slippers*, upon the Sunday, shall forfeit the Goods shewed, and 3 s. and 4 d. for every Pair so shewed. 1 Jac. 1. 22.

Working. 29 Car. 2. c. 7. §. 1. If any Person of the Age of fourteen Years or above, shall on the Lord's Day, or any Part thereof, do, or exercise any *worldly Labour*, Business, or Work of his ordinary Calling, (except Works of Necessity and Charity) he shall forfeit 5 s. for every Offence.

Selling. 1b. §. 1. & 3. No Person shall cry, shew forth or put to Sale any *Wares, Fruits, Herbs, Goods or Chattels* (except Milk before Nine in the Morning, and after Four in the Afternoon) upon Pain to forfeit the same.

Travelling. 1b. §. 2. No *Drover, Horse-Courser, Waggoner, Butcher, Higler*, or any their Servants, shall travel or come to their Inn or Lodging on the Lord's Day, or any Part thereof, upon Pain that each Offender forfeit 20 s. for every Offence.

Watermen. 1b. §. 2. No Person shall use, employ, or travel upon the Lord's Day with any *Boat, Wherry, Lighter or Barge*, (except upon extraordinary Occasions, to be allowed by some Justice of Peace or Head-Officer of the County or Place where the Offence is committed) upon Pain to lose 5 s. for every Offence.

Conviction. 1b. §. 2. The Conviction must be before any Justice of the County or Town, or Chief Officer, by View, Confession or Proof of one or more Witnesses, who shall give Warrant under Hand and Seal to the Constables or Church-wardens of the Parish or Parishes where the Offence is committed, to seize and sell the Goods shewed; and to levy the Forfeitures by Distress and Sale, rendring the Overplus; and in Case of Want of Distress, or Insufficiency, or Inability to pay, the Party to be put in the Stocks two Hours.

Reward. 1b. §. 2. Out of the Forfeitures, the Justices, Mayor, or Head Officer, may reward any Persons informing, so as the Reward exceeds not one Third of the Penalties.

Extent. 1b. §. 2. The Act not to extend to dressing of Meat in private Families, nor in Inns, Cooks Shop, or Victualling-Houses, for such as cannot otherwise be provided for.

No Person to be impeached thereupon, unless presented for the same within ten Days *Impeachment.*
after the Offence.

If any Person travel on the Sunday, and be robbed, the Hundred shall not be charge- *Robbery.*
able to him; but in Default of Hue and Cry made shall be chargeable to the King for so *Ib. §. 5.*
much as might have been recovered against them.

If any Person on the Lord's Day serve or execute, or cause, &c. any Writ, Process, *Arrest.*
Warrant, Order, Judgment or Decree, (except in Cases of *Treason, Felony or Breach of* *Ib. §. 6.*
the Peace) such Service shall be void, and the Party liable for Damages, as if no such
Writ, &c. had ever been made.

All the Laws made for frequenting Divine Service on the Sabbath-day are still in Force;
notwithstanding the Statute 1 *Wil. cap. 18.* unless Persons go to some Congregation of
religious Worship, tolerated by that Act.

Salt.

THE Officers by this Act appointed, may seize all such Salt which shall be conveyed *Taxes.*
away before Entry made, without Warrant of the Commissioners, or other Col- *Salt to be*
lectors: And the Salt that shall be so seized, shall be brought to the Office next the Place *seized, which*
where such Salt shall be so seized, and there detained: And if the same be not claimed by *is conveyed a-*
the true Owner within ten Days after Seizure, it shall be forfeited, and sold at the next *way before*
general Day of Sale to be appointed by the Commissioners or their Officers; one Moiety *Entry.*
to the Use of their Majesties, and the other to him that seized the same. And if the *5 & 6 W. &*
Owner shall claim the same within ten Days, and shall not make it appear before the next *M. c. 7. §. 7.*
Justice of Peace in the County where such Seizure was, by the Oath of one or more Wit-
nesses, that the Salt was duly entred, and that there was a Warrant for carrying away the
same, then it shall be forfeited and disposed as aforesaid, and he that carried, or caused it
to be conveyed away, shall forfeit double the Value.

The Lord Mayor and Court of Aldermen in *London*, shall ascertain the Price of Salt to *Prices of Salt*
be sold in *London*, and the Bills of Mortality; and the Justices of Peace shall, at their *to be set by the*
General Sessions set Prices upon Salt sold within the Counties, &c. where they are *Justices.*
Justices, and shall from Time to Time alter the Prices of Salt, which Prices are required *7 & 8 W. c. 31.*
to be observed by Sellers of Salt, under the Penalty of 5 *l.* to be levied by Distress and *§. 92. re-*
Sale of the Offender's Goods; and in Default of Distress he may be imprisoned by War- *enacted by 9*
rant from the Lord Mayor, or any Justice of Peace. *W. 3. c. 44.*
§. 39.

No Person shall be capable of acting as Chief Commissioner for collecting the said *Ib. §. 14.*
Duties, till he hath taken, before one of the Barons of the *Exchequer*, the Oaths appoint-
ed in the first Year of King *William* and Queen *Mary*, intituled, *An Act for abrogating* *Commissioners*
the Oaths of Supremacy and Allegiance, and the Oath following: *You shall swear to exe-* *Oath.*
cute your Office truly and faithfully without Favour or Affection, and shall from Time to
Time true Account make and deliver to such Person and Persons as their Majesties shall ap-
point to receive the same, and shall take no Fee or Reward for the Execution of the said
Office from any other Person than from their Majesties, or those whom their Majesties shall
appoint on that Behalf. The like to be taken by the other Officers before two of the *Officers Oath.*
Chief Commissioners, or two Justices of Peace of the Place where he shall be appointed *Ib. §. 15.*
Officer.

No *Certiorari* shall supersede Execution, or other Proceedings, upon any Order made *Certiorari.*
by the said Chief Commissioners or Justices of Peace in Pursuance of this Act. *Ib. §. 17.*

If any Merchant, being a Subject of this Realm, shall ship any Salt that hath paid the *Ib. §. 21.*
Duty, to convey it by Sea to any Part of *England*, and the Vessel shall happen to be lost
or taken, he shall upon Proof, before the Justices at the Quarter-Sessions, of such Loss,
have a Certificate of it, and upon producing the same to any Collector of this Duty, the
Officer shall let him buy the like Quantity, without paying any Duty for the same.

By the Statute 9 & 10 *W.* Salt must be sold by Weight, after the Rate of 56 Pounds *9 & 10 W. 2.*
the Bushel, and not by Measure, on Pain of 5 *l.* being convicted by two Witnesses before *c. 6. §. 1*
two Justices, to be levied by Distress, and to be committed till Satisfaction made.

The Offences against this Act shall be heard and determined by any two Justices of *Ib. §. 2.*
Peace residing near the Place where the Offence shall be committed. There lies an Appeal
to the next Quarter-Sessions; and all Justices of Peace are required, upon Complaint of
any Forfeiture made contrary to this Act, to summon the Party accused; and upon his
Appearance or Contempt, to proceed to the Examination of the Fact; and upon Proof by
the Oath of two Witnesses, or the Confession of the Party, to give Judgment, and issue

Warrants for the levying such Forfeitures upon the Goods of the Offender, and to cause Sale to be made, if the same shall not be redeemed in six Days; and for Want of Distress to imprison the Party until Satisfaction.

For the Salt Duties, &c. see the Statutes at large, or Mr. *Cay's* Abridgment, Tit. *Salt*.
3 Geo. 2. c. 20.
§ 4. Note, that by 3 *Geo. 2. cap. 20.* the Penalties imposed by former Acts, for Offences in landing of foreign Salt before Entry, or for any Frauds upon the re-exporting the same, shall now be sued for in *England*, in the Courts at *Westminster*, and in *Scotland* in the Exchequer at *Edinburgh*.

Ib. §. 5. And where any Provisions are made by former Acts, for recovering any Penalties for Offences in Relation to the said Duties, before Justices of Peace, the same shall continue in Relation to the Duty of 3 *d. per* Gallon on foreign Salt.

Scavenger.

SEE the Statute 2 *W. & M. stat. 2. cap. 8.* and 8 & 9 *W. 3. cap. 37.* in the *Appendix* under this Title. See there also a Clause in 1 *Geo. 1. cap. 52. sect. 9.* amended by 9 *Geo. 2. cap. 18.*

Servants. See 5 *El. 2. cap. 4.* Tit. *Labourers, supra* Chap. 58.

C H A P. LXXXVII. (a)

Schoolmaster.

Licence.
23 El. c. 1.
§. 6, 7. IF any keep a Schoolmaster, which shall not repair to Church, or be allowed by the Ordinary, he shall forfeit for every Month 10 Pounds. But the Ordinary shall take nothing for such Allowance, and the Schoolmaster, so teaching, shall be disabled to be a Teacher of Youth, and shall suffer Imprisonment for one Year. It seems by this Act, being in the Disjunctive, that although he doth not come to Church, yet if he be allowed by the Ordinary, it shall excuse the Penalty. See also 1 *Jac. 1. 4.* none shall use or teach a School out of the Universities and Colleges, except a Grammar School, or in some Gentleman's House, or be licensed by the Ordinary, upon Pain that the Schoolmaster, and he that retaineth him, shall forfeit 40 Shillings a Day, to be recovered by Action.

1 Jac. 1. c. 4.
§. 9.

Seamen. See *Mariners.*

Sessions. See Chap. 185.

C H A P. LXXXVIII.

Sewers.

SEWER signifieth such Passages, Gutters or Drains, as carry the Water into or towards the River or Sea; and the Office of the Commissioners of Sewers, is principally to see such Passages, Gutters, Drains and Ditches well scoured, kept and maintained in the Marsh and Fen Counties, for the better Conveyance of the Water into the Sea.

Six Justices.
13 El. 9. §. 2. (d) Six Justices of Peace, (two being of the *Quorum*) within their Limits, may execute the Laws and Ordinances of the Commissioners of Sewers for one Year after the Expiration of any such Commission, except a new Commission be published in the mean Time.

Co. 5. 100.
& 10. 138,
140. Note, that the Proceedings of the Commissioners of Sewers ought to be limited and bounded with the Rules of Law and Reason, and according to the ancient Statutes and Ordinances.

Statutes.
Co. 10. 143. (a) Now these ancient Statutes concerning Sewers are many, and are of three Sorts.

The first Sort consists in *defending and repairing the Walls, Banks and Sewers, &c.* Of this Sort are the Statutes made 9 *H. 3. cap. 15 & 16.* 6 *H. 6. cap. 5.* 18 *H. 6. cap. 10.* 23 *H. 6. cap. 9.* 12 *E. 4. cap. 6.* 4 *H. 7. cap. 1.* & 6 *H. 8. cap. 10.*

The second Sort consists in *pulling down and removing Nuisances, &c.* As by the Statutes made 9 H. 3. cap. 23. 25 E. 3. 4. 45 E. 3. 2. 1 H. 4. 12. 9 H. 6. cap. 9. & 12 E. 4. cap. 7.

The third consisteth of both Sorts, *sc.* as well in *repairing the Banks, &c.* as in *pulling down Nuisances, &c.* And of this Sort are these Statutes following, *viz.* 23 H. 8. cap. 5. 25 H. 8. cap. 10. 3 E. 6. cap. 8. 13 El. cap. 9.

The Inconveniencies which insue by these Nuisances, and especially by the new levying, or inhansing of Wears, Mills, Stanks, Fish-garths, Locks, Stakes, Kidles and Flood-gates, are these, *scilicet*, The common Passage of Ships and Boats in the great Rivers; as also Meadows, Pastures, and Arable Grounds adjoining to the Rivers, be greatly disturbed, drowned, wasted and destroyed, many People perished, and the young Fry of Fish destroyed. See 1 H. 4. cap. 12. 2 H. 4. cap. 11 & 12 E. 4. cap. 7. See Tit. *Wears.*

The Form of the Commission of Sewers; the Authority of the Commissioners, as also the Form of their Oath, you may see at large in the Statute 23 H. 8. cap. 5.

Every Commissioner shall, before he execute that Office, before Persons authorized by *ded' potestat'*, or before the Justices of Peace in their Quarter-Sessions, take this Oath.

YOU shall swear, that you, to your Cunning, Wit and Power, shall truly and indifferently execute the Authority to you given by this Commission of Sewers, without any Favour, Affection, Corruption, Dread or Malice, to be born to any Manner of Person or Persons. And as the Case shall require, you shall consent and endeavour your self, for your Part to the best of your Knowledge and Power, to the Making of such just, equal, and indifferent Laws and Ordinances, as shall be made and devised by the most discreet and indifferent Number of your Fellows, being in Commission with you, for the due Redress, Reformation and Amendmennt of all and every such Things as are contained and specified in the said Commission. And the same Laws and Ordinances to your Discretion, Wit, and Power, cause to be put in due Execution, without Favour, Dread, Malice, or Affection. As God you help, and all Saints. 23 H. 8. 5. sect. 5.

And shall also receive the Sacrament, and take the Oaths, and make the Declaration prescribed by 25 Car. 5. which you shall find *supra*, Chap. 4.

Note, That the King by the Common Law, may award his Commission of Sewers, *Powers* for the Amending of the Sea-Banks, and for the Repairing, Amending and Scouring other Banks, Sewers, Gutters, Ditches, Pits, and Trenches, so as the Fresh-waters may have their direct Course. *F. N. B.* 113. a. And see there the Form of that Commission, and the Proceedings thereupon.

(d) These Commissioners cannot make any new great River, neither can they make *Co. 10. 141.* new Inventions (as artificial Mills to cast out the Waters, or such like) but such new Rivers, and new Inventions (if they be for the publick Good) ought to be made by Parliament: And yet the making new of an antient Bank or a Sewer in a Place more fit, and with some Alteration and Distance, and upon Necessity, seemeth to be warrantable.

These Commissioners cannot cast down any Mills, *Causays* or *Stanks, &c.* erected before the Time of *Edward* the First, but only may cause them to be abated, if they be raised above their ancient Heights. *Co. 10. 138.*

These Commissioners ought to tax none towards these Reparations, *&c.* but such as *Tax.* have Prejudice or Loses by the *Nuisances* or Defaults, and which have Benefit by the Amending or Removing them. *Co. 10. 142.*

Also these Commissioners ought to tax all that be in Danger to be indamaged by the not *Co. 5. 100.* Repairing, *&c.* (and that according to their Land, *&c.*) And not tax him only whose *Co. 10. 143.* Grounds lie next adjoining to the River, *&c.* For, *Qui sentit commodum, sentire debet & onus.*

Note, That in all Cases of Taxing or Rating by these Commissioners, it ought to be *Co. 5. 100.* proportionable, and according to the Quality and yearly Value of the Lands, Tenements, *Co. 9. 124 a.* Rents, Commons, and Fishings of the Persons chargeable, and not according to the Quantity or Content thereof. *Co. 10. 139.*

(a) And the yearly Value shall be accounted as the Lands, *&c.* are of their own Nature, without respect to the Bettering or Impairing thereof by the good or bad Husbandry of the Owners or Occupiers thereof. See *Co. L. 171 & 179.* to such Purpose.

(d) Again, if the Owner of any Land be bound by *Prescription*, or otherwise, to repair the Bank of a River, Wall, or Sewer, *&c.* he ought to do it; yet if he be not able *Co. 5. 108 & 10. 139, 140.*

to repair it, or that there be other inevitable Necessity, or that there was no Default in the Party, but that the Banks, or Wall, &c. are broken or overflown by Tempest or unusual Overflowing of Waters, or the like, (which be the Acts of God, and which no Providence or Industry of him that is bound to the Reparations, could prevent). In these Cafes the Commissioners ought not to charge him, only, with the Whole, but may, and in good Discretion ought to charge and tax all such as have any Lands (or other Profits) there, in Danger, or subject to Loss.

(a) But when one is bound by *Prescription*, or otherwise, to repair a Bank or Wall, &c. if there be any Default in him, and the Danger not inevitable, but that he alone may well repair it, the Commissioners may there charge him only to repair this: And if by his Default the Danger become inevitable, or that he alone is not able to repair it, whereby others are charged as aforesaid, every of them may have an Action on the Case against him, &c. and shall recover their Damages according to their Loss.

Co. 10. 130. Also, where a Man hath any Lands lying between the Sea, the River of *Thames*, or any other River, and his Neighbour's Grounds, and is bound by *Prescription*, or otherwise, to make or keep certain Banks, or to scour certain Ditches or Sewers, between his said Neighbour and the said River or Sea, and he doth not make, keep, amend, and scour the same, as he ought to do, by Reason whereof his Neighbour's Grounds are drowned, the Party so damaged shall have his Action of the Case against the other so making Default, &c. See *F. N. B.* 93. g. and 7 *H.* 4. 8, & 41.

Co. 10. 139 & 143. (d) Also, these Taxations ought to be particular, *sc.* upon every *Owner or Occupier of Lands, Tenements, Rents, Commons and Fishings*, &c. And not to be a general Sum in Gross upon a whole Town. See more hereafter *Tit. Stock of the Shire*.

(a) See Serjeant *Callis's* Reading upon the Statute of 23 *H.* 8. of *Sewers*.

C H A P. LXXXIX. (a)

Sheep.

Transporting.
8 *El.* 3.

IF any shall bring, deliver, send, receive, or take or procure, &c. into any Ship or Bottom, any Rams, Sheep or Lambs, or any Manner of Sheep being alive, to be carried and conveyed out of *England, Wales, or Ireland*, or any the *Queen's* Dominions; the Party, his Aiders, Abettors, Procurers and Comforters, shall forfeit all his Goods, a Moiety to the *Queen*, the other Moiety to the Prosecutor in any Court of Record, and shall suffer Imprisonment for a Year without Bail; and at the Year's End, in some Market-Town, in the Fulness of the Market, on the Market-day, have his Left-Hand to be cut off, and nailed up in the openest Place of such Market; and the second Offence is Felony.

Justices of Peace (*inter alios*) have Power to inquire of, hear and determine Offences against this Act. 8 *El.* 3.

Keeping.

25 *H.* 8. 13.
Ibid.

No Farmer shall keep above Two thousand Sheep at one Time, upon Pain to forfeit for every Sheep above, 3 s. 4 d.

It shall not extend to Lambs under a Year old, nor to Sheep coming by Executorship or Marriage; so as within a Year, he reduce them to Two thousand, nor to Sheep bequeathed by Will, nor to Sheep kept in a Man's own Demefnes.

The Prosecution shall be within a Year, and Justices of Peace, as well by Oaths of twelve Men, as by Information of the King's Subjects. And such Process shall be made, as in Trespafs, and the Fines shall not be less than the Forfeitures. 25 *H.* 8. 13.

Sixscore Sheep shall be accounted a Hundred. *Ibid.*

For the Offence of Stealing and Destroying Sheep, &c. see Chap. 160. infra.

C H A P. XC.

Sheriffs.

THE *Custos Rotulorum*, or the eldest Justice of the *Quorum* (in his Absence) ought at the General Sessions after *Michaemas*, to appoint two Justices of the Peace (the one being of the *Quorum*) to have the Oversight and Controlment of the Sheriff, Under-Sheriff, and other their Officers and Deputies, and the Inspection and Examination of their Books and Amerciaments, and for making of *Estreats*, &c. in their County Courts. And either of those two Justices of Peace, or any other Justice of Peace, as some * think, upon Complaint of the Party grieved, may examine the Sheriff, Under-Sheriff, Shire-Clerk and Plaintiffs, concerning the Taking or Entring of Plaints in their said County Courts and Books, against the Statute, *viz.*

One Justice to oversee the County Courts.
11 H. 7. 15.

* Lam. 203.
P. 16.

1. If any Plaints shall be entered in their Books, in any Man's Name, unless the Party Plaintiff be either present in Court in Person, or by a sufficient and known Attorney or Deputy.

Sheriff's Courts.

2. If that the Plaintiff find not Pledges to pursue his said Plaint (*ſc.* such Persons as are known in that County).

3. If they shall enter more than one Plaint, for one Trespass or Contract.

4. If they shall enter or cause to be entred any more Plaints than the Plaintiff supposeth he hath Cause of Action for against the Defendant.

And if the said Justices, or Justice of Peace, upon his or their Examination, shall find any such Default in the said Sheriff, Under-Sheriff, or Clerk, it shall stand for a sufficient Conviction, without any further Inquiry or Examination; and they shall forfeit forty Shillings to the King for every Default; the same to be recovered in the *Exchequer*. And the same Justice or Justices who shall take the Examination, shall certify it into the *Exchequer* within a Quarter of a Year, upon Pain of 40 s.

Also the said Justice of Peace may examine the *Defaults of the Bailiff of the Hundred*, for not warning the Defendants (in such Plaints) to appear, according to his Precepts received from the *Sheriff or Under-Sheriff*. And if upon Examination, the Justice shall find any Default in such Bailiff, in not warning the Defendant to appear, or otherwise in not executing his said Office, it shall stand for a sufficient Conviction; and the said Bailiff thereupon shall forfeit to the King for every Default 40 s. the same Examinations to be certified into the *Exchequer* as aforesaid.

Bailiff.

Sheriffs, &c. shall make no *Estreats* to levy their *Shire Amerciaments*, until the said Justices (appointed at the General Sessions as aforesaid) have had the View and Oversight of their Books: And their *Estreats* shall be made by Indentures between the said Justices and the Sheriff and Under-Sheriff, and sealed with their Seals, the one Part to remain with the said Justices, and the other Part with the Sheriff.

Estreat.

The Collectors of the said Amerciaments shall be sworn by the said Justices, that they shall not take more Money than is forfeited, and contained in their said *Estreats*, sealed by the Justices as aforesaid.

Also the said Justices of Peace, or one of them, may examine the Default of the said Collectors, Bailiffs, and other Gatherers of the *Sheriff's Amerciaments*, whether they have taken and gathered any more Money than is forfeited and contained in their *Estreats* (sealed with the Seals of two Justices of Peace as aforesaid): And if upon Examination the Justices or Justice shall find any such Default, That also without further Inquiry, shall stand for a sufficient Conviction. And the said Collectors, Bailiffs, or other Gatherers of such *Amerciaments*, thereupon shall forfeit to the King for every Default 40 s. The said Examination also (whether it be by one or two Justices) is to be certified into the *Exchequer*, as aforesaid.

Collectors.

Also the said Justices of Peace upon Suggestion or Information of the Party grieved, shall make like Process, as in an Action of Trespass against the said Sheriff, Under-Sheriff, or other their Officers (offending in any the Particulars aforesaid) to appear before them to answer the said Suggestion or Information. See what the Process is in the Title *Process*.

Two Justices.
Process.
11 H. 7. 15.
Lam. 349.

(a) 1. No Sheriff, Coroner, or other Officer, who hath Return of *Writs*, shall return any Juror dwelling out of any Liberty, without the true Addition of his Dwelling at the Time of his Return, or within a Year before, or some other sufficient Addition, by which

Jurors.
27 El. 7. §. 2.
made perpetual
39 Eliz. c. 18.
§. 32.

he may be known ; nor within any Liberty, without such *Addition*, as shall be certified to him by the Bailiff of his Liberty, or his Deputy, under his Hand.

2. No Bailiff of Liberty, or his Deputy, shall return any Juror, or deliver the Name of a Juror to the Sheriff, his Under-Sheriff, or Deputy, without such *Addition*, &c.

Extracts. 3. No *Extract of Issues against a Juror*, returned as aforesaid, shall be delivered out, renewed, or put in Ure, without the *Addition* put in the original Panel or *Tales*.

4. No *Under-Sheriff, Bailiff, &c.* shall collect any *Issues so extracted* of any other, than of such Person as by the *Extract* is right charged or chargeable with the Payment thereof.

Penalty. Upon Pain that the Clerk writing, &c. And every Person offending against that Act, shall forfeit to the King five Marks, and to the Party suffering Loss, five Marks.

Ib. §. 3. Justices of Peace may inquire, hear and determine thereof, as well within Liberties as without, and make Execution for the Forfeitures.

Jurors. No Sheriff, &c. shall return a Juror, upon a *Venire*, that cannot dispend 4 *l.* upon Pain to forfeit 20 *s.* By the Statute 4 & 5 *W. cap. 24.* 'tis 10 *l. per Ann.*

27 El. c. 6. §. 1. 4 & 5 W. & M. c. 24. §. 15. Upon the first *Distringas* or *Habeas Corpora*, the Sheriff, &c. shall return for Issues upon every Juror 10 *s.* upon the second 20 *s.* upon the third 30 *s.* And upon every further Writ, to double the Issues, or forfeit 5 *l.*

Issues. If any be returned summoned, where he is not summoned, and lose Issues for not appearing, the Sheriff, &c. in whose Default it is, &c. shall forfeit double his Issues.

False Summons. If a Sheriff, &c. shall take or have by himself or any other, any Reward or Profit for sparing, not warning, or not returning a Juror to try any Issue before any Justices ; the Party offending shall forfeit 5 *l.* a Moiety to the Crown, the other Moiety to the Prosecutor in any Court of Record, by Action, &c. or Information.

Ib. §. 3. No Sheriff, for the Year that he is Sheriff, shall exercise the Office of a *Justice of Peace* for that County ; but all Acts done that Year by him, by Virtue of the Commission of the Peace, shall be void.

The Reason seems to be, for that the same Person cannot well exercise two Offices, especially these. For as a Justice of Peace, he is a Judge of Record, and hath Power in many Cases to command the Sheriff, so cannot command himself. But this Statute requires only the Forbearance of the Execution of his Office for that Year ; and he may continue in the Commission of the Peace.

Fees for Execution. Sheriffs, &c. shall take no more for the *Execution of any Extent*, or Execution upon Body, Goods or Lands, than *twelve Pence* in the Pound for the first hundred Pounds, and *six Pence* for every twenty Shillings more ; if he do, he shall lose to the Party his treble Damages : And for every Time he shall offend 40 *l.* a Moiety to the King, the other Moiety for the Prosecutor, by Plaint, Action, Bill, Suit or Information, &c.

By the general Words of which Act, it seemeth, That an Information or Bill lieth before the Justices of Peace in Sessions.

If the Debt be 160 *l.* there shall 100 *s.* Fee be paid for the 100 *l.* and 30 *s.* for the 60 *l.* Residue. *Latch, p. 19, 51.*

Corporation. And the Proviso of the Statute, That it shall not extend to Fees for any Execution in a Corporation, shall be intended of *Actions arising within the Corporation* : And for which the Action is brought in the Corporation Court, and Judgment there had, and not where the Sheriff upon any Process out of a Superior Court enters a Corporation, and doth Execution. *Latch, p. 19, 51. See hic postea.*

Oath of Sheriff and Bailiffs. Every Under-Sheriff, Bailiff of Franchise, Deputy and Clerk of every Sheriff, and Under-Sheriff, and other Persons that take on them to impanel or return any Inquest, Jury or Tales ; or intermeddle with Execution of Process in any Court of Record, shall before they meddle with the Execution of such Office, or Execution of Process, take this Oath *Mutatis mutandis.*

27 El. c. 12. By the Statute 3 G. 1. c. 15. §. 18. A. B. shall not use or exercise the Office of Under-Sheriff corruptly, during the Time that I shall remain therein ; neither shall or will accept, receive or take, by any Colour, Means or Device whatsoever ; or consent to the Taking of any Manner of Fee or Reward of any Person or Persons, for the Impanelling or Returning of any Inquest, Jury or Tales, in any Court of Record, for the Queen, or betwixt Party and Party, above two Shillings, or the Value thereof ; or such Fees as are allowed and appointed for the same, by the Lawes and Statutes of this Realm ; but will, according to my Power, truly and

cept the Under Sheriffs in Wales and Chester. See the Statute : But the Under Sheriffs in Wales and Chester shall take the old Oaths.

indifferently, with convenient Speed, impanel all Jurors, and return all such Writ or Writs touching the same as shall appertain to be done by my Duty or Office, during the Time I shall remain in the said Office.

So help me God.

And if any Person shall intermeddle, &c. not having taken the said Oath, he shall forfeit 40 *l.* A Moiety to the King, and the other Moiety to the Profecutor. Forfeiture. 27 El. 12

And the Justices of Peace, in their Sessions, have Power to hear and determine the Defaults against that Act, as well by Presentment and Information as Indictment; and upon Conviction, to award Execution for the Forfeitures, by *Fieri Facias*, *Attachment*, *Capias* or *Exigent*. § 4.

(d) The *Custos Rotulorum*, or any two Justices of the Peace, the one being of the *Quorum* may take the Oaths of Under-Sheriff of their County, his Bailiffs, Deputies, Clerks and other Officers, before they shall exercise their said Offices. 27 El. 12 § 32, 33

§ The Oath of Supremacy.

§ The Oath for the true Exercising of their Offices. *Vide supra.*

(a) But special Bailiffs made for the serving of Procefs, are not to be sworn by this Statute, as Mr. *Crompton* reporteth, and saith, *That it was so adjudged in the King's Bench.* And yet the Words of the Statute are, That every Person which shall have Authority, or take upon him to intermeddle with Execution of Procefs, &c. shall receive and take the said Oaths, *Crompt. 76, & 103.* And so it was resolved *Mich. 7 Car. 1. Jones's Rep. 249.* And the same Matter was also in Question lately in the King's Bench, but not resolved as I remember.

Sheriffs, Under-Sheriffs, their Bailiffs or Ministers shall not make out any Procefs on any Indictments or Presentments in their Leets or Turns, but shall deliver the same to the Justices of Peace at their next Sessions; or in Default thereof, shall forfeit 40 *l.* And the Justices of Peace may proceed thereon, as if such Indictment or Presentment were taken before them, and may arraign and deliver the Parties indicted; and such as be indicted of Trespafs shall make such Fine as they in their Discretion shall think fit; and the Estreats shall be inrolled and delivered by Indenture. And if the Sheriff, &c. shall arrest, &c. any Person, or levy such Amerciament without such Authority, he shall forfeit One hundred Pounds. 1 E. 4. c. 2. § 1.

He shall take no more than 12 *d.* Poundage for executing an *Habere facias Possessionem* or *Seisinam*, where the whole yearly Value of the Lands doth not exceed 100 *l.* and 6 *d.* for every 20 *s.* above that Value. 3 G. 1. c. 15. § 16.

He shall not take Poundage for executing a *Capias ad Satisfaciendum*, or upon charging one in Execution for any greater Sum than the real Debt, which Sum the Plaintiff shall mark and specify on the Back of the Writ, before it shall be delivered to the Sheriff to execute; he or his Bailiff taking more, are guilty of Extortion, and shall forfeit double the Sum extorted and treble Damages to the Party grieved, upon Proof before the Judge of that Court out of which the Writ issued in such summary Way as he shall think meet, and 200 *l.* to the Crown and to the Profecutor; to be recovered in the Courts at *Westminster*, so as the Profecution be within two Years after the Offence. Ib. § 17.

C H A P. XCI. (a)

Ships.

Several of the Penalties given by the Act of Navigation 12 *Car. 2. cap. 18.* for Offences against that Statute are and may be recovered by Information in any Court of Record. And it seems the Sessions being so, they may there be recovered: For which see the Statute at large.

Where a Ship is in Distress, and any Person enters without Leave of the Commander (except an Officer of the Customs, or a Constable, or one by his Order) or he who molests Persons assisting, or endeavours to hinder the Saving the Ship or Goods, or when saved, shall deface the Marks of any Goods before they are entered in a Book, shall, within twenty Days after, make double Satisfaction to the Party grieved, at the Discretion 12 Ann. c. 18. § 3. made perpetual 4 G. 1. c. 12

tion of the two next Justices, or in Default thereof be sent by the said Justices to the House of Correction, there to be kept to hard Labour for twelve Months.

12 Ann. c. 18.
§. 2.

They who assist Ships in Distress, and preserve them or their Cargoes, shall within thirty Days afterwards be paid a reasonable Reward for their Service by the Commander, and in Default thereof the Ship shall remain in the Custody of the Officer of the Customs, till they be reasonably gratified; and if they cannot agree, then the three next Justices named by the said Officer, shall settle the *Quantum* to be paid to each Assistant. And where no Person claims the Goods, the chief Officer of the next Port must make Application to three of the Justices, who are to put him or some responsible Person in Possession of the Goods, taking an Account thereof in Writing, to be signed by the said Officer; and if they are perishable, then to be sold presently, or else kept a Year.

Ib. §. 5.

Any Person making or assisting in making a Hole in a Ship in Distress, or stealing or aiding to steal any Pump, or wilfully doing any Thing tending to the immediate Loss of such Ship, shall be guilty of Felony without Benefit of Clergy.

Shoemakers. See *Labourers*, Chap. 58.

C H A P. XCII. (a)

Silk-throwing.

Apprentice.

13 & 14 Car.
2. c. 15. §. 2.

NO Person shall use, exercise, continue or set up the Trade of a Silk-thrower, unless he is or shall be Apprentice to that Trade, or have served seven Years Apprenticeship thereunto, upon Pain to forfeit forty Shillings for every Month; one Moiety to the King, the other Moiety to the Prosecutor, by Action of Debt, Bill, Plaint or Information; or by other lawful Means (*inter alios*) before the Justices of the Peace at their Quarter-Sessions.

Imbezilling Silk.

Ib. §. 5.

By the Statute 8 & 9 W. 3. c. 36. sect. 6. this extends to all Persons who shall imbezil Silk, or pawn, sell or detain it, being delivered to any one who manufactures it, their

If any Silk-winder and Doubler imbezil, pawn or detain any Silk delivered to them to wind or double, every Winder or Journeyman so offending, and the Buyers and Receivers thereof, being convicted by Confession or the Oath of one Witness before any Justice of Peace of the County or Liberty; or if within a Town corporate, before the chief Officer of the same, who may hear and determine, and give the Party damnified such Satisfaction for their Loss, Damage and Charges, as they shall order, so as no more be awarded than the Party is damnified, and hath expended in looking after it. And if the Party be not able, or do not make Recompence in fourteen Days after Conviction, he shall for the first Offence be apprehended and whipped, or set in the Stocks in the Place where the Offence was committed, or some Market-Town of that County, near thereunto; and for the second Offence, shall be punished by whipping and putting in the Stocks, as the Justices and Chief Officers shall think fit.

Agents, Journeymen, Wapers or Winders.

Ib. §. 7.

The Receivers and Buyers of Silk shall be subject to the like Punishment as the Person imbezilling.

Employment.

Ib. §. 8

Any Freeman of the Company of Silk-throwers may set on work any Native Subjects of his Majesty, whether Men, Women or Children, to turn the Mill, tie Threads, double Silk and wind Silk, as formerly.

See 9 & 10 W. 3. cap. 43. sect. 5. in the *Appendix*, Tit. *Alamodes* and *Lustrings*.

C H A P. XCIII. (a)

Skinners.

5 Jac. 1. c. 9.
§. 12.

NO Persons using the Trade of Merchandise, or any other Trade, shall dress, or cause, &c. in their Houses, or by any Workmen not using the Trade of a Skinner, any black Coney-Skins, nor transport or cause, &c. Nor pack, ship or lade, to that

that Intent, any black Coney-Skins of the Breed of *England*, unless the same be tawed and perfectly wrought, dressed and packed, by Skinners or Tawers under them, according to the Science of Artizan Skinners, upon Pain to forfeit the same, or the full Value thereof.

No Merchant shall buy, bargain or contract for, or cause, &c. any Coney-Skins or Lamb-Skins, called *Morkins*, of the Breed of *England*, or being here, under 1000 black Coney-Skins, or 3000 grey Coney-Skins, or 2000 Lamb-Skins, called *Morkins*, at one Time, and not by Parcels, except of Artizan Skinners; nor shall sell the same again to any Persons in this Realm, in small Parcels, *viz.* under these Numbers of each, unless to an Artizan Skinner, upon Pain to forfeit the same, or the full Value. ib. §. 3.

No Person shall retain or keep any Servant, Journeyman or Apprentice, to work therein, except the Person using that Trade hath served seven Years therein, and do use the Trade of a Skinner, upon Pain to forfeit double the Value of the Skins or Wares wrought. ib. §. 4.

A Moiety of the Forfeitures to the King, the other Moiety to the Seisor, or that shall sue for the same by Action of Debt, Bill, Plaint, or Information in any Court of Record. ib. §. 5.

See more Tit. Leather, Chap. 59.

Smuglers.

ANY Persons found passing knowingly with any foreign Goods, landed without due Entry and Payment of the Duties, from any of the Coasts, or within twenty Miles thereof, and shall be more than five in Company, or shall carry any offensive Weapons, or wear any Disguise when passing with such Goods, or shall forcibly resist any Officer of the Customs or Excise in seizing Run Goods, shall be guilty of Felony, and be transported for seven Years; and if he return before that Time, 'tis Felony without Benefit of Clergy. 8 Geo. 1. c. 15

Vide supra Tit. Customs, Chap. 33.

C H A P. XCIV.

Soldiers.

EVERY Justice of Peace of the County, where any Soldier, which hath served the King in his Wars, shall be found, which hath sold, given, purloined, or put away, &c. any Horse or Harnes (wherewith he was set forth, or which was after appointed to him by the Lieutenant or Captain, &c.) upon Complaint and due Proof of the Offence to be made (by the Owner, his Executors or Administrators) to any such Justice, shall by the said Justice be committed to Ward, there to remain without Bail, until he has satisfied the Party grieved, his Executors or Administrators; for such Horse or Harnes, &c. unless he bring with him, before the same Justice, sufficient Testimony from his Captain, &c. in Writing under his Seal, testifying, that the said Horse or Harnes, &c. was lost in the King's Service against the Will of that Soldier; or was taken by his Captain, &c. from him, and appointed to some other to serve withal; except the same Soldier were imprisoned for the same Offence before, by his Lieutenant or Captain, &c. and made Restitution. Armor.
2 Ed. 6. 2.
P. Just. 84.
Crompt. 76. b.

The next Justice of Peace to the Place of Landing of any poor Soldier, Mariner, or Seafaring-Man suffering Shipwreck, may make them a License to pass to the Place where they are to repair, &c. See hereof in the Title *Rogues*. License.
39 Eliz. c. 17.
§. 3.

In Default of the Parishioners, Church-wardens, and Constables (that shall not assess the Tax imposed upon the Parishioners by the Justices at their *Easter* Sessions, towards the Relief of disabled Soldiers and Mariners) any Justice of Peace dwelling in the Parish, or (if none dwell there) in the Parts next adjoining, may assess the same; And the same Justice of Peace may also in Default of the Church-wardens and Constables, levy the same by Distress and Sale of the Goods of the Party so refusing or neglecting, rendering to the Party the Overplus, &c. 43 El. c. 3.
§. 3 & 4

Payment.

Ib. §. 5.

Treasurers.

(a) Which Church-wardens and Petty Constables shall collect it, and pay it to the High Constable of that Division, ten Days before every Quarter-Sessions. Which High Constable shall, at the Sessions, pay the same to two Justices, or one of them; or to two such Persons, or one of them, as shall be elected by the more Part of Justices, who shall continue only for one Year, and shall give up an Account the *Exister* Sessions, or within ten Days, to the next elected.

Failure of Payment.

Ib. §. 6.

Treasurers Account.

Ib. §. 7.

If Church-warden or Petty Constable, or his Executors, or Administrators, shall fail of Payment, he shall forfeit 20 s. If High Constable, &c. fail of Payment, he shall forfeit 40 s. to be levied by Distress and Sale by the Treasurer.

If the Treasurer, his Executors or Administrators, fail to give up his Account, or be negligent in his Charge, the major Part of the Justices in Sessions, may set a Fine not exceeding 5 l.

To whom Application is to be made.

Ib. §. 8.

The Certificate.

Every Soldier disabled, being in the King's Pay, or returning from Sea, shall, if able, repair to the Treasurer of the County, where he was pressed; or if not pressed, to the Treasurers of the County where he was born, or last inhabited by the Space of three Years, at his Election: And if not able to travel, to the Treasurer of the County where he shall first arrive, and shall bring a Certificate under their Hand and Seal of the General of the Camp, or Governor of the Town, under which he served; and of the Captain of the Band, or his Lieutenant; and in their Absence, from the Marshal or Deputy; or from the Admiral or General at Sea; or from the Captain of his Ship, containing a Particular of his Hurts and Services: Which Certificate shall be allowed by the General Muster-Master, Resident in *England*, or Receiver General of the Muster-Rolls, the Treasurer and Comptroller of the Navy, under his Hand; upon which Certificate the Treasurers shall give him a proportionable Relief until the Sessions: At which Time, the Justices, under their Hands, to make a Grant of the same for his Life, if it be not altered, and the Treasurer shall pay it; so as to any one that hath not born Office in the Wars, be not assigned above 10 l. nor to any one that hath born Office above 15 l. nor to a Lieutenant above 20 l.

The Sum.

Alterations.

Ib. §. 9.

Distance.

Ib. §. 10.

The Justices of Peace may in their General Quarter-Sessions, upon just Cause alter, diminish or revoke the Pensions assign'd to Soldiers and Mariners.

If such maimed Soldiers and Mariners shall arrive in a County, far remote from the Place where they are to have their Pensions, the Treasurers of the County where they arrive, may give them Relief for their Journey, upon their Certificate, with a Testimonial; and so the Treasurer of the next County, until they come to the Place where they are to have their Pension settled.

Accounts.

Ib. §. 11 & 12.

The Treasurers shall keep a Book of all Sums they levy, and of the Persons to whom they give any Relief, and preserve every Certificate: And if any Treasurer shall wilfully refuse to give or distribute any Relief according to that Act, the Justices of Peace in their Sessions, by their Discretions, may fine such Treasurers, to be levied by Distress and Sale, to be prosecuted by any two of them whom they shall authorise.

Begging.

Ib. §. 13.

Surplusage.

Ib. §. 14.

If such Soldier or Mariner be taken begging, or shall counterfeit a Certificate, he shall be punished as a Rogue.

The Surplusage of such Stock shall be ordered and bestowed by the more Part of the Justices in their Quarter-Sessions, by their Discretion to such charitable Uses, in such Manner as is limited by the Statutes for the Poor, and against Rogues.

Penalties.

Ib. §. 16.

The Forfeitures of every Treasurer, Collector, Church-warden and other Officers by that Act shall be employed as the Money to be levied, and the Overplus is directed, or may be reserved as a Stock for Soldiers and Mariners.

Corporations.

Ib. §. 15.

Justices of Peace in the County shall not meddle as to this Matter in any City, Borough, Place or Corporation, where is any Justice of Peace; but the Justices of Peace, Mayors, Bailiffs and other Head Officers of Cities, Boroughs, Places and Towns Corporate, where there is any Justice of Peace, may put in Execution the said Act in all Things, as Justices of the Peace of the County may do.

Who to be settled.

Ib. §. 16.

Relief shall be given to such Soldiers and Mariners out of the Stock of the County out of which he was pressed; but if that Taxation shall be before employed, or they shall not be pressed Men, then out of the Place where they are born, or last inhabited by the Space of three Years, at his or their Election.

Continuance of the Act.

This Act was continued indefinitely by 3 *Car.* 1. *cap.* 4. and by 16 *Car.* 1. *cap.* 4.

Masters.

4 & 5 P. & M. c. 3. §. 2.

If any, commanded to be mustered, shall absent himself without lawful Impediment; or coming, shall not bring his best Furniture, Array or Armor, he shall be imprisoned ten Days

Days without Bail, unless he agree to pay a Fine of 40 s. to the Queen; which is to be estreated into the *Exchequer* by the Commissioners, &c.

If any Person authorized to muster or levy Men in War, or for the Defence of the *Bribes.* Kingdom, shall take or receive any Money or Reward to spare any Person, he shall forfeit *Ib. §. 5.* ten Times so much as he shall take.

If any Captain or other, having Charge of Soldiers, shall for any Advantage license a *Pay.* Soldier to depart, he shall forfeit ten Times the Thing taken. And if he shall not pay *Ib. §. 4.* the Soldier his Pay within ten Days after he shall receive it, he shall pay the Soldier treble so much. The Moiety of Forfeitures (except Pay) to the Queen, the other Moiety to the Prosecutor, in any Court of Record, by Information or otherwise.

The Justices of Peace in Sessions may by Presentment or Indictment hear and deter- *Ib. §. 5.* mine the Offences, and upon Conviction may award the Party to Prison till Payment of the Forfeitures. A Moiety whereof to the Party that gives Evidence, if Conviction be upon Evidence; otherwise the whole Forfeiture to the Queen.

(d) If any poor Soldier or Mariner, coming from or beyond the Seas, shall repair to *Work.* his Place of Birth, &c. and cannot there get Work, then upon his Complaint any two Justices of Peace near the said Place shall take Order (by their Discretion) to set him to work; and, for want of Work, the said Justices shall tax the whole Hundred (by their Discretion) for his Relief till sufficient Work may be had.

(a) These Acts concerning Soldiers, though not expired nor repealed, seem to be of little Use at this Time, the several Cases that may arise being provided for by the Statutes relating to the Poor and to Vagrants, or by the annual Act *for punishing Mutiny and Desertion,* &c. Which last see at large.

C H A P. XCV. (a)

Spices.

IN the Edition of 1727 of this Book, an Abstract of an Act of 1 *Jac. 1. cap. 19.* for well Garbling of Spices, was inserted; but this is repealed by 6 *Ann. cap. 16.*

Squibs.

ALL Persons are prohibited to make, utter, sell, or offer or expose to Sale any Squibs ^{9 & 10 W. 3.} or Fireworks, or to suffer any Squibs to be cast, thrown, or fired out of their ^{c. 7.} Houses or Lodgings, or any Part thereof, or Places adjoining, into the Streets, or to throw, cast, or fire, or to be aiding or assisting thereunto, if they do, 'tis a *Common Nuisance.*

And if any Person make, or cause to be made, give, sell, utter, or offer or expose to Sale any Squibs, &c. he forfeits 5 *l.* to the Poor and the Prosecutor, being convicted before a Justice upon Confession or Oath of two Witnesses, and to be levied by Distress and Sale, &c.

Permitting any Squibs to be cast, thrown, or fired out of their House, Shop, or Habitation into any Street, forfeits 20 s. to be levied and divided as afore, &c.

And he who throws them, or is aiding and assisting in throwing them forfeits the like Sum, to be divided as afore said; and if not immediately paid to the Justice, upon Conviction, shall be committed to the House of Correction, there to be held to hard Labour for a Month, unless he shall sooner pay the Money.

Stamp-Duties.

EVERY Commissioner and Officer acting in collecting the Stamp-Duties, is to take ^{10 Ann. c. 19.} an Oath mentioned in that Statute before two of the Commissioners, or before one Justice. See the Form of the Oath there; and the Justice is to give the Officer *gratis* a Certificate of his having taken the Oath.

Causing or Procuring to be forged or counterfeited any Stamp or Mark, resembling any ^{6 Geo. 1. c. 21.} Mark, or Stamp, made or used in Pursuance of this Statute, or any other relating to the ^{§. 60.} Stamp-Duties, or Causing or Procuring any Vellum, Parchment, Paper, Cards, or Dice

to be marked or stamped with such counterfeit Stamps, this is Felony without Benefit of Clergy.

Surrender of a Copyhold.
10 Ann. c. 19.
§. 105.
Writing or Printing any *Surrender* (except to the Use of a Will) or *Admittance of or to any Copyhold Estate in Great Britain or Wales* or any Grant or Lease by Copy of Court-Roll, or any Matter directed to be stamped by the Statute 10 *Annae, cap. 19.* or selling or exposing to Sale any Pamphlet or News-Paper, excepting such as exceed one whole Sheet of Paper, before the same shall be stamped; the Offender forfeits 10 *l.* with full Costs for every Offence to the Crown and the Prosecutor.

Steward of a Manor.
Ibid.
Every Steward of a Manor, or his Deputy offending, and being convicted, over and above the said Forfeiture, shall lose his Place; and the Writing shall not be good, or given in Evidence until 5 *l.* shall be paid, as also the 10 *l.* before mentioned; and a Receipt thereof be produced under the Hand of the Receiver General of the Stamp-Duties, or his Deputy, and until the Vellom, &c. be stamped.

Printer of Pamphlets.
Ib. §. 111.
The Printer and Publisher of any Pamphlet exceeding one Sheet, and the Duty not being paid, and the Title of it registred, and one Copy not stamped, within the Time limited by that Statute, forfeits 20 *l.* with full Costs to the Crown and the Prosecutor; and the Author, Printer, and Publisher, to lose the Property of the Copy, though the Title is registred in *Stationers Hall*, and any Person may print it.

Pamphlets must have the Printer's Name.
Ib. §. 113.
All Pamphlets must have the Printer's or Publisher's Name printed thereon, or pay 20 *l.* for every Offence, to be divided *ut supra.*

Two Justices to determine in a summary way.
Ib. §. 172.
Two or more Justices residing near the Place where any pecuniary Forfeiture, not exceeding 20 *l.* upon any of the Statutes relating to the Duties on Stamps, shall be incurred, may hear and determine the same in a summary Way within a Year after the Offence committed, and may issue Warrants to levy the Penalties on the Goods of the Offender, and sell the same unless redeemed within six Days.

Justices may mitigate the Penalties.
Ib. §. 173.
The Justices may mitigate the Penalties, the reasonable Charges, and Costs of the Officers and Informers being first allowed, and so as such Mitigation doth not reduce the Penalties to less than double the Duties over and above the Costs and Charges.

Appeal to the Sessions.
Ibid.
There lies an Appeal to the Quarter-Sessions from the Order of the two Justices, whose Determination shall be final, and they may issue Warrants to levy, &c.

No Certiorari.
Ib. §. 174.
But no *Certiorari* lies to supersede Execution or any other Proceedings upon the afore-said Statute.

Starch and Hair-Powder, see the Appendix.

C H A P. XCVI.

Stock of the Shire.

One Justice. To what Uses they must be employed.
Levyng.
4 El. c. 2.
P. Poor 13.
IN the Default of the Parishioners, Church-wardens and Constables (that shall not assess the Tax imposed upon the Parishioners by the Justices at their *Easter Sessions*, towards the Relief of the Prisoners in the *King's Bench* and *Marshalsea*, and of the Hospitals of that County, and of the Losses by Fire or Water, and other Casualties, and Relief of the Poor within that County) any Justice of Peace dwelling in that Parish, or (if none dwell there) in the Parts next adjoining, may assess the same: And the same Justice, or any other Justice of Peace of that Limit (in Default of the Church-wardens and Constables) may levy the same by Distress and Sale of the Goods of the Party refusing or neglecting to pay his Part thereof, rendring to the Party the Overplus; and in Default of such Distress, any Justice of Peace of that Limit may commit such Person to Prison, there to remain without Bail, till he hath paid the same.

Soldiers.
(a) Also in Default of the Parishioners, Church-wardens and Constables (that shall not assess the Tax imposed upon the Parishioners by the Justices at their *Easter Sessions*, towards the Relief of maimed Soldiers and Mariners) any Justice of Peace dwelling in that Parish, or (if none dwell there) in the Parts next adjoining, may assess the same: And the same Justice of Peace (in Default of the Church-wardens and Constables) may levy the same by Distress and Sale of the Goods of the Party refusing or neglecting to pay his Part thereof, rendring to the Party the Overplus. But in Default of such Distress, the Justices of Peace may not commit such Person to Prison, as they might in the former Case. 43 *El. cap. 3. P. Captain* 11.

(d) Now in these and other Rates and Taxations you shall observe these Rules following.

1. First, That the most reasonable rating of Land is by the yearly Value and Quality Taxes. thereof, and not by the Quantity or Content.

Co. 9. 124.

2. He that occupieth Lands lying in several Parishes, shall be charged in every Parish proportionably for his Land there.

3. The Farmer shall be rated for the Lands, and not the Lessor or Landlord.

Co. 5. 67.

4. The Landlord shall not be rated or taxed for his Farm-Rents, in as much as the Farmer or Occupier of the Land is chargeable for the same Land. So where my Farmer is assessed by his Goods, I ought not to be assessed for my Rent of the same Farm. *Br. Quinz.* 2. 4. 7 *H.* 4. 33. & 11 *H.* 4. 35.

(a) Upon a Complaint to the Judges of Assise in the County of Lincoln, it was resolved and ordered, that the Lands in the Parish, and not the Rent, neither of that Land nor of the other Lands, could be taxed. *Sir Anthony Irbie's Case, Assise Linc.* 1633.

5. (d) By Goods in most Cases, a Man may be rated as well as by Lands, but not both by Goods and Lands, as it seemeth.

(a) The like you may see in divers Acts of Subsidies, wherein there is usually a special Proviso, that no Person shall be taxed both for his Lands and Goods, nor double rated. See the Acts of Subsidies, 7, 18 & 21 *Jac.* & 27, 29, 31, 35, 39 & 43 *Eliz.* 4 *Car.* and yet see 44 *E.* 3. *Br. Customs* 6. where a Tax of ten Pounds was made by the Parishioners for the Amending of their Church, and to be levied of every Plough-Land six Pence, and of every Cow one Penny, and of every ten Sheep Half-Penny, and *J. S.* for his Lands, Cows and Sheep, was rated at 9 s. and was distrained for the same; and upon a Replevin, no Exception was taken to the Manner of Rate imposed. But Note, that the said Tax was made by his Consent; *Et omnis consensus tollit errorem.* Co. 5. 36, & 40.

So then he that hath both Lands and Goods shall be charged by the best, but he is not to be double charged, *sc.* by the one and the other; and yet in some Places they do use to charge one Person both by Lands and Goods: Which if it be warrantable by Law, yet it seemeth to be with this Difference, *sc.* That where a Man occupieth Land, and also hath in his Hands a great Estate or Stock of Merchandize, or be also a Clothier, Malster, or the like, that such Person may be charged by his Lands, and also by such his Stocks; but for such Goods or Stock of Cattle, whereby a Man doth occupy, or manure his Lands, (as Horses, Sheep, Kine, &c. wherewith he stocketh his Land) a Man shall not be charged.

Also where a Man is rated by his Goods, it seemeth reasonable that such Goods be rated after the Value of Lands to be purchased, *scil.* one hundred Pounds in Stock or Goods, to be rated after five Pounds per Annum in Lands. And so after the like Proportion for a greater or lesser Estate in Goods, Stock, Merchandise or the like.

Note; Where a Man is charged by Goods, they must be *bona notabilia*, as it seemeth; and yet to the Subsidy, Men are rated not only by their Stock of Merchandise or Cattle, Corn, Household-Stuff or other moveable Goods which are *notabilia*, but also to their Money and Debts owing to them (deducting such Debts as they owe to others, and such Debts as be desperate:) But there the Party over-rated, upon his Complaint to the Commissioners, and his Oath taken before them, that his Goods, Money, or Debts be not of such Value (which Oath the said Commissioners are authorized to take by the Statute) they may abate the said Assessments according as upon such Examination shall appear to them just. See the afore-cited Acts of Subsidies.

(d) Also for Goods, a Man shall be charged only in that Town where the Goods be at the Time of the Assessment. *Br. Quinz.* 4 & 6. See the Statute of 9 *H.* 4. *cap.* 7.

Also if a Man be assessed for his Goods in *D.* when as he had no Goods there, and be distrained for such Assessment, he may have an Action of Trespass. *Br. Quinz.* 3 & 4.

The Constables (or other Officers) and greater Part of the Parishioners (upon a general Warning given in the Church) assembled, may make such Taxations by Law. See *Coke* 5. 67.

The like may be done by the Church-warden and the greater Part of the Parishioners, for Church Charges.

And if the greater Part of the Parishioners will not meet upon such Warning given, it seems the Officers, and such of the Parishioners as will meet, may make such Taxations.

(a) Note, That such Taxations being made for a Commonwealth, as for the Making or Amending of a Bridge, Highway, Causey, Sea-bank or the like, they shall bind all Persons (although they assent not). 44 E. 3. 18, 19. *Br. Customs* 6. *Co.* 5. 63. *Fi.* 49.

And so of Taxations made to repair the Church, or for other common Town Charges, where they are made by the greater Part of the Parishioners, as aforesaid. See *Co.* 5. 36, & 67. & 21 H. 7. fol. 20. b. & 8 E. 1. *Fitz. Aff.* 413.

Sever.

Also when Assessments are made for the Reparation of Bridges, Highways, Sea-Banks, Causeys, and the like, the Sum assessed upon particular Men, or Towns, ought to be competent and reasonable, having Regard to the Benefit which the Parties assessed or charged shall or may have and enjoy, by Reason of the said Assessment, and so reasonable as that the Party shall or may have more Benefit than Charge thereby; and then such Assessments cannot be reputed burdensome or a Charge to the Subject. See 13 H. 4. fol. 14. & *Co.* 5. 63.

If a Township be amerced, and the Neighbours do (by Assent) assess a certain Sum upon every Inhabitant, and do agree that *J. S.* shall gather it; and that if it be not paid at such a Day, that *J. S.* shall distrain for the same; in such a Case a Distress taken by *J. S.* for such Rates behind, is good. *Br. Cust.* 6. *Doct. & Stud.* 74. b.

And Issues estreated upon the Parish, may by Order of Sessions be equally rated upon the Inhabitants and levied accordingly. *Ord.* 16. *May* 8. *Car. lib. Sess. Pac. Mid. Consimil. Ord.* for the Inhabitants of *Fulham*, 9 *Apr.* 11 *Car.* Inhabitants of *Eling*, *Ord.* 2. *Dec.* 9 *Car.*

See the 12 Geo. 2. cap. 29. for the more easy Assessing, Collecting and Levying County-Rates, *infra* Chap. 196.

Stolen Goods. See *Theft*, Chap. 155.

C H A P. XCVII.

Subsidy.

THE old Subsidy Acts mentioned by *Dalton* under this Title, are expired.

Surety of the Peace. See Chap. 116.

C H A P. XCVIII. (a)

Swearing.

IF any Person or Persons shall prophanely swear or curse, in the Hearing of any Justice of Peace in the County, Mayor, Bailiff, or Head Officer of any City or Town Corporate, where such Offence shall be committed; or shall be thereof convicted by the Oaths of two Witnesses, or by Confession of the Party before any such Justice of Peace or Head Officer, &c. Every such Offender shall, for every Time so offending, forfeit and pay to the Use of the Poor of that Parish where the Offence shall be committed, the Sum of

Penalty.

21 Jac. 1.

c. 20.

3 Car. 1 c. 4.

16 Car. 1. c. 4. 12 d.

Ibid.

Every Justice of Peace, and every such Head Officer, may minister the said Oath to every Witness.

How to be

levied.

Ibid.

Every Justice of Peace, and every such Head Officer may make their Warrant to the Constables, Church-wardens, and Overseers of the Poor of that Parish where the said Offence shall be committed; and the said Constable, Churchwardens, and Overseers of the Poor, by Virtue of that Warrant, may levy the same Sum and Sums of Money by Distress and Sale of the Offender's Goods, rendering to the Party the Overplus.

Ibid.

In Defect of such Distress, the Offender, if he or she be above the Age of twelve Years, shall by Warrant from such Justices of Peace or Head Officer, be set in the Stocks by three whole Hours. But if the Offender be under the Age of twelve Years, and shall

not forthwith pay the said Sum of 12 *d.* then he or she by Warrant of such Justice of Peace or Head Officer shall be whipped by the Constable, or by the Parent or Master in the Presence of the Constable.

But every Offence against this Law shall be complained of and proved as aforesaid, *Ibid.* within twenty Days after the Offence committed.

Any Person that shall prophanely Swear or Curse, in the Hearing of any Justice of Peace of the County, or other Head Officer or Justice of Peace of the City; or shall thereof be convicted by Oath of one Witness, or Confession of the Party before any Justice of the Peace, Mayor, &c. The Offender shall forfeit to the Use of the Poor, if he be Servant, Labourer, Common Soldier, or Common Seaman, one Shilling, and every other Person two Shillings: And for every second Offence double; and for every third Offence treble.

The Penalties shall be levied by Distress, by Warrant of one Justice. If no Distress, the Party to be set in the Stocks one Hour for one Offence; for more than one two Hours, if above sixteen Years of Age; if under, to be whipt.

Justice of the Peace, &c. who wilfully omits the Execution of this Act, forfeits five Pounds.

None to be prosecuted upon this Act, unless within ten Days after the Offence.

This Act to be read in Churches by the Parson the next *Sunday* after every Quarter-day yearly, immediately after the Morning Prayer, upon Pain of twenty Shillings for every Omission.

Justices of Peace, Mayors, &c. shall register in a Book kept for that Purpose, all Convictions made before them upon this Act, and the Time, and certify the same to the Quarter-Sessions, to be there kept upon Record by the respective Clerks of the Peace, to be seen without Fee.

Vide *Tit. Oaths.*

Tanner. Vide Leather.

Taxing. See Poor, and Stock of the Shire.

C H A P. XCIX. (a)

Tobacco.

NO Person may set, plant, improve to grow, make or cure any Tobacco in Seed, Plant, or otherwise, upon any Ground in *England, Wales, Isles of Guernsey, Jersey, Berwick or Ireland*, upon Pain of Forfeiture of 40 *s.* for every Pole or Rod of Ground planted, set or sown; and so proportionably for any greater Quantity: One Moiety to the King, and the other Moiety to him who will sue for the same in any Court of Record.

And by the Statute of 15 *Car. 2. cap. 7.* the Penalty of 10 *l.* for every Pole or Rod of Ground is given, above the 40 *s.* by the said Act of 12 *Car. 2. cap. 34.* And one third Part thereof given to the King, another third Part to the Poor of the Parish, and the other third Part to the Informer.

And all Sheriffs, Justices of the Peace, Mayors, Bailiffs, Constables, and every of them, upon Information or Complaint made to them or any of them, of any such Tobacco sown or planted within their Precincts, shall within ten Days after such Complaint cause the same to be destroyed. And any Person resisting or opposing the Execution of the said Act to forfeit five Pounds for every Offence, to be recovered as aforesaid, and by Distress and Sale of the Offender's Goods; and for Want of Distress the Offender to be imprisoned two Months without Bail. And over and above the Penalties appointed by this Act for such as resist; by the Statute of 15 *Car. 2. c. 7.* the Party resisting shall be committed to the Gaol without Bail, till he enter into a Recognizance to the King, with two Sureties of 10 *l.* Penalty, not to do so again; and by the Statute of 22 & 23 *Car. 2.* shall forfeit 5 *l.* to be levied by Distress and Sale; and if no Distress, by Imprisonment for three Months without Bail, upon Conviction before two Justices of Peace.

All Justices of Peace, a Month before every General Quarter-Sessions, shall issue Warrants to the High Constables, &c. requiring them to make Search what Tobacco is sowed, set, planted, growing, curing, cured or made, and to make a Presentment in Writing upon

upon Oath, next Sessions, of the Names of the Persons planting, &c. the Quantity of Land, the immediate Tenants or present Occupiers, who shall be deemed Planters thereof.

Inquiry.

Ib. §. 3.

Which Presentment, filed in Sessions, shall be a Conviction, unless the Persons presented (having Notice by the Delivery of a Copy of the Presentment to him, or leaving it at his Dwelling-house or usual Place of Abode, in the Presence of one or more credible Witnesses, ten Days before the next Sessions) shall at next Quarter-Sessions, after such Notice, traverse the same Presentment, and find Sureties for prosecuting his Traverse the next Sessions after such Traverse.

Ib. §. 4.

All Constables, Tithingmen, Bailiffs, and other publick Officers in their Jurisdictions, within fourteen Days after Warrant from two or more Justices of Peace, calling such Assistance as they find necessary, may destroy the same Tobacco.

Officers Negligent.

Ib. §. 5.

If such Tobacco shall be suffered to grow fourteen Days after the Receipt of such Warrant, then such Officers shall forfeit 5 s. for every Pole, Perch or Rod, and so proportionably for a greater or lesser Quantity. One Moiety to the King, the other Moiety to the Informer. 22 & 23 Car. 2.

Assistance.

Ib. §. 6.

If any Person refuse or neglect to assist such Officer, for every such Offence he shall forfeit 5 s. upon Conviction thereof before two Justices of Peace, to be levied by Warrant from such Justices by Distress and Sale; and if no Distress, the Party to be committed to the Gaol without Bail for one Week.

Continued for such Time as the Act for Tonnage and Poundage shall continue by 5 Geo. 1. cap. 11.

Cutting Leaves and Plants, &c. resembling Tobacco.

1 G. 1. c. 46.

Every Person who shall cut or procure to be cut, any Manner of Leaves, Herbs, Plants or Materials (not being Tobacco Leaves) into the Form or Imitation of any the usual Sizes or Cuts which Tobacco is usually cut for Sale, or shall colour, or procure to be coloured or cured any such Leaves, &c. to make them resemble Tobacco, or shall sell or procure to be sold, or agree or offer to sell knowingly, any such Leaves, &c. mixed or not mixed with Tobacco, shall forfeit for every Pound so offered to Sale, and for every Pound of such Mixture 5 s. and after that Rate for a greater or lesser Quantity; one Moiety to the Crown bearing the Charge of the Prosecution, and not otherwise; the other Moiety to the Informer, to be recovered by Action of Debt in the Courts at *Westminster*, with full Costs, &c.

House may be opened to search by a special Warrant from two Justices.

Ib. §. 4.

No House shall be opened to search for such Leaves, or for Engines, Utensils and Tools, &c. without a special Warrant from two Justices of the Peace, and if seized above six Miles from any Port, shall be secured by the Order of two Justices at the King's Charge, till the Cause of Seizure be determined at the next Sessions, or the Sessions after that at farthest; and after Condemnation shall be burnt.

Servants and Labourers employed in cutting Leaves, &c.

Ib. §. 5.

5 G. 1. c. 7.

Servants and Labourers employed in cutting such Leaves, or knowingly selling the same, and being convicted thereof by the Oath of one Witness, before two Justices, shall be by them committed to Gaol, or to the House of Correction, there to be kept at hard Labour for any Time under six Months, without Bail.

Enacted, That the Stat. 12 Anne, cap. 8. for encouraging the Tobacco Trade, and all Things therein contained, shall be continued and in Force during such Time as the respective Duties on Tobacco shall continue.

Timber. Vide Wood.

Toll. See Weights and Measures.

C H A P. C.

Transportation, ^(a) Importation, Exportation, and Transportation of Felons.

One Justice.
1 & 2 Ph. & Ma 5.
P. Jul. 27.

(d) IT should seem by the Words of the Statute, that any one Justice of Peace may inquire, hear and determine (as also may examine the Mariners and every other Person) of all and singular the Offenders against the Act 1 & 2 Phil. & Mar. provided for the restraining of carrying Corn, Beer, Butter, Cheese, Herrings and Wood beyond the Sea. But *quære*.

And it is holden to be great Policy, to provide that Corn be always of a reasonable and competent Value, it being an assured Means to increase and advance Husbandry and Tillage, the antientest of all Trades and Professions, and commanded by God to *Adam*, *Gen. 3. 23.* one of the greatest Commodities of this Realm, and much respected and favoured, as well by the Common Law, as also by the common Assent of the King, the Lords and Commons in many Parliaments. *Co. 4. 39.* See *15 Car. 2. cap. 7.* *22 Car. 2. cap. 13.* *1 Jac. 2. cap. 19.* *1 W. & M. ft. 1. cap. 12 & 24.* *2 Geo. 2. cap. 18.* *5 Geo. 2. cap. 12.* and *11 Geo. 2. cap. 22.* Tit. *Corn, Chap. 27.*

By *18 Car. 2. cap. 2.* the bringing in of Cattle is declared a Nufance, and if any great Cattle, Sheep, Swine, or any Beef, Pork or Bacon, shall be imported or brought into *England*, any Constable, Headborough, Tithing-man, Churchwardens or Overseers, within their Limits, may seise the same, and may keep them for forty-eight Hours in some publick Place; in which Time, if the Owner shall make it appear by the Oath of two Witnesses, unto some Justice of Peace, that the same came not from beyond the Seas, the same by Warrant from a Justice shall be delivered to the Party: But if he shall not make it so appear, the same shall be forfeited; one Moiety to the Seisor, the other Moiety to the Poor where the same are seised, the *Island of Man* excepted, so as they be of their own Breed, and exceed not 600 in one Year, and be landed at *Chester*.

Not only the Constables, Tithingmen, Headboroughs, Churchwardens or Overseers of the Poor, but every Inhabitant, or any other Person whatsoever, shall and may seize any great Cattle, Sheep or Swine, or any Beef, Pork or Bacon, imported into *England* or *Wales* contrary to the aforesaid Statute of *18 Car. 2. cap. 2.* wheresoever the same shall be found, and shall within six Days after Conviction and Forfeiture thereof cause the said Cattle, Sheep and Swine to be killed, and the Hides and Tallow shall be to the Seisor, and the Remainder of the said Cattle, Sheep and Swine shall be forthwith by the Churchwardens and Overseers distributed among the Poor of the Parish, upon Notice thereof to be given by such Seisor.

If such Seisor, Churchwarden or Overseer shall fail in the Execution of his said Duty, they shall severally forfeit forty Shillings for every one of the great Cattle, and ten Shillings for every Sheep or Swine, which should have been so killed or distributed; one Moiety thereof to the Poor of the Parish, and the other to the Informer, to be levied by Distress and Sale of the Offender's Goods, by Warrant of any Justice of Peace of the County or Place where the Offence is so committed, upon Confession of the Party, View of the Justice, or Oath of one or more credible Witnesses (other than the Informer) the Overplus to the Owners, necessary Charges of distraining deducted: And for Want of Distress, the Offender to be committed to Gaol for three Months without Bail or Mainprize.

If no Seisure shall be made by the Officers or Inhabitants within the Liberty, Parish or Place where such Cattle or Goods shall be first imported, such Liberty, Parish and Place, and the Inhabitants thereof, shall forfeit for every Default 100 *l.* for the Use of the House of Correction, within the County or Liberty where such Default shall be.

If any great Cattle, Sheep or Swine shall be once or oftner seised, and afterwards by Permission, Connivance, Negligence, or otherwise, removed and found alive in any other Parish or Place, they shall be liable to like Seisure, and the Seisor and Poor of the Parish or Place to the like Benefit, and the Cattle, Sheep and Swine be forfeited; and the Proof incumbent upon the Owner, as if such Cattle had never been seised before.

If any *English* or other Cattle, driven or intermixed with *Irish* Cattle, shall be seised together with them, such Cattle shall be deemed *Irish*, and shall be subject to like Forfeiture, and be ordered and disposed in all Respects, as if they were *Irish*.

Every Vessel in which any Cattle, Swine, Sheep, Beef, Pork or Bacon shall be imported from beyond Sea, and out of which any of them shall be put on Shore, shall be forfeited; and any Person within a Year after such Importation, may seize and sell her: One Half of the Price to be to the Use of the Poor of the Parish where seised: The other Half to him that shall seise: And any Justice of Peace of the County, or Chief Officer of the Port-Town, in or near the Place where such Importation shall be, or where any of the said Cattle, &c. shall be driven or brought, by Warrant under Hand and Seal, may cause to be apprehended the Masters and Mariners of the Vessel, in which such Importation shall be made, and others employed in landing, driving or taking Care of the same, and commit them to Gaol for three Months without Bail.

All Forfeitures by the Acts of *18 Car. 2. cap. 2.* and *20 Car. 2. cap. 7.* are to be accounted for to such Persons, and in such Manner, as the Overseers of the Poor are appointed to account by the Statute of *43 Eliz. cap. 2.*

*Mutton, Lamb,
Butter and
Cheese.*

No Mutton or Lamb shall be imported into *England* from *Ireland*, or any foreign Ports; nor any Butter or Cheese out of *Ireland*; and all such Mutton, Lamb, Butter or Cheese imported or exposed to Sale here, shall be subject to the like Seizures, and the Importers and Sellers to the like Penalties as are appointed against any Importer or Seller, on Importation of Beef, Pork or Bacon.

Plantations.
15 Car. 2.
c. 7. §. 6.

Suit may be commenced in any Court of Record for any Forfeiture accrued upon any Statute of 15 *Car. 2. cap. 7.* whereby is prohibited the Importing any Commodities of the Growth or Make of *Europe*, into any Place in his Majesty's Possession in *Asia*, *Africa* and *America*, but what shall be shipped in *England* or *Wales*, and that in *English* shipping, &c.

*Lace and
small Wares.*
13 & 14 C. 2.
c. 13. §. 2.

No Person shall sell or cause to be sold, or offer to Sale, or export, any foreign Bone-lace, Cut-work, Imbroidery, Fringe, Band-strings, Buttons or Needle-work, made of Thread, Silk, or any or either of them, in Parts beyond the Seas, or import, bring in, send or convey, or cause, &c. into *England*, &c. any such foreign Bone-lace, &c. upon Pain, That the Person that shall sell or offer to sale foreign Bone-lace, &c. shall forfeit for every Offence 50 *l.* and the whole Bone-lace, &c. And upon Pain that he that shall import, &c. such foreign Bone-lace, &c. shall forfeit the whole Bone-lace, &c. and 100 *l.* for every such Offence. A Moiety thereof to the King, and the other Moiety to the Prosecutor in any the King's Courts of Record, &c.

Search.
Ib. §. 3.

Upon Complaint and Information to any Justice of Peace at Times reasonable, he shall issue out his Warrant to the Constables, to enter and search for such Manufactures in Shops, being open, or Ware-houses and Dwelling-houses of the Persons suspected to have the same, and seize the same. 14 *Car. 2. cap. 13.*

Horses.
1 Ed. 6. c. 5.
§. 1.

No Person shall give, exchange, sell convey or deliver into any Place beyond the Sea, out of this Realm, or the Dominions thereof, any Horse, Gelding or Mare, without Licence from the King, under the Great Seal or Privy Signet. No Person shall convey any Horse, Gelding or Mare into any foreign Parts, without such Licence, upon Pain to forfeit the same to the King, and also 40 *l.* for every one. A Moiety to the King, the other Moiety to the Prosecutor in the King's Court, and Imprisonment for a Year.

*Who may in-
quire.*

Ib. §. 2.

Justices of Peace in their Sessions may inquire of the Offences, and every Subject may arrest the Persons offending against that Act. That Act shall not prejudice any that carry Horses beyond the Sea, in the King's Service, nor to the Warden of the Cinque Ports, that may give or send six Horses or Geldings beyond Sea in every Year, nor to the Master of the Horse, as to the Duties of his Place.

6 G. 1. c. 23.

'Tis Felony without Benefit of Clergy to rescue an Offender ordered to be transported, and likewise aiding or assisting them to escape.

A Felon ordered to be transported, and returning before the Term expired, is guilty of Felony without Benefit of Clergy; and this may be tried in the County where he was taken, or from whence he was ordered to be transported; and a Certificate from the Clerk of the Assize, or of the Peace, or their Successors, containing the Effect and Tenor of the Indictment and Conviction, and of the Order and Contract for Transportation, being produced in Court, shall be sufficient Proof, that such Person hath been before convicted and ordered to be transported.

Touching exporting Sheep, *vide Tit. Sheep.*

Touching exporting Wool, *vide Tit. Wool.*

For importing Fish, *vide Tit. Fish.*

Trees. See *Trespass.*

C H A P. CI.

Trespass.

*Orchards,
Corn and
Fences.*
43 El. c. 1.
§. 1.

ALL and every lewd and mean Persons which shall unlawfully cut or take away any Corn growing, or rob any Orchards or Gardens, or break or cut any Hedge, Pale, Rail or Fence, or dig pull up or take away any Fruit-trees, or shall cut or spoil any Woods, Under-woods, Poles or Trees standing, (not being Felony) and their Procurers or Receivers, knowing the same, being thereof convicted by Confession of the Party, or by the Testimony of one sufficient Witness, upon Oath before any one Justice of Peace, (where the Offence shall be committed, or the Offender apprehended) shall for the first

Fault

Fault give the Party wronged such Recompence (and within such Time) as by any one Justice of Peace (of the County where such Offence shall be done) shall be appointed. And if such Offender shall be thought (in the Discretion of the said Justice) not able, or do not make Satisfaction accordingly; then the said Justice shall commit the said Offender to some Constable or other inferior Officer (where the Offence shall be committed or the Offender apprehended) to be whipped.

Also for the second Fault, and every other Offence whereof such Offender shall be convicted in Form aforesaid, such Offender shall be whipped as aforesaid, without any Satisfaction to be taken.

If any Constable or inferior Officer do refuse, or do not, at the Command of the Justice (by himself, or some other by him to be appointed) execute upon the Offender the Punishment aforesaid, the said Justice may commit such Constable, &c. to the common Gaol, there to remain without Bail until the said Offender be by the said Constable, or by some other by his Procurement whipped, as aforesaid.

But no Justice of Peace shall execute this Statute for any of the Offences aforesaid done unto himself, unless he is associated and assisted with one or more other Justices of the Peace whom the Offence doth not concern.

(a) One Justice of Peace (not being the Party grieved) may send such Offenders for their second Fault, &c. to the House of Correction, as idle and disorderly Persons, there to be detained, &c. at the Discretion of the said Justice; and this by Force of Statute 7 Jac. 1. cap. 4. especially, if they be common Offenders in this Kind; or may bind them to their Good Behaviour, and so over to the next Quarter-Sessions, and by Order from thence, to be sent to the House of Correction, there to be continued some convenient Time.

But for the gleaning and leaving of the Harvest, &c. God commandeth, that it be left for the Poor, the Fatherless, the Widow, and the Stranger. *Levit. 19. 9 & 23. Deut. 22. 24.* And it were worthy the Consideration of the Justices to take some Course that such only might have the Benefit of Gleaning, and not Farmers and Tradesmen, that in many Places in Harvest-Time set their Servants to that Employment, which is no better than to rob the Poor of what properly belongs to them.

If any shall by Night or Day unlawfully break, cut down, cut out or destroy any Head or Dam of any Pond, Pool, Mote, Stagne, Slew or several Pit, wherein Fish are or shall be put, or shall fish therein without Authority, and be convicted thereof at the Suit of the King or Party grieved, he shall be imprisoned three Months, and pay the Party treble Damages; and after the three Months be bound to the Good Behaviour for seven Years with sufficient Sureties, or else continue in Prison for seven Years without Bail. For the Recovery herein, see Tit. *Hunting*.

No Person shall slay, take or cause to be taken by Means of any Craft or Engine, Herons, unless by Hawking or with Long-Bow, upon Pain to forfeit for every Heron 6 s. 8 d. For the Conviction, see Tit. *Hunting*. See postea Tit. *Wood*.

Maliciously	}	Barking,	Any	}	Fruit-Tree,
		Breaking down,			Timber-Tree,
		Cutting up,			Or other Tree.
		Defacing,			
		Destroying,			
		Plucking up,			
		Spoiling or Throwing down			

Trees.
1 G. 1. Stat.
2. c. 48. §. 1.

The Party grieved shall receive Satisfaction from the Inhabitants of the Parish where such Trees shall be barked, &c. against whom an Action may be brought to recover the Damages, according to the Statute 13 Ed. 1. cap. 46.

Any two Justices where such Offence shall be committed, or the Sessions, upon Complaint of the Inhabitants of the Parish, or the Owner of the Trees, or any other, may cause the Offenders to be apprehended, and hear and determine the Offence, and on Conviction may commit them to the House of * Correction, there to be kept to hard Labour for three Months without Bail; and if there be no House of Correction, then to be committed to the common Gaol for four Months, and to be publicly whipped by the common Hangman once every Month during the four Months, on a Market-Day, in some Town, between the Hours of eleven and two.

* And to be publicly whipped once every Month during those 3 Months in some Market Town and Before Day, &c.

Before

Ib. §. 3. Before he is discharged shall find Sureties for his good Behaviour for two Years.
 Ib. §. 4. Maliciously setting on Fire, burning or causing to be burnt, any Wood, Underwood or Coppice, or any Parts thereof, is Felony.

6 G. 1. c. 16.

Any Person	}	Barking,	}	Any	}	Coppices,
		Breaking,				Poles,
		Burning,				Quicksets,
		Carrying away,				Wood-Springs,
		Cutting,				Thorns,
		Defacing,				Trees,
		Destroying,				Tops of Trees,
		Plucking up,				Underwoods,
		Spoiling,				Coppice-Wood,
		Taking up,				Wood,
		Throwing down,				

without the Consent of the Owner, or of him who is intrusted with the Care thereof.

Breaking open, Destroying, Levelling or Throwing down	}	Any	}	Banks,
				Dikes,
				Ditches,
				Fences,
				Gates,
				Hedges,
				Posts,
				Rails,
				Stiles or
				Walls,

Or any other En- closures of	}	}	}	wrongfully and maliciously, without the Consent of the Proprietor, Wood-keeper, or Person chiefly intrusted with the Care of Woods, Under- woods, Parks, Chafes, Cop- pices, or Plantations.
				Chafes,
				Coppices,
				Fruit-Trees,
				Parks,
				Plantations,
				Quicksets,
				Thorns or Trees,

* Cro. Car. 280, 439.
 † Leon. 108.
 Stile 215.
 Sid. 107, 312.
 Raym. 487.
 † Westm. 2.
 He who is damnified shall have Recompence of the Inhabitants of the Village adjoining, as by the Act * 13 Ed. 1. upon which Act † Writs have been founded to distrain the adjoining Vills, to satisfy the Damages, where the Offenders cannot be known; and by the Statute 6 Georgii aforesaid, if he be known, and shall not be convicted by the Parish within six Months after the Fact committed.

Nota; This last Statute extends to preserve all Enclosures about Chafes, Coppices, Trees, which the first Act 1 Georgii did not, but the Prosecution and the Conviction and Punishment must be as by the Statute of Westminster 2. is enjoined.

43 El. c. 7.
 15 Car. 2.
 c. 2.
 Unlawfully taking or cutting Corn growing, robbing Orchards, and taking away any Fruit-Trees, &c. shall make such Recompence as Justices shall direct, and a Sum not exceeding 10 s. to the Poor; and in Default thereof to be sent to the House of Correction, not exceeding a Month, and be whipped.

15 Car. 2.
 c. 2. §. 5.
 Prosecution to be within six Weeks after the Offence, and the Conviction by Confession, or one Witness.

The Defendant was convicted by two Justices upon the Statute 1 Geo. 1. cap. 48. for destroying Fruit-Trees, and it was moved to quash this Conviction, because it did not specify the Punishment inflicted by that Statute, which is to be sent to the House of Correction for three Months, &c. and the better Opinion was, that this being a special Judgment of the two Justices, they should have specified the Punishment inflicted by the Statute, because it might be different from the Punishment appointed by them: However there being no Forfeiture in this Case, it was held, that *Idco consideratum est quod convictus est* was sufficient without setting forth the Punishment. Trin. 9 G. 1. B.R. Trial. See Chap. 187.

C H A P. CII.

Tithes.

TWO Justices of the Peace (the one being of the *Quorum*) upon Complaint by any competent Judge of Tithes, for any Misdemeanor of the Defendant in a Suit of Tithes (or for other Duties of the Church) may cause him to be attached and committed to Ward, there to remain without Bail until he find sufficient Sureties (unto the said Justices) by Recognizance to the King's Use, to obey the Process and Sentence of that Judge.

Also upon Complaint or Certificate in Writing by any Ecclesiastical Judge, that hath given definitive Sentence, in the Case of Tithes, against one which wilfully refuseth to pay the Tithes or Sums of Money so adjudged, two such Justices of Peace may cause the Party to be attached and committed to the next Gaol, there to remain without Bail, till he find such Sureties (as aforesaid) to perform that Sentence.

(a) If a Quaker refuse to pay or compound for Tithes, or Church Rates, the two next Justices may upon Complaint made, summon him to appear before them (other than such Justices who are Patrons of the Church, or interested in the Tithes) and they upon Examination of the Matter on Oath, may ascertain what is due to the Person complaining; and if under 10 *l.* may by an Order under their Hands and Seals direct the Payment thereof, and then if he refuse to pay it, one of the said Justices may by Warrant, &c. cause the same to be levied by Distress and Sale, &c.

An Appeal lies to the Quarter-Sessions, and if the Quaker appeals, no Warrant shall be granted to distrain till the Appeal is determined.

If the Appeal is determined in Favour of the Appellee, the Sessions may give reasonable Costs, to be levied by Distress, &c.

No *Certiorari* is to be allowed, unless the Title of the Tithes is in Question. *Ib.* §. 5.

All Persons shall set out and pay all and singular their small Tithes, Compositions, &c. to the Rectors, Vicars, or to whom they shall be due, according to the Rights used in the said Parishes: And if any Person fail, &c. in the Payment, &c. of such small Tithes, &c. for twenty Days after Demand thereof, then the Person to whom the same are due may make his Complaint in Writing to two or more Justices of Peace in that County, City, &c. where the same grows due, neither of which Justices is to be Patron of the Church where the said Tithes, &c. arise, nor any Ways interested in the said Tithes, &c.

And if Complaint be hereafter brought to two or more Justices of the Peace, as aforesaid, the said Justices are hereby authorized to summon in Writing under their Hands and Seals, by reasonable Warning, the Person or Persons against whom such Complaints shall be made, and after Appearance or Default, the Summons being proved upon Oath, the said Justices or any two of them, shall proceed to examine and determine the said Complaint, and upon Evidence produced before them, shall in Writing under their Hands and Seals, adjudge the Case, and give such reasonable Allowance for such Tithes, &c. so subtracted, and also such Costs, not exceeding 10 *s.* as they shall reasonably think fit.

If any Person shall neglect or refuse, the Space of ten Days after Notice, to pay the sum so adjudged, the Constables and Church-wardens of the said Parish, or one of them shall by Warrant, under the Hands and Seals of the said Justices, distraining the Goods of the Party so refusing, and after detaining them three Days, in Case the Sum adjudged be not paid with reasonable Charges for making the Distress, he shall make publick Sale of the same, pay the Sum adjudged to the Party complaining, retain reasonable Charges for distraining, as the said Justices shall think fit, and return the Overplus.

The Justices in their Examination of the Matters offered to them by this Act, may administer an Oath or Oaths.

No Complaint to Justices of Peace for Tithes, &c. hereafter due, shall be heard and determined by them, unless made within two Years after the said Tithes become due.

Parties aggrieved by any Judgment of the said two Justices, may appeal to the next Quarter-Sessions, and the Justices there present, or the major Part of them, shall

finally hear and determine the Matter ; and if they find Cause to confirm the Judgment given by the said two Justices, they shall decree the same by Order of Sessions, and give Cofts against the Appellant, to be levied by Distress, &c. And no Proceedings to be removed by *Certiorari*, unless the Title of such Tithes, &c. shall be in Question.

Judgment in-rolled.

Ib. §. 9.

Every Person obtaining Judgment, or against whom Judgment shall be obtained before Justices of Peace out of Sessions, for small Tithes, &c. shall procure the same to be inrolled at the next Quarter-Sessions ; and the Clerk of the Peace upon Tender is to inrol the same, for which he shall receive no more than 1 s.

Removal of Party.

Ib. §. 10.

If the Person against whom such Judgment shall be had, shall after such Judgment, and before the Levying the Money adjudged, remove out of the County, City, &c. the Justices who made the Judgment, or one of them, shall certify the same under Hand and Seal to any Justice of Peace of such other County, &c. where the said Person shall inhabit, who is hereby required by Warrant under his Hand and Seal, to the Constables or Church-wardens of the Place to levy the Sum adjudged, in such Manner as the other Justices might have done, in Case the Party had not removed.

Ib. §. 12.

The Justices who shall hear and determine the Matters aforesaid, shall have Power to give Cofts, not exceeding 10 s. to the Party prosecuted, if they shall find the Complaint false and vexatious ; to be levied as aforesaid.

This Act is made perpetual by the Statute 3 & 4 *Ann. cap.* 18.

C H A P. CIII.

Tile.

17 Ed. 4. 4.
Lamb. 197.
Cromp. 130.

BY the Words of the Statute, any one Justice may inquire, hear and determine (by Examination or otherwise by their Discretion) all and singular the Offences committed in Tile-making, *sc.* If they be not made good, and of Earth well prepared, and also of due Assise in Length, Breadth and Thickness ; and may assess the Fines limited by the same Statute ; and may call before him such as have best Knowledge in Tile-making, and appoint them Searchers of the said Defaults ; but Mr. *Lamb.* 197. maketh a Doubt thereof.

(a) But the Justices so resolved, and accordingly made an Order for licensing Persons to be Searchers of all Manner of Tile made within the County of *Middlesex* for four Years. *Ord.* 5. *Oct.* 7. *Jac.* 1. *lib. Sess. pa. Mid.*

Vagabonds. See *Rogues, &c.* Chap. 83.

Waggoners. See *Carriages,* Chap. 21.

C H A P. CIV.

Watch.

13 Ed. 1.
Stat. 2. c. 4.

(a) **I**N great Towns walled the Gates shall be shut up from the Sun-setting until the Sun-rising ; and no Man shall lodge in the Suburbs or any Place out of the Town, from nine of the Clock till Day, except his Host will answer for him.

13 Ed. 1.
Stat. 2. c. 6.

(d) Every Justice of Peace may cause Night-watch to be duly kept for the arresting of Persons suspect or Night-walkers (be they Strangers or others) that be of evil Fame or Behaviour : And this they may do by Force of the Commission, the first *Assig.* *Lamb.* 190.

13 Ed. 1.
Stat. 2. c. 4.

This Watch is to be kept yearly from the Feast of the *Ascension* until *Mickaelmas*, in every Town, and shall continue all the Night, *sc.* from the Sun-setting to the Sun-rising.

Winch.

13 Ed. 1. 4.
5 Ed. 3. 14.

All such Strangers or Persons suspected as shall in the Night-time pass by the Watchmen (appointed thereto by the Town, Constable or other Officer) may be examined by the said Watchmen, whence they come and what they be, and of their Business, &c. And if they find Cause of Suspicion, they shall stay them ; and if such Persons will not obey the Arrest of the Watchmen, the said Watchmen shall levy Hue and Cry, that the Offenders may be taken, or else they may justify to beat them (for that they resist the Peace and Justice of the Realm) and may also set them in the Stocks (for the

same)

same) until the Morning; and then, if no Suspicion be found, the said Persons shall be let go: But if they find Cause of Suspicion, they shall forthwith deliver the said Persons to the Sheriff, who shall keep them in Prison until they be duly delivered; or else the Watchmen may deliver such Persons to the Constable, and so to convey them to the Justice of Peace, by him to be examined, and to be bound over or committed, until the Offenders be acquitted in due Manner. See more of *Watch* in the Title *Felony*.

(a) These Watchmen are also to apprehend all Rogues and Vagabonds, Night-Walkers, Eve-Droppers, Scouts, and such like, and such as go armed, &c.

Note, That in an Action of False Imprisonment brought by one *Sm.* against *Brown* Cro. El. 2. (a Constable of *Chelmsford* in *Essex*) these Things were holden for Law concerning P. 204. Watches, about 32 *Eliz.*

1. First, That no Man is compellable to watch except he be an Inhabitant within the same Town.

2. That such as are Inhabitants within the Town are not compellable to watch at the Will of the Constable, but only when their Turn cometh; and therefore *Gawdy* (Justice) said, That the Statute of *Winchester* is, That from henceforth Watches shall be kept as hath been used in Times past, &c. and so the Manner of Watching is not referred to the Will of the Constable, but only to the Use heretofore, which is commonly by Turn, or by the House.

3. That if a Man who is compellable to watch shall contemptuously refuse, upon Commandment of the Constable, the Constable *Ex Officio* may set him in the Stocks for such his Contempt. *Tamen quære de hoc.* Or else the Constable may present such his Default at the Assises or Sessions of the Peace, &c. or may complain thereof to any Justice of Peace who may bind the Offender to the Good Behaviour, and so over to the next Quarter-Sessions, &c.

Note also, That both Watching and Warding must be by Men that be able of Body and sufficiently weaponed.

And Note, That Watching is properly intended of the Night, and Warding for the Day-time; and for the Warding in the Day-time, for the Apprehending of Rogues and the like idle evil Members, is of great Use; it therefore is and must be left to the Discretion of the Constable and Directions of the Justice of Peace to appoint or alter according to the Occasion. *Resol. 36. supra, Chap. 73.*

A Certificate under the Hand and Seal of two Justices, that a Watchman, or other Person, was killed in endeavouring to take a Burglar or House-breaker, intitles his Executor or Administrator to 40*l.* 5 Ann. c. 31.

C H A P. CV.

Watermen.

EVERY Justice of Peace (by the general Words of the Statute) within the Shires next adjoining to the River of *Thames* (between *Gravesend* and *Windſor*) within his several Jurisdiction hath Power (upon Complaint made to him by the Overseers and Rulers of the Watermen and Wherry-men, or Two of them, or by the Masters of any such Servants) to examine, hear and determine all Offences against the Statute, and to set at large him that shall be imprisoned by such Overseers or Rulers, according to this Act (if there be just Cause) and also by his Discretion to punish those Overseers and Rulers that shall unjustly punish any Person by Colour of this Act. 2 & 3 P. & M. c. 16. P. Boteman. 4. P. Just. 109. Cromp. 131. Lamb. 205.

The Offences of Watermen against this Statute are these.

1. No single Man shall be a Waterman there, unless he be an Housekeeper, or an Apprentice, or retained in Service by the whole Year. See 1 *Jac. 1. cap. 16.* P. Botem. 4. P. Ibid. 3.

2. One of the (two) Watermen, rowing together in one Boat, must be allowed by the most Part of the eight Overseers, by Writing under their Seal, and must have used rowing there two Years before.

3. Watermen shall not hide themselves in Time of Pressing for the King's Service, &c. P. Ibid. 6.

4. Watermen shall not take for their Fare and Labour above the Prices assessed, &c. P. Ibid. 7. and set up in Tables in *Westminster-Hall*, &c. But *Quære* whether the Justice of Peace be to meddle in this. See the Statute at large.

(a) It shall not be lawful for any Person who shall keep or work any Wherry-Boat, Tilt-Boat, Barge or other Vessel, for carrying Passengers or Goods for Hire upon the 2 Geo. 2. c. 26. §. 1.

Thames

Thames between *Gravesend* and *Windsor*, to take or employ any Apprentice or Servant, unless he be a House-Keeper, or have some known Place of Abode where he may entertain such Apprentice, &c. and shall Register with the Clerk of the Waterman's Company the Habitation, &c. where he shall reside, upon Pain that every Person receiving any Apprentice, &c. contrary to this Act, and being convicted before the Lord Mayor, or any one Justice of Peace for the City, or for the County or Place where the Offenders shall be found, by the Oaths of two Witnesses, shall forfeit 10 *l.* to be levied by Distress and Sale of Goods by Warrant of such Lord Mayor, &c. and for want of Distress, he shall by like Warrant be committed to the Work-House or House of Correction, to be kept to hard Labour not exceeding one Month, nor less than fourteen Days; and the Clerk of the Company shall register the Habitation, &c. of every such Waterman, &c. without Fee; and in case of Neglect, such Clerk shall forfeit 10 *l.* to be levied as any other Penalty by this Act. And if any Waterman, &c. shall not Register his Habitation, &c. and every Removal thereof, such Apprentice bound to such Waterman, &c. shall, on Application to the Rulers at any of their publick Courts, be turned over to any other Master or Mistress.

Ib. §. 2. It shall not be lawful for any Apprentice to have the sole Care of any Boat within the Liberties aforesaid, till such Apprentice shall have attained the Age of sixteen Years, if he be the Son of a Waterman, and seventeen Years, being the Son of a Landman; and unless he shall have worked on the River for two Years at least before his attaining of the said Ages; and if any Apprentice under the said Years shall offend contrary to this Act, and be convicted in Manner aforesaid, the Master of such Apprentice shall forfeit 10 *s.* to be levied, &c. as any other Penalty in this Act.

Ib. §. 3. In all Cases where Distress cannot be found to satisfy the Penalties inflicted by any Rules, &c. of the Company, Oath being made of such Want of Distress before the Lord Mayor, or any Justice of Peace for the Place where the Offender shall be found, it shall be lawful for such Lord Mayor, &c. to commit such Offender to the Work-House or House of Correction, to be kept at hard Labour not exceeding one Month, nor less than fourteen Days, such Offender being convicted according to this Act, or the Act 11 & 12 *Will.* 3. *cap.* 21.

Ib. §. 4. If any Person, not having served seven Years to any Waterman, &c. (except Trinity-men, Fishermen, Ballastmen, and Persons employed in navigating Western Barges, Mill-Boats, Chalk-Hoys, Faggot and Wood Lighters, Dung-Boats and Gardeners Boats, in such Manner as hath been accustomed, and is allowed by 11 & 12 *Will.* 3. *cap.* 21.) shall row any Boat or other Vessel upon the River for Hire, between the Limits aforesaid, every such Offender being convicted in Manner aforesaid shall forfeit 10 *l.* to be levied as aforesaid; and for want of Distress, the Lord Mayor, or any Justice of Peace for the Place where the Offence shall be committed, is required by Warrant to commit such Offender to the next publick Work-House, or House of Correction, not exceeding one Month, nor less than fourteen Days.

10 Geo. 2. c. 31. §. 2. Apprentices to Watermen between *Gravesend* and *Windsor*, shall be bound by Indentures to serve seven Years, upon Pain that every Person acting contrary shall forfeit 10 *l.* upon Conviction, before a Justice of Peace.

Ib. §. 3. Apprentices bound contrary to this Act shall not thereby obtain any Freedom, but shall be liable to pay for every Time they shall work any Boat or other Vessel, being convicted in Manner aforesaid, 10 *l.*

Ib. §. 4. No Freeman of the Company, nor his Widow, shall at one Time take more Apprentices than two, nor shall take the second Apprentice till the First hath served four Years, under the Penalty of 10 *l.*

Ib. §. 5. It shall not be lawful for any Waterman or Lighterman, or his Widow, to keep any Apprentice, unless such Waterman, &c. be the Occupier of some Tenement wherein to lodge himself and his Apprentices; and such Waterman, &c. shall keep such Apprentices to lodge in the same House wherein he doth lodge, upon Pain of 10 *l.*

Ib. §. 6. If any Person shall knowingly and wilfully produce any forged or false Certificate, and shall be thereof convicted before the Lord Mayor, or any Justice of Peace for the City, by the Oath of one Witness, he shall forfeit 10 *l.*

Ib. §. 8. It shall not be lawful for any Person who shall work any Tilt-Boat, Row-Barge, or other Boat, for Gain, to carry in any such Boat more than thirty-seven Passengers, and three more Passengers only, if brought on Board by the Way; nor to carry in any other Boat or Wherry more than eight Passengers, and two more only if called in by the Way; nor to carry in any Ferry-Boat or Wherry allowed to work on *Sunday* more than eight Passengers; and if any Person shall carry in any such Tilt-Boats, &c. a greater Number,

every Person so offending, and being convicted by the Oath of one Witness, or by Confession before the Lord Mayor of *London*, or one Justice of Peace for the Place where the Offence shall be committed, or the Offender found, or on View of any such Justice, shall for the first Offence forfeit 5*l.* and for the second Offence 10*l.* one Moiety to the Informer, and the other Moiety to such Uses as the other Penalties imposed by this Act; and every Person who shall offend in the Premises a third Time, shall be disfranchised for twelve Months from working any Boat, &c. And in case any greater Number of Persons shall be carried in any such Tilt-Boats, &c. and any Passenger shall be drowned, every Person who shall work such Boats offending therein, and being convicted, shall be guilty of Felony, and transported as Felons. See the Statute, *sect.* 9, 10, 11, 12. for the Regulations relating to the *Gravesend* Boats.

Penalties by this Act to be levied by Distress and Sale of Goods by Warrant of the Lord Mayor of *London*, or one Justice of Peace; and for Want of Distress, the Offender may be committed to the House of Correction to hard Labour, not exceeding one Month, nor less than fourteen Days. ib. §. 15.

C H A P. CVI.

Wax.

(a) **T**HE 11 *Hen.* 6. *cap.* 12. concerning Wax-Chandlers, and the Price of Candles, and other Wax-Works, inserted by *Dalton*, is repealed by 21 *Jac.* 1. *cap.* 28. *sect.* 11.

By 23 *El.* *cap.* 8. Mixing Wax for Sale with Rosin, Tallow, or other deceitful Thing, is a Forfeiture of 2*s.* for every Pound, Half to the Crown, and Half to the Informer, to be sued for in any Court of Record. And Counterfeiting the Marks mentioned in the Statute is a Forfeiture of 5*l.* to be divided and recovered as above. 23 *El.* c. 8. §. 1. ib. §. 6.

C H A P. CVII. (a)

Wears.

EVERY Person that shall erect any new Wear along the Sea-Shore, or in any Haven, Harbour or Creek, or within five Miles of the Mouth of any Haven or Creek, or shall willingly take, destroy, or spoil any Spawn, Fry or Brood, or any Sea-Fish in any Wear, Engine or Device whatsoever, shall forfeit 10*l.* for every such Erecting or Spoiling. The one Moiety to the King, the other Moiety to the Prosecutor. *Erecting Wears.* 3 *Jac.* 1. c. 12. §. 2. *Catching Fish with them.*

Any Person, which in any Haven, Harbour, Creek, or within five Miles of the Mouth of any Haven, Harbour or Creek of the Sea, shall Fish with any Draw-net or Drag-net, not three Inches Mesh, *viz.* an Inch and a Half from Knot to Knot, except for the Taking of Smoulds in *Norfolk* only; or with any Net with Canvas, or any other Engine or Device, whereby the Spawn, Brood, or Fry of Fish may be destroyed, shall forfeit for every Net, and every Time so doing 10*s.* a Moiety to the Poor of the Place, &c. the other Moiety to the Prosecutor, to be levied by the Mayor, &c. or by Warrant of one Justice of Peace, by Distress and Sale of Goods, rendering the Overplus, &c. *Unlawful Nets.* *Ibid.*

By 6 & 7 *Will.* 3. *cap.* 16. The Justices of Peace of *Wilts*, *Gloucester*, *Oxford*, *Berks*, and *Bucks*, within their respective Counties, shall be Commissioners for putting in Execution the Powers herein mentioned, *viz.* they, or five of them, shall have Power at their Quarter-Sessions, upon Examination upon Oath, to make Orders for settling reasonable Rates to be taken from the Owners of Barges, by the Occupiers of Locks, Wears, Bucks, Winches, Turnpikes, Dams, Floodgates, or other Engines, within their Counties, for the Help which such Barges may receive thereby, regard being had as well to the ancient Rates as the Charges of Repairing; and also to appoint other necessary Rules concerning the Navigation, and concerning such Locks, &c. and concerning the Behaviour of Barge-men belonging to such Barges. 6 & 7 *W.* 3. c. 16. §. 2.

3 Geo. 2.
c. 11.

This Act was revived and amended by 3 Geo. 2. cap. 11. By which last Act the Members of Parliament for the Counties of *Middlesex, Surry, Berks, Bucks, Oxon, Gloucester* and *Wilts*, and several other Persons therein named, for each of the said Counties severally, are to be Commissioners for regulating the Prices to be taken for the Passage of Barges, &c. by Owners of Locks, Weirs, &c.

The Act of 3 Geo. 2. cap. 11. is by 13 Geo. 2. cap. 18. continued till the 1st June 1747.

C H A P. CVIII. (a)

Weavers.

What Looms
they may keep.
2 & 3 P. & M.
c. 11. §. 2.

NONE using the Trade of Cloth-working, living out of a City, Borough, Market-Town, or Corporate Town, shall keep above one Woollen Loom at one Time in his House or Possession, or make Profit by letting or setting a Loom, or of a House wherein a Loom is, and to be let with it, upon Pain to forfeit for every Week 20 s.

Ib. §. 3.

No Woollen Weaver living out of a City, &c. shall keep above two Looms, or make Profit by any other Loom, upon Pain to forfeit for every Week 20 s.

Ib. §. 4.

None using the Trade of a Weaver, and not Cloth-making, shall keep a Tucking-mill, or use the Trade of a Tucker, or Fuller, or Dyer, upon Pain to lose for every Week 20 s.

Ib. §. 5.

None using the Trade of a Tucker or Fuller, shall keep or have a Loom, or make any Profit thereby, or forfeit for every Week 20 s.

What Appren-
tices they may
take.

Ib. §. 7.

No Woollen Weaver living out of any City, &c. shall have above two Apprentices, upon Pain of 10 l. *

*The Clause in 5 El. c. 4. §. 32. is repeal'd by 5 W. & M. c. 9.

Ib. §. 8.

No Person shall use the Trade of a Weaver, except he have been an Apprentice, or used the Trade seven Years, on Pain of 20 l.

Ibid.

Of all which Forfeitures, a Moiety to the Queen, and the other Moiety to the Prosecutor, in any Court of Record, by Action, &c. or Information.

C H A P. CIX.

Wine.

THE 24 Hen. 8. cap. 6. mentioned by Dalton under this Title, is repealed by 21 Jac. 1. cap. 28.

Licences.

7 Ed. 6. c. 5.
§. 3.

(a) Note, That no Person may sell any Wine in any Town not Corporate, but by the Licence of the Justices of the Peace in open Sessions by Writing under the several Seals of every of the said Justices, upon Pain of 5 l. for every Day of so offending. See *Co. lib. Entr. fol. 370. Finch's Case*, who recovered 550 l. in an Information upon this Statute, notwithstanding the Queen's Licence there, pleaded in Bar of the said Action.

Ibid.

And by the Statute in Towns corporate, no Person to Sell but by Licence of the Mayor, Aldermen, &c. and that under the common Seal of the Corporation upon the same Penalty.

12 Car. 2.
c. 25. §. 1.

No Person unless he be authorized in Manner as by this Act, shall sell by Retail, that is by the Pint, Quart, Bottle or Gallon, or by any other greater or lesser retail Measure, any Wine to be drank in his Mansion-house, or without, upon Pain of 5 l. one Moiety to the King, the other to him that will sue for the same in any of the King's Courts of Record.

Ib. §. 2.

Commissioners to be appointed from Time to Time, under the Great Seal.

Extortion.

Ib. §. 10.

No Officers to be appointed by his Majesty for carrying on the Duty of Wine Licences by this Statute of 12 Car. 2. cap. 25. shall demand or receive any Fees or Rewards, or Sums of Money for, or in Respect of his Service, other than 5 s. for a Licence, 4 d. for an Acquittance, and 6 d. for a Bond, under the Penalty of 10 l. A Moiety to the King, the other Moiety to the Prosecutor.

No Person selling or retailing Wine, shall mingle or utter any *Spanish* Wine, mingled with *French* or *Rhenish* Wine, Cyder, Perry, Honey, Sugar, Syrups of Sugar or Molasses, or any Syrups; or put in any Hinglafs, Brimstone, Lime, Raisins, Juice of Raisins, Water, or any other Liquor or Ingredient; or Clary, or other Herb, or any Flesh; nor shall any such Person mingle or utter any *French* Wines mingled with *Rhenish* or *Spanish* Wines, Cyder, Perry, Stummed Wine, Vitriol, Honey, &c. and no such Person shall mingle or utter any *Rhenish* Wines mingled with *French* or *Spanish* Wines, Cyder, &c. on Pain to forfeit, *viz.* Every Person selling Wine in Gros, mingled or abused as aforesaid, for every such Offence 100 *l.* And every Retailer for every such Offence 40 *l.* A Moiety to the King, the other Moiety to the Informer, to be recovered in any Court of Record by Action of Debt, Bill, Plaint or Information, &c.

Mingling or corrupting.
Ib. §. 11

No *Canary* Wines, *Muskadel* or *Alicant*, or other *Spanish* or Sweet Wines shall be sold by Retail at above 18 *d.* per Quart. No *Gascoign* or *French* Wines at above 8 *d.* per Quart. No *Rhenish* Wines at above 12 *d.* per Quart. And so for lesser or greater Quantities, upon Pain to forfeit for every Pint, Quart, Pottle, Gallon, or greater or lesser Measure 5 *l.* A Moiety to the King, the other Moiety to the Profecutor, to be recovered as aforesaid: Confirmed by Statute 13 *Car. 2. cap. 7.*

Prices and Penalty.
Ib. §. 12.

No Wines (except of the Growth of the Dominions of the Great Duke, or of *Turky* and the *Levant*) shall be imported in Flasks or Bottles, or in any Vessel containing less than 25 Gallons, on Pain of forfeiting the same, or the Value thereof, one Moiety to the King, the other Moiety to the Seisor or Profecutor, in any Court at *Westminster*, or by any Laws of Excise, for Forfeitures incurred in *England*, or in the Court of *Exchequer* in *Scotland*.

1 G. 2. c. 17.
§. 7, 8.

C H A P. CX. (a)

Wild Fowl.

NO Person shall between the last Day of *May*, and the last Day of *August*, take or cause, &c. any *Wild Fowl*, as Ducks, Mallards, Widgeons, Teals, wild Geese, or other Kinds of *Wild Fowl*, with Nets or other Engines, upon Pain of a Year's Imprisonment, and to pay 4 *d.* for every one so taken.

At what Time not to be taken.
25 H. 8. c. 11
§. 2.

The Justices of Peace have Power to hear and determine the Offences aforesaid, as in Cafes of Trespafs.

Ib. §. 3.

A Gentleman that may dispend 40 *s.* per Annum of Freehold, may hunt them with Spaniels only, or the Long-bow.

Ib. §. 4.

From the last Day of *March* to the last Day of *June* in every Year, none shall take or convey, or destroy any Eggs of *Wild Fowl* from the Place they are laid by the *Wild Fowl*, upon Pain of Imprisonment for a Year, and to lose for every Egg of a Crane or Bustard 20 *d.* And for the Egg of a Bitton, Heron or Shovelar 8 *d.* And of a Mallard, Teal, or other *Wild Fowl* 1 *d.* And all Justices of Peace shall have Power to inquire, hear and determine the same.

Eggs.
Ib. §. 5

The Part of the Statute 25 *Hen. 8. 11.* touching taking of *Wild Fowl*, was repealed by 3 & 4 *E. 6. 7.* But it is again revived by 21 *Jac. 28. sect. 9.* which is continued by 3 *Car. 1. 4.* and 16 *Car. 1. 4.* and so is in Force at this Day.

C H A P. CXI.

Wood.

TWO Justices of Peace (not being of Kindred, Alliance, Counsel or Fee to the Lord or Owner of the Wood) appointed by the more Part of the Justices of Peace at their Sessions, upon Complaint of the Lord made unto them, may divide and set out the fourth Part of the Wood, if the Lord and Commoners thereof (being first called before them) cannot agree upon it.

35 H. 8. 17
§. 7.

(a) Whereas the Statute of 43 *Eliz.* doth not sufficiently prevent nor punish the cutting and spoiling of Woods, by this Statute, it is enacted, that every Constable and other Person

Cutting Woods.
15 Car. 2.
c. 2. §. 2.

Person in every County, City, or other Place, where they shall be Officers or Inhabitants, shall and may apprehend, or cause to be apprehended, every Person they shall suspect having, carrying, or conveying, any Burden or Bundle of Wood, Poles, young Trees, Bark, Mast of Trees, Gates, Stiles, Posts, Pales, Rails or Hedgwood, Broom or Furzes. See Tit. *Trespass*. And by Warrant under the Hand and Seal of any one Justice, directed to any Officer, he may enter into and search the Houses, Yards, Gardens, and other Places belonging to the Houses of any Persons they shall suspect to have Trees aforesaid, and finding any such Wood, &c. to apprehend the Persons suspected for cutting or taking the same, and as well such Persons apprehended or taken carrying any Kind of Wood or other Premises, as those in whose Houses, or other Places belonging to them, any of the same shall be found, to carry before any one Justice of the Peace of the same County, City, or Town Corporate. And if such Persons suspected do not give a good Account how they came by the same, by the Consent of the Owner, such as shall satisfy the said Justice (or within some convenient Time to be set by the said Justice) produce the Party of whom they bought the said Wood, or some credible Witness upon Oath, to prove such Sale, then such Persons suspected, not giving such good Account, nor producing such Witness, shall be judged as convicted, for cutting and stealing of Woods, Underwoods, Poles, Trees, Gates, Stiles, Posts, Pales, Rails, Hedgwood, Broom or Furze, within the Meaning of the said Statute of 43 *Eliz.* and liable to the Punishment therein, and of this Act, *viz.*

Penalty.
Ib. §. 3.

Every Person so convicted, shall for the first Offence give the Owner Satisfaction for his Damages within such Time as the Justice shall appoint, and over and above, pay down to the Overseers of the Poor of the Parish where such Offence is, such Sum of Money, not exceeding ten Shillings, as the said Justice shall think fit: In Default of either of which Payments the said Justice may commit such Offender to the House of Correction for such Time (not exceeding one Month) as he shall think fit, or to be whipt by the Constable, or other Officer, as in his Judgment shall seem expedient.

Ibid.

And if such Person shall again commit the said Offence, and be thereof convicted as before, that then the Persons offending the second Time, and convicted, shall be sent to the House of Correction for one Month, and there to be kept to hard Labour: And for the third Offence, convicted as before, shall be judged and deemed as incorrigible Rogues.

Buying.
Ib. §. 4.

And whosoever shall buy any Burdens of Wood, or any the Premises, suspected to be stolen or unlawfully come by, the Justices, the Mayor or Chief Officer, or any one of them, within their respective Jurisdictions, upon Complaint, may examine the Matter upon Oath: And if they find the same was bought of any suspected to have stolen or unlawfully come by the same, then any one of the said Justices or Chief Officer shall and may award the Party that bought the same to pay treble the Value thereof to the Party from whom the same was stolen or unlawfully taken: And in Default of present Payment, to issue forth a Warrant to levy the same by Distress and Sale of the Offender's Goods, rendering the Overplus to the Party: And for Want of such Distress, to commit the Party to the Gaol, at his own Will, there to remain one Month without Bail.

But no Person is to be questioned for any Offence within this Act, unless within six Weeks after the Offence committed; nor if punished by any former Law for the same.

Quære, If no Owner can claim the Wood as his Own, then it seems, although the same be suspected to be stolen, no Proceedings can be on this Act.

Standels.
35 H. 8. 17.
§. 1

Every Owner of Coppice-wood (of fourteen Years growing or under) for Inheritance, Life, Copyhold, or for Years, shall leave standing for every Acre, twelve Standels or Storers of Oak; if so many of Oak; if not, to be made up of Elm, Ash, Asp or Beech, to be left of those that were left standing at the last Selling; if so many; if not, of others, likely to be Timber-trees, which Storers shall not be cut till they be ten Inches square, within three Foot of the Ground, upon Pain of 3 *s.* 4 *d.* for not leaving the said Storers. A Moiety to the King, the other to the Prosecutor, by Action, &c. or Information in any Court of Record.

Inclosure.
Ib. §. 2.

All Coppice and Underwoods that shall be felled at fourteen Years Growth or under, from the twentieth Day of *April* next after the Felling for four Years, shall be sufficiently inclosed, and the Springs preserved from Cattle by him that hath the lawful Interest and Possession, upon Pain to forfeit 3 *s.* 4 *d.* for every Rod not so inclosed or preserved by the Person so bounden to it for every Month.

Ibid.

All Coppice above fourteen Years Growth, and not above twenty-four, shall in like Sort be inclosed or preserved for six Years, under the like Penalty; and this is enlarged to eight Years, as above.

No Person shall convert into Tillage or Pasture any Coppice or Underwoods, containing two Acres or more, being then Coppice or Underwood, and being two Furlongs distant from the Owner's House, or the House to which it appertains, upon Pain to forfeit for every Acre 40 s. *Altering.*
Ib. §. 3.

Every Person having several Woods or Coppice set with great Trees about twenty-four Years Growth, shall at the Felling, leave for every Acre twelve Oaks, if so many Oaks, or else so many Trees of Elm, Alb, Asp, Beech, as make up the Number to be left standing, twenty Years after the Felling; and for seven Years next after the Felling, preserve and inclose it from Destruction by Cattle, upon Pain that the Owner forfeit for every great Tree lacking 6 s. 8 d. and for every Month for every Rod not inclosed or preserved, 3 s. 4 d. *Standels*
Ib. §. 5.
Inclosing.

But the Owner may take any of them for Repairs and Necessaries. Ib. §. 6.

The Lord, Owner of the Soil where Woods grow, and others having Common, shall before Felling, call together the Tenants, and by the Consent of more Part of them, if they can agree, shall set out a fourth Part thereof: And if the Lord and Tenants do not agree, then two Justices to be assigned by the Sessions, at the Request of the Lord, being not of his Alliance, Kin, Counsel or Fee, shall call together Twelve such Commoners and Inhabitants, and under such Penalties as they think fit; and being met, and the Justices shewing the Cause of their Meeting, if the Justices, Lord, Commoners and Inhabitants, or the major Part of them cannot agree upon a Division of a fourth Part, the Justices may set out a fourth Part; and the Lord or Owner may inclose and fell. *Commoners*
Ib. §. 7.

Standels, Storers and Trees, shall be left upon like Penalties, as before is limited, and the Inclosure maintained, and Springs preserved seven Years from the Felling; and within that seven Years no Beast be put in or suffered to feed there, upon Pain to forfeit 4 d. for every Beast. And the Owner to forfeit for every Tree otherwise felled 6 s. 8 d. *Standels.*
Ib. §. 8.
Ib. §. 9.

After such inclosing, the Tenants may use and enjoy their Common in the Residue not inclosed; and the Lord shall put no Cattle therein for the seven Years. And after the seven Years it shall be left open, and used as before. *Preservation.*
Ib. §. 10.

But by 13 *El.* 25. the Woods are to remain inclosed, and Springs to be preserved two Years longer than by 35 *H.* 8. *cap.* 17. is directed, upon the like Penalties. 13 *El.* c. 25.
§. 18.

No Person shall fell or cause, &c. any Oaken Trees, meet to be barked (where Bark is worth two Shillings a Cart-load above the Charges) except Timber for Houses, Ships or Mills; but between the first Day of *April* and the last Day of *June*, upon Pain of Forfeiture of the Bark, or double the Value thereof. *Bark.*
1 *Jac.* 1. c. 22.
§. 20.

No Person shall convert to Fuel, for the Making of Iron, in any Iron-Mills, Furnace or Hammer, any Manner of Wood or Underwood, growing within twenty-two Miles about the City of *London*, or Suburbs; or within twenty-two Miles of the River of *Thames*, from *Dorchester*, in the County of *Oxford*, downwards; nor within four Miles of the Foot of the *Downs*, betwixt *Arundel* and *Pemsey* in *Suffex*; nor within four Miles of *Winchelsey* or *Rye*; nor within two Miles of *Pemsey*, or within three Miles of *Hastings*, upon Pain to forfeit for every Load 40 s. *Felling for*
Iron-works.
23 *El.* 5. §. 1.

This Act shall not extend to any Woods in any such Parts of the Wilds of *Surry*, *Suffex* or *Kent*, as is distant above 18 Miles from *London*, and 8 Miles from the *Thames*. Ib. §. 2.

No new Works shall be set up within 22 Miles of *London*, nor within 14 Miles of the *Thames*, nor within four Miles of the *Downs*, or of the Towns of *Pemsey*, *Winchelsey*, *Hastings* or *Rye*, upon Pain to forfeit 100 l. Ib. §. 3.

A Moiety whereof to the Queen, the other Moiety to the Informer, by Action, &c. or Information in any Court of Record, &c.

The Affize of Tale-wood, Billet, Fagots, and the ordering thereof, and the Penalties therein, see 43 *Eliz.* 14.

See 27 *Eliz.* *cap.* 19. *supra* Chap. 51.

Any Justice of Peace of the County (or the Mayor, &c. of any Town Corporate) shall have Power to call before him six good Men of the Town, &c. where Billet is exposed to Sale, and shall swear them truly to inquire and present whether the said Billet be of good Affize; and if they present that such Billets are not affized and marked as the Act directs, the Justice shall take the Billets not marked, or false affized, as forfeited, and deliver them to the Overseers of the Poor, to be given to the Poor. 9 *Ann.* c. 15.
§. 2.

See 1 *Geo.* 1. *cap.* 48. 6 *Geo.* 1. *cap.* 16. *supra* *Tit.* Trespass, *Chap.* 101.

C H A P. CXII.

*Weights and Measures.**Two Justices.*11 H. 7. 4.
P. Just. 92.
Lamb. 345.

Ibid.

Lam. 345.
P. Weight 9.P. Just. 92.
Lamb. 345.*False Weights.*

11 H. 7. 4.

*Vera fides,
pondus, men-
sura, moneta
fit una,
Ac status illæ-
sus totius or-
bis erit.*9 H. 3. 25.
P. Weight 1.
P. 7.16 Car. 1.
c. 19. §. 2.

Ib. §. 9.

Jurisdiction.

Ib. §. 3.

Standard.

Ib. §. 4.

Extortion.

Ib. §. 5.

TWO Justices of Peace (one being of the *Quorum*) may by Examination or Inquiry; hear and determine the Faults of Head Officers in Cities, Boroughs and Market-Towns, that do not twice every Year view and examine all Weights and Measures in their Towns, &c. and do not break and burn the defective.

Also two such Justices may by Examination or Inquiry, hear and determine the Faults of all Buyers and Sellers, which do not buy and sell with Weights and Measures that be lawful, (*ſc.* with such as be marked and sealed, like and equal with the King's Standard.) Also the said Justices may break and burn all defective Weights and Measures.

The said Justices may fine all and every the Offenders aforesaid by their Discretion, and make Proceſs againſt them, as if they were indicted of Treſpaſs againſt the Peace. For the Proceſs, ſee hereof in the Title *Proceſs*.

(a) Mayors, Bailiffs, and Head Officers of Cities, Boroughs and Market-Towns, ſhall cauſe twice a Year, or oftner, as they think fit, all Weights and Measures there to be brought before them; and ſuch, as upon View and Examination they ſhall find defective; to break and burn; and the Parties which have offended, and be found defective, ſhall for the firſt Offence forfeit 6 s. 8 d. for the ſecond 13 s. 4 d. and for the third 20 s. to the Mayor, Bailiff, or other having Jurisdiction and Correction; and for further Punishment to be ſet on the Pillory.

(d) Now for the readier Direction of the Juſtices of Peace herein, I thought good to ſet down the juſt and certain Contents of all (or moſt Sorts of) Weights and Measures, that ſo they may the better judge what be lawful or defective, and what not.

By the Statute of *Magna Charta*, cap. 25. there ſhall be but one Weight and one Meaſure of Corn, Wine, Beer and Ale; and one Yard throughout the whole Realm, (*ſc.* according to the King's Standard in the *Exchequer*.) And this Statute of *Magna Charta* hath ſince herein been confirmed by many Parliaments, *viz.* by the Statutes of 14 *Ed.* 3. 12. 25 *Ed.* 3. 10. 27 *Ed.* 3. 10. 34 *Ed.* 3. 5. 13 *Rich.* 2. 9. 8 *H.* 6. 5. 7 *H.* 7. 4. 11 *H.* 7. 4. and 12 *H.* 7. 5. as thereby appeareth.

(a) There ſhall be one Weight, one Meaſure, and one Yard, according to the Standard of the *Exchequer*, throughout all the Realm, as well in Places privileged as without, and every Meaſure of Corn ſhall be ſtriked without heap. And whoſoever ſhall keep any other Weight, Meaſure or Yard, whereby any Corn, Grain, or other Thing is bought or ſold, ſhall forfeit for every Offence five Shillings, being thereof convicted, by the Oath of one ſufficient Witneſs, before any Juſtice of Peace, or Head Officer of City, Town, or Place where the Offence is done, to be levied by the Church-wardens or Overſeers of the Poor of the Pariſh, to the Uſe of the Poor of the ſaid Pariſh, by Diſtreſs and Sale of the Offender's Goods; and for want of Diſtreſs, to be imprifoned without Bail until Payment. And any Juſtice of Peace, upon Suit againſt him, for any Thing done upon this Act, to plead the General Iſſue, and give the Act in Evidence, and to have treble Coſts, if unjuſtly vexed.

The Clerk of the Market, his Duty follows.

The Clerk of the Market of the King's Houſhold, ſhall execute his Office only within the Verge of the King's Houſe, and no where elſe. And all Mayors, and Head Officers of Towns, Lords of Liberties, according to their Liberties and Jurifdictions, may execute their Offices accordingly.

If any Clerk of the Market ſhall ſeal or allow any Weights or Meaſures, other than according to the Standard in the *Exchequer*, or ſhall reſuſe to allow ſuch as are according to it, paying only ſuch Fees, as by Statute or Cuſtom are allowed, they, their Deputies, or Agents, ſhall forfeit 5 l. to be levied as aforesaid.

If any Clerk of the Market of the King's Houſhold, or others, having Power to execute the Office, ſhall take, by Colour of his Office, any Fines or Fees, other than ſuch as are allowed by Statute or Cuſtom, or ſhall take any Fine, Fee, Reward or Conſideration for making, ſigning, or Examination of any Weights or Meaſures, formerly marked or ſealed; or ſhall ſet any Fine or Amerciament, without legal Trial of the Offence, or otherwiſe miſdemean himſelf in his Office, and be convicted, ſhall for the firſt Offence

forfeit

forfeit 5 *l.* for the second 10 *l.* for the third, and every other Offence 20 *l.* to be levied as aforeſaid to the Uſe of the Poor.

The Meaſure called *Water Meaſure* is thereby continued where the ſame was then uſed. But by 22 *Car.* 2. the ſame Clauſe, as to the Meaſuring of Corn and Salt, is repealed. *Water Meaſure. Corn, Salt. 22 Car. 2. c. 8. §. 2. See Tit. Salt, this is altered ibid.*

If any Perſon ſhall ſell Corn or Grain, ground or unground, or Salt by any other Buſhel than *Wincheſter* Meaſure, containing eight Gallons ſtricken by the Brim, and ſealed, he ſhall forfeit 40 *s.* to be levied as by the Act of 16 *Car.* 1. is directed. *Neglect to puniſh. Ibid. §. 3.*

If any Mayor or Head Officer wilfully permit any Perſon to ſell by any other Meaſure than as aforeſaid; or upon Complaint, ſhall not puniſh the Breach of that Statute, he ſhall, upon Conviction by Preſentment or Indictment at the General Quarter-Sessions of the County, forfeit 5 *l.* one Moiety to the Informer, the other Moiety to the Poor, to be levied by Diſtreſs and Sale; and for want of Diſtreſs, Imprisonment until Payment. *Neglect to puniſh. Ibid. §. 3.*

If any Clerk of the Market ſhall neglect or reſuſe to ſeal or mark any Buſhel, half Buſhel, or Peck, duly gaged, he ſhall forfeit for the firſt Offence 5 *l.* for the ſecond, and every other Offence 10 *l.* to be levied as aforeſaid. *Reſuſal to Seal. Ibid. §. 4.*

If the Clerk of the Market of the King's Houſe, within the Verge, ſhall take more than the lawful and accuſtomed Fees; or if any other ſhall take above one Penny for the Sealing and Marking a Buſhel, a Halfpenny for a half Buſhel or Peck: and a Farthing for a Gallon, Pottle, Quart, Pint or half Pint, upon due Proof and Conviction, he ſhall incur the Penalties in 16 *Car.* 1. *cap.* 19. *Fee. Ibid.*

At the Charge of ſuch Perſon as hath the Toll and Profit of the Market, ſhall be provided one Meaſure of Braſs, and chained in the Market-Place, or elſe forfeit 5 *l.* to be recovered as by that Act is directed. One Moiety to the Poor, the other to him that ſues. *Providing Meaſure. Ibid. §. 5.*

Every Conſtable ſhall ſearch if any uſe any other Meaſure, or ſhall ſtrike the ſame otherwiſe than that Act directs, or buy or ſell by unſealed Meaſures; and if he find any unſealed, to break it, and to preſent thoſe Offences to the next private or Quarterly Sessions. *Search. Ibid. §. 6.*

(*d*) And yet notwithstanding (the Statutes of *Magna Charta*, &c.) there always hath been, and ſtill are two Kinds of Weights uſed in *England*, and both warrantable: The one by Law, and the other by Cuſtom; but they are for ſeveral Sorts of Wares or Commodities; for there is *Troy Weight*, and *Averdupois*. *Raft. 8. Diu. fol. 5. 7. b.*

1. *Troy Weight* is by Law; and thereby are weighed Gold, Silver, Pearl, precious Stones, Silk, Electuaries, Bread, Wheat, and all Manner of Grain or Corn is meaſured by *Troy Weight*. And this hath to the Pound 12 Ounces, or 20 *s.* Sterling weight, and no more. It is called by ſome, *Libra medica*; by others, *Libra & uncia Trojana*. *Sorts of Weights. Ibid.*

2. *Averdupois Weight* is by Cuſtom (yet confirmed alſo by Statute,) and thereby are weighed all kind of Grocery Wares, Phyſical Drugs, Butter, Cheeſe, Fleſh, Wax, Pitch, Tar, Tallow, Wools, Hemp, Flax, Iron, Steel, Lead, and all other Commodities not before named, but ſpecially every Thing which beareth the Name of Garble, and whereof iſſueth a Refuſe, or Waſte. See *Raft. 8. fol. 527.* and the Book of *Aſſiſe*, Impref. 1597. *Raft. 8. & 14. 27 El. 3. c. 10.*

(*a*) The Word *Averdupois* in *French*, is as much as to ſay, to have full Weight, *Habere pondus*. *Geo. Agricola* in his learned Tract *De ponderibus & menſuris*, pag. 339. ſaith thus of both theſe Kinds of Weights, *Medica & civilis libra numero non gravitate unciarum differunt*.

(*d*) And this hath to the Pound 16 Ounces, or 25 *s.* ſterling Weight.

Alſo in this *Averdupois Weight*, unto every Hundred is allowed twelve Pounds Weight.

Alſo all Manner of *Averdupois* ſhall be weighed by lawful Weights, ſealed according to the Standard of the *Exchequer*. *P. Weights 14.* *27 Ed. 3. 10.*

Averdupois Weight.	{	14 Ounces and a half, and two Pence Weight <i>Troy</i> , do make 16 Ounces of <i>Averdupois</i> .	}	
	{	7 { Pounds or Pints } <i>Averdupois</i> make the Gallon.	}	Measures of Corn, according to <i>Averdupois</i> Weight.
	{	14 { Pounds or Pints } <i>Averdupois</i> make the Peck.	}	
	{	56 { Pounds or Pints } <i>Averdupois</i> make the Buſhel.	}	

Troy Weight.	}	Pints or Pounds,	5120	512	256	64	16	8	4	Measures of Grain according to Troy Weight.
		Quarts,	2560	256	128	32	8	4	2	
		Pottles,	1280	128	64	16	4	2	1	
		Gallons,	640	64	32	8	2	1		
		Pecks,	320	32	16	4	1			
		Bushels,	80	8	2	1				
		Coombs,	20	2	1	Ten Quarters of				
		Quarters,	10	1	Corn is a Last.					

Beer Measures.

Ale Measures.

Measures of Beer and Ale.	}	Pints,	288	144	72	8	4	2	256	128	64	8
		Quarts,	144	72	36	4	2	1	128	64	32	4
		Pottles,	72	36	18	2	1		64	32	16	2
		Gallons,	36	18	9	1			32	16	8	1
		Firkins,	4	2	1				4	2	1	
		Kilderkins,	2	1					2	1		
		Barrel,	1						1			

See for Corn, Beer, and Ale, more fully in that which followeth.

Troy Weight.

Measures.

Troy Weight,

12 H. 7.
5. & 51
H. 3.

Thirty-two Wheat Corns, taken in the Midst of the Ear, weigheth one Penny *Sterling*.
 Twenty-pence *Sterling*, maketh the Ounce *Troy*.
 Twelve Ounces maketh in { Weight one Pound *Troy*.
 { Measure one Pint.
 Two Pints, or Pounds, maketh the Quart.
 Two Quarts maketh the Pottle.
 Eight Pints }
 Four Quarts } maketh a Gallon.
 Two Pottles }
 Eight Quarts maketh the Peck.

Troy Weight,

12 H. 7.
5. & 51
H. 3.

Sixty-four Pints }
 Thirty-two Quarts } maketh the { Bushel
 Eight Gallons } or
 Four Pecks } Firkin.
 Sixteen Gallons }
 Two Firkins } maketh the { Kilderkin.
 { Half Barrel.
 { Rondlet.
 Two Hundred fifty-six Pints }
 One Hundred twenty-eight Quarts }
 Thirty-two Gallons } maketh the { Coomb
 Four Firkins } or
 Two Kilderkins } Barrel.
 Four Bushels }

Troy Weight.

Five Hundred and twelve Pints }
 Two Hundred fifty-six Quarts }
 Sixty-four Gallons } maketh the { Quarter
 Eight Firkins } or
 Four Kilderkins } Hogthead.
 Two Barrels }
 Eight Bushels }

So the { Pint and Pound }
 { Firkin and Bushel } are of like Content.
 { Barrel and Coomb }
 { Hogthead and Quarter }

(a) Also the Statute of 23 *H. 8. cap. 4.* doth limit the Weight of every of these three Vessels here next named, being empty as followeth, *scil.* 23 *H. 8.*
c. 4. § 6.

- | | | | | |
|---|---|--------------------------|---|--|
| 1. The Barrel
2. The half Barrel or Kilderkin
3. The Firkin | } | must weigh (being empty) | } | $\left. \begin{matrix} 26 \\ 13 \\ 6\frac{1}{2} \end{matrix} \right\} lb.$ |
|---|---|--------------------------|---|--|

(d) *Measures of Corn.*

All kind of Corn and Grain is measured by *Troy Weight.*

By the Statute the Bushel must contain eight Gallons, or sixty-four Pounds or Pints of Wheat, 31 *Ed. 1. 12 H. 7. 5. P. Weights. 2 Rastal, 34. Div.*

And yet by the Book of *Affise*, imprinted *An. Dom. 1597.* the Bushel is to contain fifty-six Pounds (or Pints) of *Averdupois Weight* (which is three Pounds or three Pints and eight Ounces *Troy*, more than the Statute or *Troy Weights.*) For fifty-six Pounds or Pints *Averdupois Weight*, and sixty-seven Pounds eight Ounces *Troy Weight*, do justly agree. *See the Book of
of Affises.*

Also eight Bushels stricken make the Quarter of Corn. 11 *H. 7. 4.*

Also every Measure of Corn shall be stricken without heap. 25 *Ed. 3. 10.*

Corn.
P. 3.
15 R. 2. 4.
P. 1.
34 E. 3. 6.
P. 9.

Water Measure, sold within Ship-board, shall contain five Pecks stricken to the Bushel.

No Person shall buy or sell with a Bushel, except it be sealed and marked by the Officer, and according to the King's Standard. P. 9.

But Note, That in many Places and Countries the Measure of Corn doth much differ, and the Bushel in one Place is greater than in another: And it seems *Conjuetudo loci est observanda: Tamen quare*, for it is contrary to the Statute of *Magna Charta, Chap. 25.* and divers other Statutes, as you may see before in this Title: And Custom or Prescription against a Statute seemeth not good. See *Bro. Preser. 2, 50.* *Bushel different.*
9 *H. 6. f. 56.*
30 *Aff. pl. 38.*

(a) But this Difference of Measure of Corn comes partly from the Diversity of Clerks of the Market (there being a Clerk of the Market for the King's House, another for the Prince, another for the Dutchy; others in Corporate Towns, and others belonging to the Lords of Liberties) and partly from the Abuse of divers Corporate Towns and other Privileged Places or Liberties, where they by usurped Custom (without any good Warrant of Law) have used to have, and to buy by such Measures. And where the Clerk of the Market for the King hath forborn or neglected to meddle, in regard perhaps of their Corporation, Liberty, or some other respect. But this Abuse two Justices of Peace (the one being of the *Quorum*) may reform, *sc.* Two Justices of Peace of the County, where there be no Justices of Peace within that Corporation, &c.

*Clerks of the
Markets cause
the Diversity of
Measure.*

Also the Clerk of the Market for the King's House may reform this in all Places within the Verge. 27 *H. 8. cap. 24.*

*Clerks of the
Market, his
Office.*

And yet by the Words of the Statutes of 25 *E. 3. cap. 10.* & 34 *E. 3. cap. 6.* the Rents and Farms of Lords, shall be measured by the Measures as they were wont to be, whether it were by heaped Measure, or greater Measure than the Statute appointeth.

And Note, that the Clerk of the Market shall carry with him all his Weights and Measures signed according to the Standard of the *Exchequer*, 16 *R. 2. cap. 3.* And the Justices of Peace may, yea, ought, to sit with the Clerk of the Market at his Coming into the County, &c.

Sir *Francis Harvey* hath often delivered in his Charge at *Cambridge Affises*, these Directions, *sc.* That one Justice of Peace at the least ought to sit with the Clerk of the Market, to see that the King's Subjects be not wronged. And that the Clerk of the Market ought to have with him his Directions out of the *Exchequer.* And that he may take no Money for any Bills, &c. and that he ought to seal no Bushel, or other Measures or Weights, but once (and not yearly as they use to do :) And that if after the first Sealing, he shall take any Thing for the Sealing thereof again, or for the shewing thereof, &c. it is Extortion; yea, it is one of the greatest Oppressions (saith he) for that it concerneth almost all Men.

It was resolved *Nemine contradicente* by all the Justices, *M. 39 & 40 El.* That if the Clerk of the Market claim Fees for examining and seeing any Bushels or other Things before sealed, the same was a great Extortion, and no Fee is due unto him therefore, for such seeing and examining, is to no other End than to find and discover Abuses in

Weights and Measures. And those that they find false, their Duty is to damn and reform them, and upon lawful Presentments to punish the Offenders by Amerciaments, which belong to the King. And this agrees with the Statute of 13 R. 2. *cap.* 4. And if such Use hath been through Covetousness or Greediness of corrupt Officers, that Use may not make a Law. Which Case you may see *Moor's Rep.* p. 523.

The Clerk of the Market's Duty is to take Charge of the King's Measures, and to keep the Standard of them, that is, the Examples and Patterns of all the Measures that ought to be throughout the Realm, as of Ells, Yards, Quarts, Pottles, Gallons, &c. of Weights, Bushels, and such like, and to see that all Measures in every Place be answerable to the said Standard or Pattern. *Flet. l. 1. cap.* 8, 9, &c. And he is to have with him, when he goeth to assay Weights and Measures signed according to the Standard, and none other his Weights and Measures. 16 R. 2. *cap.* 3.

Bread. (d) For the Assise of Bread, I refer you to the Books made for the Assise thereof, and will only set down some short Observations therein.

1. All Sorts of Bread ought to be weighed by *Troy Weight*.

2. *Post septem dies panis non ponderetur.*

3. The Bakers shall not sell to any Victualler, &c. to be retailed, but only thirteen Pennyworth for twelve Pence, as well Man's Bread as Horse Bread.

(a) 4. Every Baker shall have a Mark of his own for his Bread. *Poulton's Statutes at large, p.* 111. & *Raft. Weights* 7.

5. Every Sort of Bread shall be weighed according to the Price of the middle Sort of Corn.

6. No Man shall be a common Baker, except he hath been an Apprentice to that Trade by the Space of seven Years at the least.

7. The Statute doth appoint three Sorts of Bread to be made and sold to the Subjects, *vis.* white Bread, Wheaten, and Household Bread, besides the Horse Bread.

8. The Bakers of Cities, Boroughs, and Corporate Towns, shall have 6 s. Allowance for the baking of every Quarter of Wheat, over and above the second Price of Wheat in the Market.

9. Bakers inhabiting out of Cities, Boroughs, and Corporate Towns, shall have 4 s. in Allowance for his Charges in baking of every Quarter, &c.

10. But Foreigners Bread shall weigh six Ounces in the Penny Loaf, more than the Town-dwellers, for that they bear not such Scot and Lot as the others do.

11. Lastly, For Horse Bread, that three Horses Loaves be sold by the Baker for a Penny, 13 d. for 12 d. and every Loaf to weigh the full Weight of a Penny white Loaf, at what Price soever the Wheat be sold.

Bakers and their Punishment.

* Vide supra, Chap. 15.

(d) For the Punishment of the Bakers for their unlawful Bread *; *Quære*, Whether they shall only be amerced, &c. after Indictment and Conviction of their said Offence; or that the Justices of Peace (or sworn Officers in Leets) may take away their unlawful Bread, and give it among the Poor, as Officers in Corporate Towns are inabled or appointed to do in the End of the Book of Assise, imprinted *Anno* 1597. And all Justices of the Peace are there willed and required to be aiding and assisting to the said Officers therein.

(a) By the Statutes of 51 H. 3. & 13 R. 2. 8. Bakers and Brewers being convict for not observing the Assise the first, second and third Time, they shall be amerced according to the Offence (if it be not grievous.) But if the Offence be grievous, or often, then shall they suffer Punishment of the Body without Redemption (or remitting of the Offence either for Gold or Silver) *sc.* a Baker to the Pillory, and the Brewer to the Tumbrel (now called *The Cucking Stool*, as it seemeth by Mr. *Lambard* 62. *Minsbew* taketh *Tumbrel* for a *Dung-Cart*) or to some other Correction. See another Statute concerning Bakers and Brewers, and their Punishments, and to the same Effect, made *incerto tempore, cap.* 2. & 6. *Poulton's Statutes at large, fol.* 111.

Note, That within every Leet or Market there ought to be a Pillory and a Tumbrel to punish the Bakers and Brewers that offend, &c. *Fitz. Leet*, 12. And for want thereof, the Lord of such Leet or Market shall make a Fine to the King. *Cro.* 149.

Also they which have the Keeping and Correction of the Assise of Bread and Beer, if they have not a Pillory and a Tumbrel to punish Bakers and Brewers that are faulty, they shall forfeit their Franchise. *Cro.* 148.

Also a Leet may be seized into the King's Hands, if the Steward there shall take Money to spare the Punishment of the Tumbrel, where one shall offend in the Assise of Bread or Ale. *Libr. Intr. Cromp.* 181.

The Millers Toll-dish also must be according to the Standard.

Now Millers are to take for the Toll but the twentieth Part, or the twenty-fourth *Millers.* Part, according to the Strength of their Water, and Custom of the Realm. Statute 3 *E. 1. de Viſtulariis. Raſt. Tit. Weights, Dic. 7.*

And yet in ſome Places the Millers do claim and take the fixteenth Part; and where the Cuſtom hath been ſo uſed Time out of Mind, it ſeemeth good and warrantable. *Tamen quere.*

But the Miller ought to take but one Quart for grinding of one Buſhel of hard Corn, and if he fetch and carry back the Griſt to the Owner, he may take two Quarts of hard Corn; and this hard Corn is intended of Wheat, Rye, Meſlin (which is Wheat and Rye mixed.) And for Malt, the Miller ſhall take but Half ſo much Toll as he taketh for hard Corn, (*ſc.* one Pint in the Buſhel) for that Malt is more eaſily ground than Wheat or Rye: But if the Miller do fetch to his Mill, and carry back the Malt to the Owner's Houſe, then the Miller alſo ſhall have double Toll. See *Crompt. Author des Courts, 221, & 224.*

Note, That Millers are not to be common Buyers of any Corn, to ſell the ſame again, either in Corn or Meal: But ought only to ſerve for the grinding of Corn that ſhall be brought to their Mills.

(d) *Meaſures of Wine, Beer and Ale, &c.*

Wine,	} their Mea- ſure is all one <i>ſc.</i> the	} Rondlet, 16 and <i>di.</i> Barrel, 32 and <i>di.</i> Hogshead, 63 Pipe, 126 Tun, 252	} Gallons.
Oil and			
Honey,			

Meaſures of Liquids.
18 H. 6. 17.
P. Wine, 13.
1 R. 3. 13.

Yet for Honey the Aſſiſe is altered to 32 Wine-gallons the Barrel, 16 Gallons the Kilderkin, &c. 23 *El. 8. P. Wax, 6.*

Beer; the Meaſure thereof	} Firkin, 9 Kilderkin, 18 Barrel, 36	} Gallons.
is as followeth, <i>ſcil.</i> the		

23 H. 8. 4.
P. Coop. 2.

And ſo Beer Meaſure containeth in the Barrel four Gallons more than Wine or any other Veſſel.

Ale; the Meaſure thereof	} Firkin, 8 Kilderkin, 16 Barrel, 32	} Gallons.
is as followeth, <i>ſc.</i> the		

(a) No Cooper ſhall make any other Veſſel for Beer or Ale, to be ſold within this *Coopers.* Realm, of any greater or leſſer Number of Gallons than is aforeſaid, unleſs he ſhall cauſe to be marked upon every ſuch Veſſel (of greater or leſſer Number of Gallons) the true and certain Number how many Gallons every ſuch other Veſſel ſhall contain. 23 *H. 8. cap. 4.*

Alſo no Brewer of Beer or Ale ſhall put the Beer or Ale to Sale, to be ſpent within this Realm, in any other Barrels, Kilderkins, Firkins, or other Veſſels of Wood, other than ſhall be marked by a Cooper, and whereof every Veſſel ſhall contain and hold the Number of Gallons aforeſaid, of full and juſt Meaſure, or above, and not under that Meaſure. *Ibid.*

The Wardens of Coopers in all Cities and Boroughs where there be ſuch Wardens, and in all other Boroughs and Towns the Mayor, Sheriffs, Bailiffs, Conſtables or other Head-Officers, may ſearch and gage all ſuch Veſſels (made in ſuch City or Town) whether they bear their true Contents, as aforeſaid; and if they find any Veſſel defective, they may mark or amend the ſame, according to the true Content, or elſe may cauſe the ſame to be burned. *Ibid.*

He who ſhall cauſe the Marks of Boats, Keels, Wains, &c. to be removed or altered, thereby to fruſtrate the Intent of the Statute 6 & 7 *W. 3.* ſhall upon Proof of one Witneſs, before one Juſtice, forfeit 10 s. to be levied by a Warrant, &c. by Diſtreſs and Sale, &c. and for want of Diſtreſs to be committed for three Months, and the Boats, &c. to be meaſured and marked again. *Boats. Keels. Wains. 6 & 7 W. 3. c. 10.*

(d) It appeareth by Mr. *Crompton*, that it was agreed by the Juſtices, that the Meaſure of Wine and Ale ſhould be all one, but now by the Statute of 1 *Jac. 1. cap. 9.* Ale *Crompt. 94.b. P. Alch. 7.*

Ale and Beer shall be sold by Retail by one and the same Measure, *scil.* by the Ale-quart.

Vessels. (a) And for the Prices of all Vessels of Ale and Beer, by the Statute 23 *H. 8. cap. 4.* two Justices of Peace might assess the Prices thereof, and that no Brewer shall take for any Barrel, Kilderkin or Ferkin, &c. of Ale or Beer, but after such Prices and Rates as shall be assessed by the said Justices of Peace in the County, or by the Mayor or their Head-Officers in Corporate Towns, &c. But now by the Statute 8 *Eliz. cap. 9.* the Assessment of the Prices thereof by the Justices, shall be by the Justices, or the more Part of them, being present at the *Easter Quarter-Sessions*, and only of such Vessels as shall be made or sold out of Cities or Corporate Towns.

Soap. (d) Soap, the Barrel, half Barrel and Firkin, shall be of the same Content that Ale is, *sc.* the Barrel 32 Gallons or above, and the empty Vessel not to be in Weight above 26 Pounds; the empty Firkin not to weigh above six Pounds and a half, and to contain eight Gallons or above of full and just Measure.

Butter also shall be of the same Measure that Soap is of.

Butter
See *Tit. Butter.*
23 *H. 8. 4.*
P. *Soap 1.*
14 Car. 2. c. 26.
Cheese.
P. *Weight 6.*
Cheese: A Weigh of Cheese must contain 32 Cloves, and every Clove seven Pounds of *Averdupois* Weight: See the Statute 9 *H. 6. 8. Rast. 28. diu.* and the Book of Assise, imprinted 1597. And yet by that Book of Assise, the Weigh of *Suffolk* Cheese must contain twelve Score and sixteen Pounds of *Averdupois* Weight (and their Barrel of Butter is of like Weight with the first:) But the Weigh of *Essex* Cheese or Butter is three Hundred Pounds Weight, after the Rate of five Score and twelve Pounds to the Hundred, which is sixteen Score and sixteen Pounds of *Averdupois* Weight.

Flesh. Beef and other Flesh are sixteen Ounces *Averdupois* to the Pound, and eight of them Pounds to make the Stone, except where the Usage of the Country require more Pounds to the Stone. *Book of Assise.*

Fish. Herrings, the Barrel, half Barrel and Firkin, shall be the same Content that Ale is, *sc.* the Barrel 32 Gallons, &c. 11 *H. 7. cap. 23,* and 13 *El. 11. P. Fish 9.*

Also six Score Herrings shall go to the Hundred, ten Hundred to the Thousand, and ten Thousand to the Last.

Salmon and Eels. See the Contents of their Vessels, Statute 11 *H. 7. cap. 23. P. Fish 8, 10.*

Wool. Wool, 14 Pounds Weight goeth to the Stone of Wool, 28 Pounds goeth to the Tod, and 26 Stone goeth to the Sack. 11 *H. 7. 4.*

Hemp. Hemp, 20 Pounds Weight maketh the Stone.

Sugar. Sugar, Spices and Wax eight Pounds maketh the Stone, and thirteen Stone and a half, or 100 Pounds maketh the Hundred. See the Statute *de Comp. ponder. Rast. Weights 8.*

(a) Hops, five Score and twelve Pounds maketh the Hundred.

(d) Lead, the Content of the Pound, the Stone and the Load. See *Rast. Weights 8.*

Leather, the Content of the Dicker and the Last. See *Rast. Weights 8.*

The Contents of Iron, Glass, Linen-cloth, and divers other Things. See the Statute *de Composit. ponder. Rast. 8.*

All other Commodities of Tale or Number are sold by the Hundred.

Whereof $\left\{ \begin{array}{l} \text{Cattle and Fish are sold six Score to the Hundred, and yet the Hun-} \\ \text{dred of Hard-fish must contain eight Score. } \textit{Rast. 8.} \\ \text{Also all other headed Things, as Nails, Pins, \&c. are sold six Score} \\ \text{to the Hundred.} \end{array} \right.$

All other Things have but five Score to the Hundred.

Fuel. For the Assise of Fuel, *scil.* of Cole, Tall-wood, Billet and Fagot, see the Statute of 7 *Ed. 6. 7. 43 El. 14.* A Sack of Coals is four Bushels.

Timber. Timber well hewn, and perfectly squared, fifty Foot thereof maketh the Load.

Lath. Lath shall contain in Length five Foot, in Breadth two Inches, and in Thickness half an Inch.

Tile. Tile, six Score to the Hundred: As for the Assise thereof, (*scil.* the Length, Breadth and Thickness thereof,) see Statute 17 *Ed. 4. cap. 17. P. 2.*

Paper. A Bale of Paper is ten Ream, a Ream is twenty Quires, a Quire * is twenty-five Sheets.

* 24 Sheets by
10 *Ann. c. 19.*

Parchment. A Roll of Parchment is five Dozen or sixty Skins.

Three Barley-Corns measured from End to End (or four in Thickness) make one Inch. *Measures of Length.*
 Four Inches make a Handful. 27 H. 8. 6. *P. Weight 4.*
 Twelve Inches make a Foot. *Inch.*
 Three Foot a Yard. *Handful.*
 Three Foot and nine Inches make an Ell. *Foot.*
 Five Foot do make a Geometrical Pace. *Yard.*
 Seven Foot make a Fathom. *Ell.*
 Five Yards and a half (which is sixteen Foot and a half) make a Pole, Rood or *Pace.*
 Perch. *Ibid.* *Fathom.*
Pole.

And yet by the Usage of many Countries the Pole doth vary, for in some Places it is 18 Foot, and in some Places 20 Foot go to the Pole; and there if a Man sell a certain Number of Acres of Wood, &c. it shall be measured according to the Usage of the Country there, and not according to this Statute, for herein *consuetudo loci est observanda.* *Co. 6. 6, 7.*
Ed. 3.
f. 18.
Cromp. des
Courts, f. 32,
& 222.

The same Reason may seem to hold of Measures of Corn by the Bushel. See a little before. *Corn.*

(a) Master Osborn writeth, that the Measure of 18 Foot to the Perch (or Pole) is commonly called *Wood-land-measure*; 21 Foot to the Pole is called *Church-measure*, (i.e. of Land which now doth or formerly did belong to the Church) and *twenty-four Foot to the Pole* is called (and that rightly) *Forest-measure*.

Note, That the Clerk of the Market may inquire of the Pole or Perch whereby Land is measured, as well as of other Measures. *Cromp. Authbor. des courts 221.* But the Justices of Peace are not to meddle therewith, especially out of their Sessions.

Also Note, That no Measure shall be sealed but the Bushel, Half-Bushel, Peck, Gallon, Pottle, Quart and Pint. *Cromp. fol. 222. tamen quære.* *Sealed Measure.*

(d) Forty Pole in Length make a Furlong. *Furlong.*

Eight Furlongs (or 320 Pole) make an *English Mile*. *35 El. c. 6.*

Note; That our *English Mile* contains 280 Foot more than the *Italian Mile*. *Mile.*

Forty Pole in Length and four in Breadth (or 160 Pole do make an Acre.) Statute *Acres.*
Composit. ulnarum, & Stat. 34 Ed. 1.

And (by the Opinions of Mr. Camden, fol. 339 and Hollinshead, p. 13. impr. 1586.) one hundred Acres is a Hide of Land; but yet it seemeth that a Hide of Land or Plow-land, or Carve of Land, which are all one, are not of any certain Content. See hereof before, Tit. *Highways.* *Plow-land is 50 l. per Ann.*

(a) *Librata terræ* containeth four Oxcgangs and every Oxcgang 13. Acres *Min.*

A *Yard-land* containeth in some Places more, in some other less. *Yard-land.*

And yet Mr. Norden, in his *Surveyors Dialogue*, Page 59. saith, that every Plow-land containeth commonly 120 Acres; and every Flow-land is four *Yard-land* (in Latin called *quatrona terræ* or *virgata terræ*) every *Yard-land* containeth thirty Acres; and yet after some Computation, every *Yard-land* containeth but 20 Acres, and in some Places 24 Acres; and this is the common Account with us on the East Part of *Cambridgeshire*.

(d) Now that I have set down the Contents of most Weights and Measures, you must farther observe.

First, That in every County (in the Principal or Shire-Town there are) or ought to be Standards of *Brass for Weights and Measures*, (i.e. for the Bushel and Gallon) according to the King's Standard of his Exchequer, there to remain with the chief Officers of the same Town; according to the Scantling, of which every City, Borough and Market-Town within the same County ought to make them common Weights and Measures, to be marked by him that keepeth the Standard. *Standard in every Shire-town.*
11 H. 4.
12 H. 7. 5.
P. 7.

Also in every City, Borough and Market-Town, there ought to be a common Balance, and a common Bushel, and Weights sealed, and according to the Standard in their Shire-Town (as aforesaid) upon Pain to every City 5 l. to every Borough 5 l. and to every Market-Town 40 s. for their Defaults. *Market-Town.*
11 H. 7. 4.
8 H. 6. 5.

Also no Man within any City or Market-Town ought to buy or sell with any Weights or Measures except they be sealed and marked in Form aforesaid (i.e. according to the King's Standard, and by the Officers in whose Possession the King's Standard remaineth;) Nor any other Person out of a Market-Town, except their Weights and Measures be like and equal with the Standard. See *Rastall, fol. 531. c. diu. 33.* *11 H. 7. 4.*
P. 9. 7.

Weights and Measures sealed.

See Ra. diu. 5, 15, 26, 29, 32, 33. 8 H. 6. c. 5. 15 R. 2. c. 9.

11 H. 7. 4. P. 8.

11 & 12 W. c. 15. §. 3.

Ib. §. 5.

Ib. §. 6.

1 Ann. c. 15.

And yet it seemeth by the Statute 31 Ed. 1. & 8 H. 6. 5. (*Rastall, div. 3 & 26.*) that no Man (though out of a Market-Town) shall use Weights or Measures, nor other Thing in the Place of Weights or Measures that is not sealed according to the King's Standard, upon Pain to forfeit the Value of the Goods weighed or measured, and two Years Imprisonment, and to be fined and ransomed, and yield *quadruple* Damages. See *Rastall, Tit. Weights, & Cromp. 94.*

The Officer that keepeth the Standard (in the Shire-Town) shall mark and seal other Weights or Measures to all other the King's Subjects that shall require it; and they shall take for the marking of the Bushel but 1 *d.* and for all other Measures but an Half-penny; and for Weights, for every hundred Weight 2 *d.* and for half an hundred Weight an Half-penny, and for every Weight under, but a Farthing.

(a) The Sub-Commissioners or Collectors of the Excise, not providing or procuring a substantial *Ale Quart* and *Ale Pint* within their respective Divisions, forfeit 5 *l.* to the Use of the Poor, to be levied by Distress.

The Chief Officer of every City, &c. or Market-Town neglecting, or upon Request refusing to stamp and mark the *Quarts* and *Pints*, forfeits likewise 5 *l.* to be levied and employed, *ut supra*; the Conviction may be by one Witness, before a Justice of Peace, and the Prosecution must be within thirty Days, &c.

Selling in any other Water-Measure than according to the Statute 1 *Annæ, cap. 15.* forfeits 10 *s.* to be levied by Distress and Sale; one Half to the Informer, the other to the Poor.

By the said Statute 4 *Annæ* 'tis enacted, that Water-Measure shall be round 18 Inches and an half Diameter, and eight Inches Deep and no more, and so in Proportion for any greater or lesser Measure; and the Measure by which Apples and Pears are sold shall be heaped as usually.

He who buys or sells by any other Measure, forfeits 10 *s.* to the Informer and the Poor, &c. being convicted by the Oath of one Witness before one Justice, &c. Mayor, &c. where the Offence was committed, to be levied by Distress, and Sale, &c.

Coals shall be sold by the Chaldron containing 36 such Bushels heaped.

Now follow the Names of the principal Towns in every Shire (or County) appointed to have the Keeping of Standards for the Weights and Measures, according to these Statutes.

Bedfordshire, Town of *Bedford*.
 Berkshire, the Town or *Reading*.
 Bristol, the same Town.
 Buckinghamshire, the Town of *Buckingham*.
 Cambridgeshire, the University of *Cambridge*.
 Cheshire, the City of *Chester*.
 Cornwall, the Town of *Lustythiel*.
 Cumberland, the City of *Carlisle*.
 Derbyshire, the Town of *Derby*.
 Devonshire, the City of *Exeter*.
 Dorsetshire, the Town of *Dorchester*.
 Essex, the Town of *Chebmsford*.
 Gloucestershire, the Town of *Gloucester*.
 Hampshire, the City of *Winchester*.
 Hertfordshire, the Town of *Hertford*.
 Herefordshire, the City of *Hereford*.
 Huntingdonshire, the Town of *Huntingdon*.
 Kent, the Town of *Maidstone*.
 Lancashire, the Town of *Lancaster*.
 Leicestershire, the Town of *Leicester*.
 Lincolnshire, the City of *Lincoln*.

London, the same City.
 Middlesex, the City of *Westminster*.
 Norfolk the City of *Norwich*.
 Northampton, the Town of *Northampton*.
 Northumberland, the Town of *Newcastle*.
 Nottingham, the Town of *Nottingham*.
 Oxford, the University of *Oxford*.
 Rutland, the Town of *Upinham*.
 Shropshire, the Town of *Skrewsbury*.
 Cinque-Ports, the Castle of *Dover*.
 Stafford, the Town of *Stafford*.
 Somerset the Town of *Ilchester*.
 Southampton, the same Town.
 Suffolk, St. *Edmunds-bury*.
 Surry, the Town of *Guildford*.
 Sussex, the Town of *Lewes*.
 Warwick, the Town of *Coventry*.
 Westmorland, the Town of *Appulbie*.
 Wiltshire, the City of *Salisbury*.
 Worcester, the City of *Worcester*.
 Yorkshire, the City of *York*.

Stat. 11 H. 7.

Levit. 19. 35, 36.

Ye shall not do unjustly in Judgment, in Line, in Weight or in Measure : Ye shall have just Balances and true Weights.

Prov. 11. 1. & 20. 20.

False Balances or divers Measures are all an Abomination unto the Lord.

Deut. 25. 13, &c.

Thou shalt not have two Manner of Weights, a great and a small ; nor divers Measures ; but a right, just and perfect Weight and Measure, that thy Days may be lengthened in the Land, &c.

C H A P. CXIII. (a)

Wool.

NO Person shall press together with Screws, Presses, or other Engines, into Pressing in order to Transporting. any Sack, Bag, Pack, or other Wrapper ; or put, press, pack or strain, any Wool or Yarn made of Wool into any Cask or Vessel, or shall lay or carry, or cause, 13 & 14 Car. 2. c. 18. § 7. &c. at or near the Shore or Coasts of the Sea or Navigable River, any Wool, Wool-flocks, or Yarn made of Wool, with an Intent to convey the same out of *England* or *Ireland* into foreign Parts, upon Pain to lose the same or Value thereof.

No Bags, Sacks, Packs or Cask of Wool, Wool-fells, Mortlings, Shorlings, Yarn Times of Carriage. made of Wool, Wool-flocks, Fullers-earth, Fulling-clay or Tobacco-pipe Clay, shall be carried or conveyed to or from any Place or Places in *England*, but from the first of Ib. §. 9. *March* to the Twenty-fourth of *September*, between four of the Clock in the Morning and eight of the Clock in the Evening, and from the Twenty-ninth of *September* to the first Day of *March*, between seven of the Clock in the Morning and five of the Clock in the Evening, upon Penalty of Forfeiture thereof.

The Moiety of all Forfeitures by this Act to the King, the other to the Prose- Forfeitures. cutor. Ibid.

Justices of Peace in their Quarter-Sessions may hear and determine Offences against Ib. §. 12. this Act.

The Exporting, Transporting, Carrying or Conveying of any of the Goods, Wares Ib. §. 11. or Commodities mentioned in that Act is declared a common Nufance.

Exporting Sheep or Wool of the Breed or Growth of *England* or *Ireland*, or 12 Car. 2. c. 32. §. 2, 4. any Woolfells, Mortlings or Shorlings, or any Yarn made of Wool, or any Wool-flocks, or Fullers-earth or Fulling-clay, or loading the same on any Horse, Cart or Carriage, or on board any Ship or Vessel, with an Intent to export it, shall forfeit the same, and also 20 s. for every Sheep, and 3 s. for every Pound of Wool, &c. and the Owners of the Ship or Vessel shall forfeit their Interests therein, with all the Apparel and Furniture ; and the Master of the Ship knowing the said Offence, shall forfeit all his Goods and Chattels and be committed for three Months ; the said Forfeitures to be divided between the King and the Prosecutor, and to be recovered in any Court of Record, by Action of Debt, Bill, Complaint or Information, or before Justices of Assize, or at the General Quarter-Sessions of the Peace.

The Merchant transporting any such Goods, shall be disabled to require any Debt or Ib. §. 5. Account of his Factor, or others.

Offenders shall be tried in the County where the Goods are loaded, or where they are Ib. §. 6, 7. apprehended ; the Prosecution must be within a Year after the Offence.

Tobacco-pipe Clay not to be exported, on Pain of forfeiting three Shillings for every Ib. §. 4. Pound. *

* Exporter of Fullers-earth or scouring Clay, forfeits 1. s. for every Pound. 9 & 10 W. 3. c. 40. §. 2.

10 & 11 W. 3. Wool shall not be transported from *Ireland* to any Place but to *England* or *Wales*, on
 c. 10. §. 1, 2. Pain to forfeit the same, and 500 *l.* for every Offence, and the Vessel with all her Tackle
 By this Act shall be forfeited: And the Master, Mariners, Porters, Carriers, Waggoners, Boatmen,
 any Person employed in working Wool, Linen, Fustian, and other Persons knowing the Offence, and assisting therein, shall forfeit 40 *l.* a Moiety
 to the Informer. See the Statute.
 Cotton or Iron, and intrusted therewithal, and imbezilling or purloining the same, forfeits double the Value of the Damages to the Use of the
 Poor: Conviction is to be by the Oath of one Witness, before one Justice, or the Confession of the Party; and if the Forfeiture is not paid, the
 Justice may send him to the House of Correction; and if not able to pay it, then he shall be whipp'd and kept to hard Labour not exceeding
 fourteen Days.

1b. §. 4. Any Person may feize Wool designed to be exported, and also the Vessel, &c.

Every Offender against this or any other Act, prohibiting the Exportation of Wool, may be prosecuted in any of the Courts at *Westminster*, and thereupon a *Capias* shall issue, the first Process specifying the Sum or the Penalty for which the Suit is brought, and the Defendant shall give Bail to appear at the Return of the Writ, &c.

4 Geo. 1. Any Person being in Gaol for the unlawful Exportation of Wool, and refusing to appear and plead to a Declaration or Information to be delivered to the Gaoler for one whole Term; in such Case Judgment shall be had against him by Default, and where such Judgment is had, or a Verdict be against him, if he doth not pay the Condemnation-Money within three Months after the Entering the Judgment, the Court shall cause him to be transported for seven Years, and if he return before that Time is expired, he shall suffer as a Felon, without Benefit of Clergy.
 c. 11.

See 12 Geo. 2. cap. 21. *infra* Chap. 196.

C H A P. CXIV. (a)

Words, News.

Justices of Peace may by Virtue of their Commission take Cognizance, and punish evil Words, for they tend to the Breach of the Peace, especially if spoken against any publick Person or Officer: And therefore if one say of a Mayor in the Execution of his Office, that he is a Fool, an Indictment lies: But to say of a Mayor playing at Dice, that he is a Fool, no Indictment lies. *Bag's Case, Mich. 12 Jac. Roll's Rep. part 2. p. 79.*

C H A P. CXV.

NOW for a Conclusion of these Statutes, and of the Services of the Justices of Peace therein, I wish them, that in all Cases where the whole Matter is (by the Statute) committed to one alone, or to two Justices, or more, out of their Sessions, to bear and determine, &c. as where upon his or their own View, or by Confession of the Offender, or upon Examination and Proof of Witnesses; (and without any Indictment found or preferred) they may commit or punish an Offender as convicted by such his Confession or Examination and Proof; as also where they may proceed by Inquiry and Indictment; that in every such Case of their judicial Proceeding they be led by no Affection, but advisedly to examine and consider as well the Fact it self as the Circumstances, and then (in the Fear of God, and according to Law) to proceed and to see or cause due Execution of the Punishment to be done upon the Offenders, according to the Quality and Quantity of their Offence, and as the Statutes themselves direct; for Law without due Execution and Punishment of the Offenders, is as a sheathed Sword, without any Use or Profit.

(a) But in all Cases where the Justices of Peace have Power to bear and determine out of their Sessions (*sc.* upon their own View, or upon the Confession of the Offender or upon Proof of Witnesses) if upon such Conviction, the Offender is to be committed to Gaol, the Justices ought to make a Record in Writing under their Hands of all the Matter, and of the Proofs, &c. which Record notwithstanding in many Cases they may keep by them, &c.
 Record.

Also if upon such Conviction the Offender is to be fined to the King, then the Justices of Peace are to estreat such Fine, and to deliver or send the Estreat into the Exchequer, whereby

whereby the Barons of the *Exchequer* may cause the said Fine, or Forfeiture, to be levied to the King's Use.

(d) And here I will shortly point out some particular Offences which by the Statutes are referred to the Justices of Peace to hear and determine, *out of their Sessions*, as aforesaid, and will leave the rest to your own Search.

1. Some Particulars where one Justice of Peace upon his own View of the Offence may punish the Offenders. *Where one Justice may hear and determine out of Sessions.*

Alehouse-keepers, &c. suffering Townsmen or any other Person to continue Drinking in their Houses contrary to the Statute 1 *Jac.* 1. *cap.* 9. and 21 *Jac.* 1. *cap.* 7. *Vide antea Tit. Alehouses.*

Townsmen or Strangers tippling in Alehouses, &c. contrary to the Statute 4 *Jac.* 1. *cap.* 5. and 21 *Jac.* 1. *cap.* 7. *ibid.*

Persons that shall ride or go armed, contrary to the Statute 2 *Ed.* 3. *cap.* 5. *Vide antea Tit. Armour.*

Persons that shall have any Tenters, &c. for the deceitful Stretching of Cloth. *Vide antea Tit. Cloth.*

Offenders in Forcible Entries or Detainers contrary to the Statute. See *antea Tit. Forcible Entry.*

Keepers of Places for unlawful Gaming. *Antea Tit. Games unlawful.*

Players in such Places. *Ibid.*

Players at unlawful Games, wheresoever, contrary to the Statutes. See as before.

(a) *Swearing prophanely, or Cursing,* in the Hearing of any Justice of Peace, &c. *Antea Tit. Swearing.*

(d) 2. Where one Justice of Peace may punish Offenders as convict, upon their own Confession. *And convicted upon their own Confession.*

Sheriffs, &c. entring Complaints in their Courts unduly. *Vide antea Tit. Sheriffs.*

Persons not repairing every Sunday to Church. *Vide antea Tit. Recusants.*

Trespassers in Corn, Orchards or Woods, &c. contrary to the Statute 43 *El.* 7. *Vide antea Tit. Trespass.*

Offences in Tile-making contrary to the Statute. *Vide antea Tit. Tile.*

Offences in Watermen contrary to the Statute. *Vide antea Tit. Watermen.*

3. Where one Justice of Peace may punish Offenders as convict upon Examination and Oath of Witnesses. *Upon Examination and Oath of Witnesses.*

Alehouse-keepers, &c. suffering Townsmen or Strangers to be Tippling in their Houses contrary to the Statute 1 *Jac.* 1. and 21 *Jac.* 1. *Vide antea Tit. Alehouses.*

Alehouse-keepers, &c. selling less Beer or Ale than according to the Statute 1 *Jac.* 1. *ibid.*

Townsmen or Strangers tippling in Alehouses, &c. contrary to the Statute 4 *Jac.* 1. *cap.* 5. *ibid.*

Persons not repairing every Sunday to Church, they may be convicted upon the Oath of one Witness. *Vide antea Tit. Recusants.*

Transporters of Corn, &c. *Vide antea Tit. Transportation.*

Trespassers of Corn, Orchards or Woods, &c. they also may be convicted upon the Oath of one Witness. *Vide antea Tit. Trespass.*

(a) And yet here, and in all Cases of Conviction upon the Oath of Witnesses, the Offender himself must also be heard to speak, and be examined by the Justice of Peace, &c. or else it is no lawful Conviction. See *hic, cap.* 6 & 7. & *hic infra.*

(d) 4. Where one Justice of Peace may punish Offenders as convict upon Examination generally, the Statutes not shewing what Persons shall be examined; in which Cases the Justices of Peace may thereupon examine as well the Offenders themselves as other Witnesses. *Upon Examination generally.*

The Defaults of the Collectors of the Sheriffs Amerciaments; as also of Bailiffs of Hundreds. *Vide antea Tit. Sheriffs.*

Offences in Tile-making. *Vide antea Tit. Tile.*

Offences in Watermen, *Vide antea Tit. Watermen.*

5. Where one Justice of Peace may punish Offenders upon Accusation or Proof, generally; which Accusation or Proof must be by Examination of Witnesses only, as it seems. *Upon Accusation or Proof.*

Offenders in keeping or using *Guns or Cross-bows, &c.* contrary to the Statute. *Vide antea Tit. Guns.*

Disturbers of *Preachers.* *Vide antea Tit. Preachers.*

Soldiers that have purloined their *Horse or Harnes*. *Vide antea Tit. Soldiers.*

Upon Oath.

Note, That in these former Cases, and in all other Cases where the Justice of Peace is to take such Examination of Witnesses, or such other Accusation or Proof aforesaid, though the Statute doth not expressly set down that it shall be upon Oath, yet 'tis fit that the Justice doth it upon Oath; for Mr. *Brook* (sometime Chief Justice of the Common Pleas) was of Opinion, that every Examination ought to be upon Oath; and Mr. *Lamb.* 517. was also of Opinion, that these Examinations taken by the Justices of Peace ought always to be *upon Oath*, the rather, because the Trial in these Cases dependeth wholly upon these Examinations. (a) Yea, in all other Cases wheresoever any Man is authorized to *examine Witnesses*, such Authority to examine shall be taken and construed to be in such Manner as the Law will, which is only by Oath. *Vide postea Tit. Examination.*

Plö. 12. 2.

(d) Also where the Matter is to be *tried by Witnesses* only, it is fit there be *two Witnesses* at the least, except where the Statute doth expressly allow the Oath and Testimony of one Witness. And so was the Opinion of Mr. *Brook*, that in such Case there ought to be *two Witnesses* at the least; and agreeable thereto also is the Word of God. Otherwise it is where the Trial is by a *Jury of twelve Men*, there one Witness sufficeth, yea, there many Times Witnesses are not necessary. See *Plö. 12. a.*

Deut. 17. 6.
& 19. 15.
Matt. 18. 16.
2 Cor. 13. 1.

Where two
Justices may
hear and de-
termine out of
Sessions.

Where two Justices of Peace (out of their Sessions for the Peace) may punish Offenders as convict before them, upon the Confession of the Offender, or upon Examination of Witnesses, or upon their own View.

Clothiers refusing to pay the Wages assessed, &c. See *antea Tit. Cloth.*

Spinsters, &c. which shall imbezil any Part of their Wool, contrary to the Statute 7 *Jac.* 1. cap. 7. upon Proof of one Witness.

(a) *Clothiers* making deceivable Woollen Cloth. 21 *Jac.* 1. cap. 18. *Hic antea Tit. Cloth.*

Servants or Labourers assaulting their Master. See *antea Tit. Labourers.*

Servants departing, refusing to serve, or taking excessive Wages, &c. See *Tit. Labourers.*

(d) *Destroyers of Partridges* or other Fowl, or of their Eggs, or of Hares, or keeping Hunting Dogs, contrary to the Statute 1 *Jac.* 1. 27. See *antea Tit. Partridge.*

Destroyers of Pheasants or Partridges, contrary to the Statute 7 *Jac.* 1. 11. upon Proof of one Witness. *Ibid.*

Such as shall *put out of their Parish*, as poor Persons, those that be not to be put out. *Vide antea Tit. Poor.*

Also the Defaults of the *Overseers of the Poor.* *Ibid.*

Disturbers of Preachers. *Vide antea Tit. Preachers.*

Offenders which shall disturb the Execution of the Statute for *Rogues*; and Officers which shall be remiss or negligent therein, &c. *Vide antea Tit. Rogues.*

The *Defaults of Officers* and others touching Weights and Measures. *Vide antea Tit. Weights.*

But note, that this Manner of Trial by Examination of the Offenders, or Witnesses is not permitted to Justices of Peace, but only in Cases where either the Statutes do generally refer the Trial to their Discretions, or else do specially authorize them to take the Examinations.

In all these former Cases where the Justices may hear and determine, or may punish Offenders as convict upon their own Confession or upon Examination of Witnesses, the Justices may grant out their Warrants against such Offenders (or at least ought to send for them) to appear before them to answer their said Offences: And thereupon may proceed to examine, hear and determine the Offences.

By Indictment
out of Sessions.

Where one or two Justices of Peace may hear and determine, by Inquiry and Indictment taken before them, out of their general Sessions, as it seemeth, *viz.*

Defaults of Sheriffs and Bailiffs, in not returning sufficient Jurors to inquire of Forcible Entries. *Vide antea Tit. Forcible Entry.*

Offenders in Riots. *Vide antea Tit. Riots.*

Transporters of Corn, &c. *Vide antea Tit. Transportation.*

Offences committed in Tile-making. *Vide antea Tit. Tile.*

Defaults as well of Officers as of Buyers and Sellers with unlawful Weights or Measures. *Vide antea Tit. Weights, &c.*

See L. m. 317,
and 496.

And in these Cases the Offence being found upon such Inquiry, these Justices have Authority not only to make out Process against the Offenders under their own *Tesse*, but also to *fine them*, and to commit the Offenders to Prison till they have paid their Fine, and to deliver them upon Payment of the same, or upon Sureties given for it; Or otherwise the

Justices may receive the Traverse of the Offenders, &c. for to all these Effects, the Words in those Statutes, *Hear and Determine*, do seem to lead and inable the said Justices.

C H A P. CXVI.

Sureties for the Peace.

Surety for the Peace, is the Acknowledging a Recognizance (or Bond) to the King, taken by a competent Judge of Record, for the Keeping the Peace: And it is called Surety, of the Word *Securitas*, because the Party that was in Fear, is thereby the more secure and safe. *What it is.*
Lam. 77.

This Surety for the Peace every Justice may take and command by a two-fold Authority. *Two Ways*
Supplicavit.
F.N.B. 79.h.
Lam. 77.

1. First, As a *Minister* (commanded thereto by a higher Authority) as when a Writ of *Supplicavit*, directed out of the Chancery or King's Bench, is delivered to him: Upon this Writ, that Justice of Peace only, to whom such Writ is delivered, is to direct his Warrant, to cause the Party to be brought before him *alone* to find Sureties for the Peace. And therein the said Justice is to do according as the Writ doth direct him.

See more concerning this Writ of *Supplicavit*, &c. *postea, sub hoc Tit. Surety for the Peace.*

2. Secondly, As a *Judge*, and by Virtue of his Office, derived from his Commission, he may command this Surety of the Peace to be found; and that either of his own *Motion and Discretion*, or else at the Request or Prayer of another.

The Justice of Peace, upon his own *Motion and Discretion*, may, if he see Cause, command Surety of the Peace to be found, or may bind a Man to the Peace, and that against *all the King's Subjects*, if the Justice shall so think meet, in these Cases following: *Upon Discretion.*

1. One that maketh an *Affault or Affray upon the Justice of Peace himself*, the Justice may commit him to Prison till he hath found Sureties for the Peace. *For what Act done in his Presence.*
5 H. 7. 6.
P. R. 18, 19.
Bro. Faux Impr.

2. Such as *in his Presence shall make an Affray upon another*, or shall strike or assault, or offer to strike another, the Justice may commit him to Prison until he hath found Sureties for the Peace.

3. So of such as *in his Presence and Hearing shall threaten to kill, beat or hurt another, or to burn his House.*

4. So of such as *in his Presence shall contend only in hot Words*; for from thence oftentimes do ensue Affrays and Batteries, and sometimes Maims, yea, Manslaughters and Murders. P. R. 18.

5. So of such as *in his Presence shall go or ride armed* offensively, or with an unusual Number of Servants or Attendants: For these are accounted to be an Affray and Fear of the People, and a Means of the Breach of the Peace: So of Servants and Labourers that shall bear any Weapons contrary to the Statute of 12 R. 2. *Vide antea Tit. Armour.* See Crom. 76.
142.
P. R. 4.

6. Also he may bind to the Peace any other Person, by him suspected to be inclined to the Breach of the Peace. 9 Ed. 4. 3.
P. R. 4.

7. If (out of the Presence of the Justice of Peace) any Man shall threaten to *kill, maim, or beat another*, or do attempt or go about to do it: Then any *Constable*, being present, may arrest such Offender, to come before a Justice of Peace, to find Sureties for the Peace, and the Justice may bind him to the Peace. *Out of his Presence.*
Crom. 135
and 143.
P. R. 22.
F. Bar. 201

8. If any Constable shall perceive any other Persons in *his Presence to be about to break the Peace*, either by *drawing Weapons*, or by Striking or Assaulting one another, or by Assaulting the Constable himself; he may take Assistance, and carry them all before the Justice, to find Sureties for the Peace, and the Justice may bind them. 1 H. 7. 7.

9. If the Constable shall know that certain Persons be fighting or quarrelling in a House, he may *break open the Doors, and arrest them*; and carry them before a Justice of Peace, to find Surety of the Peace: And the Justice may bind them. P. R. 22.

10. Yea, the Justice of Peace (either upon his own Discretion, or upon any Man's Complaint) may make his Warrant for any such as have made an *Affray* (though out of his Presence) and may bind them to the Peace. *Vide antea Tit. Affray.* See Br. Peace
21.
21 Aff. 27.

11. If one hath received a Wound, the Justice of Peace may take Surety of the Peace of the one and the other, (by his Discretion) until the Wound be cured and the Malice be over. *Popkam*, late Lord Chief Justice of *England* (an honourable and grave Judge) did accordingly between *James* and *Benton*, at *Cambridge Assises*, 3 *Jac.* 1.

12. All such as shall go or ride armed (offensively) in *Fairs*, *Markets*, or elsewhere; or shall wear or carry any *Guns*, *Dags* or *Pistols* charged; any Constable, seeing this, may arrest them, and carry them before the Justice of Peace, and he may bind them to the Peace; yea, though those Persons were so armed or weaponed for their Defence; for they might have had the Peace against other Persons: And besides, it striketh a Fear and Terror into the King's Subjects.

See more *hic antea* Tit. *Affray* and *Armor*.

13. Also the Justice of Peace (upon his Discretion) may bind to the Peace a common *Barrator*. *Vide* Tit. *Barrator*.

14. So of *Rioters*. *Vide* Tit. *Rioters*, and *Lamb.* 79.

New Sureties.
21 *E.* 4. 40.
Br. Peace 17.
Lamb. 117.
Cromp. 142.
15. He that standeth bound to keep the Peace, if he hath broken (or forfeited) his Recognizance by Breach of the Peace, the Justice may and ought to bind him anew; but that must not be done, until the Party be convicted of the Breach of the Peace upon his Recognizance; for before his Conviction it resteth indifferent whether the Recognizance be forfeited or no: But after that he is thereof convicted, and that the Forfeiture be levied, the Recognizance is then utterly determined; and then he is to be compelled to find new Surety, or else to be sent to the Gaol.

So, though the Forfeiture be not levied, yet if the Party be convict for Breaking the Peace, he shall be bound of new. *Cromp.* 141. and *Br. Recog.* 21.

16. Also he that standeth bound to keep the Peace, if his Sureties be insufficient, the same Justice, or another Justice of Peace, may compel him to find better Sureties.

And in many of the former Cases the Justice of Peace ought of Duty (or at least in good Discretion) to command this Surety for the Peace, although the same be not required by any other Person: And if any such Person shall refuse to give such Surety, the Justice ought to send him to Prison, there to remain until he shall find such Surety.

9 *Ed.* 4. 3.
Br. Peace 8.
If a Justice of Peace (upon his own Discretion) shall cause one to be arrested to find Sureties for the Peace, and shall after let him go without taking Surety, or binding him to the Peace, yet the Party hath no Remedy. (a) For an Action will not lie against the Justice for this, he being a *Judge of Record*. See 9 *H.* 6. f. 60. and 9 *E.* 4. f. 3. *Br. Judges* 2. 10. and *Br. Faux Imp.* 12.

Lamb. 80.
P. R. 18.
(d) A Justice of Peace may persuade a Man to require the Surety of Peace against another, and he himself may grant a Warrant for it, because it is no more than he might have granted of his *own Authority*, without any Demand made; and it shall be presumed that he saw Cause to do all this.

Upon Request.
Also at the *Request* or *Prayer* of another, the Justice of Peace may command this Surety of the Peace, and may grant his Warrant for it.

Oath, the Form of it.
F. N. B. 79.
H.
Lamb. 84, 85.
But here the Justice must and ought first to take an Oath of the Party that demandeth the Peace, which Oath must be to this Purpose, *sc.* *That he standeth in Fear of his Life, or of some bodily Hurt to be done to himself, or to have his Houses burnt (and that he doth not crave the Peace for any private Malice, or for Vexation, but of very Fear, and for the needful Safety of his Body or Houses)* for the Words of the Commission herein are, *Et ad omnes illos qui alicui, vel aliquibus de populo nostro; de corporibus suis, vel de incendio domorum suarum, minas fecerint, ad sufficientem securitatem de pace, &c. inveniendam, &c.*

So he that shall be threatned to be hurt in his Body, (*scil.* to be beaten, wounded, maimed or killed) the Party so threatned may crave and have Surety of the Peace against the other.

Also if a Man do fear that another will kill, *maim*, *beat*, *assault*, or hurt him in the Body, he may crave the Peace against such other Person.

Fitz. 79
G. H.
So if a Man do fear that another will *burn his House*, or that he will procure or cause any such Hurt to be done him by another, *either in his Body or in his Houses*; for the Words of the Recognizance be, *Non faciet, nec fieri procurabit.*

Cromp. 135. a.
So if a Man *lieth in wait* to beat, kill or hurt another, it is good Cause to require the Surety.

Threatning.
Lamb. 84.
If a Man be threatned to have his *Goods burn'd*, by the Opinion of Mr. *Fitz.* he may demand Surety of the Peace for this: *Quære tamen.* (a) Because he may recover Damages for and to the Value of the same. *Co. L.* 255.

(d) But

(d) But where a Man shall threaten to *imprison another*, it is holden, That the Peace shall not be granted; for that the Party wronged may have his Action of False Imprisonment, or a Writ *De homine replegiand'*, and so shall recover Damages for his Imprisonment. 17 E. 4. 4.
Br. Peace 22.

Yet inquire hereof, for to threaten Imprisonment is within the Words *minas de corporibus*; and like Harm may happen to a Man by hard Imprisonment, as by cruel Beating of him. (a) And to threaten Imprisonment, is a Cause to avoid a Deed or Bond, as well as to threaten to kill or maim one, &c. 39 H. 6. Br. Dureffe 9. Vide Lamb. 85.
F. N. B. 80.
G.
Lamb. 85.

(d) Where a Man is in fear that another will hurt his Servant or his Cattle or other Goods; this Surety of the Peace shall not be granted by the Justice: But in this Case Mr. Fitz. saith, the Party may have a special Writ out of the Chancery, directed to the Sheriff, that he shall cause such Person to find Surety, that he shall do no Hurt or Damage to the other Man in his Body, or to his Servants or Goods. And if he will not find Surety, that then he shall arrest and detain him in Prison until he shall find Surety: And that the Sheriff shall certify all that he shall do thereupon into the Chancery, &c. And the Sheriff ought to take such Surety by Recognizance. And yet if a Man shall threaten to hurt my Servant, or my Wife or Child, I see no Cause but that in their Behalf I may crave the Peace, by the Words of the Commission, and that the Justice ought to grant it.

If a Man will require the Peace, because he is at Variance, or in Suit with his Neighbour, it shall not be granted.

Note also, the Surety for the Peace shall not be granted but where there is a Fear of some present or future Danger, and not meerly for a Battery or Trespass that is past, or for any Breach of the Peace that is past: For this Surety of the Peace is only for the Security of such as are in fear. Now *Metus est, presentis vel futuri periculi causa, mentis trepidatio*: And so this Surety is, *providere presentia & futura, & non preterita*. Br. F. imp 42.
P. R. 14.

And, as for a Battery, or other like Trespass that is past, the Party wronged may have his Action of Trespass or Battery, &c. or may punish the Offender by Indictment at the King's Suit: And yet in such Case the Justice may (if he see Cause) bind over the the Affrayer. Vide antea.

If the Justice of Peace shall perceive that this Surety for the Peace is demanded meerly of Malice or for Vexation only, without any just Cause of Fear, he may safely deny it. As in common Experience we find it, That where A. shall upon just Cause come and crave the Peace against B. and hath it granted to him; when B. shall come before the Justice, B. likewise will crave the Peace against A. (and will perhaps surmise some Cause) but yet will nevertheless be content to surcease his Suit and demand against A. so as A. will relinquish to have the Peace against him; here the Justice of Peace shall do well (as I think) not to be too forward in granting the Peace thus required by B. but to persuade him, and to shew him the Danger of his Oath which he is to take; but yet if B. will not be persuaded, but will take his Oath, that he is in Fear (where indeed he neither doth fear, nor hath cause to fear) this Oath shall discharge the Justice, and the Fault shall remain upon such Complainant. Deny.

(a) And when the Justice hath granted the Peace to one, who in his Judgment shall crave or require it only out of Malice or for Vexation, he may presently in good Discretion bind him to the good Behaviour that so required the Peace.

C H A P. CXVII.

For whom, and against whom this Surety for the Peace shall be granted.

THE Law hath such an Opinion of the Peaceable Disposition of Noblemen, that 'tis sufficient to take one of their Promises, upon his Honour, that he would not break the Peace against a Man. Br. Contempts 6. 24 E. 3. 3. and 17 E. 4. 4. Noblemen.

And therefore if a Man shall have Cause to have the Surety of the Peace against a Lord of the Parliament, or such great and noble Personage, he shall not have a Warrant from the Justices of Peace to that Purpose; nor yet have a *Supplicavit* out of the Chancery directed Fitz.
Subp. 20.

directed to the Justice of Peace: But if there be Cause, he may have a *Subpœna* out of the *Chancery*, (of common Right) and there such *Lord or Nobleman* shall be bound to the Peace. And yet if such Lord will not appear upon the *Subpœna* served, *Quære*, If an Attachment will lie against him upon such his Default; *Cromp. f. 134. b.* saith that it was holden in the Case of the Lord *Cromwell* in the *Chancery*, about 18 *El.* that an Attachment will not lie, and *Dyer 315.* seemeth to accord.

Co. 65, 53, 54.
11 H. 4. 14.
Br. Repl. 19.
Co. 9. 49.
Vide 27 H. 8.
f. 22. b.

But though it be true that the Person of a *Baron* (who is a Peer of the Parliament) shall not be arrested in Cases of Debt or Trespass, &c.) first, In respect of their Dignity; secondly, In respect that the Law presumeth that they have sufficient Lands and Tenements whereby they may be distrained; yet in Cases of *Contempt*, they may be arrested by *Capias* or *Attachment*, &c.

Fitz.
Subp. 20.
F. N. B. 79. g.
Cromp. 134.

Or else he the Party may crave the Peace in the *Chancery* against such Lord or Peer (*sc.* to have a *Supplicavit* directed to the Sheriff) who may and ought to execute the same: And if the Sheriff shall not do his Office therein, an *Alias Plur.* and Attachment lieth against him. And if the Sheriff shall return, that such Lord is so powerful that he cannot arrest him; upon such Return, the Sheriff shall be grievously amerced (for he might have taken the *Posse comitatus*, *scil.* he might have levied 300 Men by his Discretion, if there had been need, to have aided him. And if such Lord or Peer, who is by the Sheriff so arrested, shall refuse to obey the Arrest, and shall make a *Rescous*, whereupon the Sheriff shall return a *Rescous*, there shall be an Attachment granted out against such Lord, to arrest and take his Body for such his Contempt.

Noblerwomen.
Co. 6. 52, 53.

The same Law and Remedy is where a Man hath Cause to have the Surety of the Peace against a *Dutcheß, Countess* or *Baroness*; for they are Peers of the Realm, and shall be tried by their Peers, though in respect of their Sex they sit in Parliament: And they are in the same Degree (as concerning their Nobility and the Privileges incident to their Dignities) with Dukes, Earls, and Barons. But here Note this Diversity, *sc.* if such Woman, being a Countess or Baroness, *sc.* by *Marriage only*, shall marry again under the Degree of Nobility, she hath thereby lost her Name of Dignity (together with the Privileges of her said Nobility also, for in such a Case, *Si mulier nobilis nupsierit ignobili, definit esse nobilis*, and that which was gotten by Marriage may also be lost by Marriage; for *Eodem modo quo quid constituitur, dissolvitur*; but if she be Noble by Birth or Descent, whomsoever she shall marry, yet she remaineth Noble: For Birthright *est Character indelebilis*.

Co. ibid.

Vide *Dyer*
79. & *Br. Nof-*
me de Dignity 31. & 69. & C. 1. 168.

And yet by the *Curtesy of England*, if Women have good Estates they never lose by marrying more meanly, but do still take Place according to the Estate of their first Husband.

Knicht.
Surety of the Peace may be granted by the Justice against a *Knicht*, and all other *Lay Persons* being under the Degree of a Baron or Peer of the Realm, and they shall be bound with Sureties.

* *A Justice of Peace of Surrey.*
(a) Sir *Nicholas Stoughton* * in *Surrey* was, upon the Complaint of one *Gilham*, required in Sessions to give Sureties for the good Behaviour for a sufficient Cause; he refused; the Sessions committed him until, &c. he gave Sureties: And afterwards Complaint was made hereof in the King's Bench, and he was compelled there to give Sureties, notwithstanding it was objected that the Justices of Peace were all of equal Power: But it was answered by the Court, that the Sessions made a Court, which Court might require Sureties for the Peace or good Behaviour of any one Justice of Peace.

Pa. 120.
36 H. 6. 23.
Br. Moign.
14 & 15.
See Stat.
1 R. 2. c. 15.
& 1 Mar. c. 3.

(d) *Ecclesiastical Persons* (if they be not attending upon Divine Services) may be arrested for the Peace, and they shall be bound with Sureties: But whilst they are doing any Divine Service in the Church, Church-yard, or other Place dedicated to God, they may not be arrested. 50 *Ed. 3. 5. P. Arrests* 1.

Sheriff.
Surety of the Peace may be granted against the *Sheriff, Under-Sheriff, Coroner, Escheator*, and other such Officers of Justice. But Mr. *Marrow* adviseth, that such Persons be not bound *versus cunctum populum*; but only against such Persons as shall demand it, lest otherwise it should argue them unworthy of their Offices.

(a) One Justice of Peace may grant this Surety to any Man against one of his Fellow Justices (and yet the Commission is joint) but great Discretion is herein to be used.

Wj. 8.
Yea, a Justice of Peace, upon Demand, may grant this Surety of the Peace against his own Wife: And yet he and his Wife are but one Person in Law.

If Surety of the Peace be demanded against a *Juror at the Sessions*, it is grantable; but *Juror.* yet the same should not be granted or done before the Sessions be ended.

(d) One Justice of the Peace may demand Surety of the Peace of his fellow Justice against another Man.

If a Man hath Cause to have Surety of the Peace against one dwelling in the *Cinque Ports*, he must have a Writ out of the *Chancery* directed to the Constable of *Dover*, and to the Warden of the *Cinque Ports*: The Form thereof see in *Fitz. N. B.* F. N. B. 80.

The Wife may demand this Surety against her Husband, (if he shall threaten to kill her, or outrageously to beat her, or if the Wife hath any notorious Cause to fear that he will do so) and it shall be granted her by the Justice of Peace, or she may have it by *Supplicavit* in the *Chancery*. *Fitz. 238. f. Br. Peace 23.* Feme.

The Husband for the like Causes may demand Surety of the Peace against his Wife. *Fitz. 80. f.*

(d) But it was resolved *T. 9 Car. 1. B. R.* that a Husband cannot have Sureties of the Peace of the Wife.

Also the Justice of Peace, upon his own Discretion, may in either of the aforesaid Cases between the *Husband and Wife* (especially happening in his Presence) grant Surety of the Peace.

An Infant, under the Age of fourteen Years, may demand this Surety, and it shall be granted him. *Infant.*
Lamb. 81.

Also this Surety of the Peace may be granted at the Prayer of any Person against a Feme Covert, or against an Infant, though he be under 14 Years of Age. (For if an Infant under 14 hath Discretion to demand the Peace, &c. then hath he Discretion to break the Peace.)

But if an Infant and a *Feme Covert* shall be bound by Sureties only, they themselves shall not be bound, and if they cannot find Sureties they shall be committed to Prison until they have found Sureties. And yet if an Infant shall be bound to the Peace, &c. by Recognizance taken by a Justice of Peace, he shall be estopped to avoid such a Record, if he doth not avoid it during his Minority, for it is not void but voidable, by *Audita querela*. Co. 10. 43.
Crompt. 237. b.

But if a *Feme Covert* shall be bound, or acknowledge such a Recognizance (though her Husband join with her) yet it is merely void as to the Wife, although she overliveth her Husband.

A Man of *Non sane Memorie*; this Surety shall neither be granted against him, nor to him upon his *Request*; and yet if there shall be Cause, the Justice of Peace (upon his Discretion) ought to provide for his Safety.

A Man that is *Lunatick* (*sc.* who at some Seasons hath the Use of Reason, and at other Times not) it seemeth this Surety of the Peace may be granted against him; and also that he may demand the same against another. *Lunatick.*

And if one of *Non sane Memorie*, or a *Lunatick*, be himself bound by Recognizance before a Justice of Peace, to keep the Peace, it seemeth such Recognizance shall bind them and all others for ever. See Co. 4.
124. & 11. 77.

But *Quere*, if there be not a Difference to be taken where a Recognizance by an Infant, or one that is *Non compos Mentis*, shall be acknowledged in a Court of Record, or in open Session, and where before a Justice of Peace out of the Sessions.

A Man that is *Deaf, Dumb, and Blind*, be it naturally (*scil.* that he was so born,) or accidentally, he shall not have this Surety granted to him, for he hath no Understanding to ask it, and yet for such a Person, (or any other Person not having Reason to demand the Peace) if there be Cause, the Justice of Peace, upon his Discretion, ought to provide for their Safety. *Natural Infirmities.*

A Man that is born dumb and blind may have Understanding; and therefore it seemeth this Surety may be granted to him, or against him.

But a Man that is born dumb and deaf can hardly have Understanding; for though the Sight be the chiefest Sense, yet by Hearing we come chiefly to Knowledge, and therefore it seemeth not grantable to him or against him. See Stamf. de Prærog. fol. 33, 34. Cro. El. 135.

(a) And yet a Man that is *Dumb and Deaf, or Blind and Deaf accidentally*, may have Understanding, and therefore this Surety may be granted to him, or against him.

(d) Also this Surety of the Peace may be granted against an *impotent Person*, although he be such a one as is not like to break the Peace himself; for he may procure another to kill or beat one: And the common Form of Recognizance is to bind a Man from *procuring Hurt*, as well as from doing Hurt. *Impotent Person.*

- Attaint.* This Surety of Peace may also be granted to, or against, a Man attainted of Treason or Felony.
- Excommunicate.* A Man *excommunicate* may have this Surety granted to him or against him.
- Cromp. 34. Abjured.* So also of a Man that hath abjured the Realm; for notwithstanding the Abjuration, he oweth the King his Allegiance, and remaineth within the King's Protection, and the King may pardon and restore him again; *Qui abjurat Regnum, amittit Regnum, non Regem.* Co. 7. 9. b.
- Præmunire.* A Man attainted in a *Præmunire*, may (at this Day) require, and ought to have this Surety granted to him. *P. R. 19. Cromp. 133.*
- Alien.* An *Alien born* who is made *Denizen*, may have this Surety; and so of an Alien born who liveth in *England* under the King's Protection (altho' he be not made a Denizen.)
- Crom. 134. R. 19. Co. 7. 17.* And so of an Alien whose King is in League with our King; or if there be no Wars between this Realm and that Realm whereof the Alien is; for by the Common Law, all these may get and have within this Realm any personal Goods, and may sue for the same, and so have the Benefit of the King's Laws and Protection. But an Alien who is the King's Enemy, (*scil.* where there is open War between our King and his King) shall not have this Surety granted to him, nor any other Benefit of the King's Laws.
- Dyer 2.* Who shall be said to be Alien. See *Co. 7. 16, 17.*
- Subjects.* In *Calvin's Case*, 6 *Jac. 1. Reg.* there is a Difference taken between *ante-nati* and *post-nati* in *Scotland*, where it is holden, That *ante-nati* in *Scotland*, *sc.* such as were born before the King's Coming to the Crown of *England*, they are Aliens born; the Reason is, for that at the Time of their Birth, they were under the Legiance and Obedience of another King; and he could not be a Subject born of the Kingdom of *England*, that was born under the Legiance of a King of another Kingdom. And yet it is manifest, that *ante-nati*, being the King's Subjects, are herein provided for by the Commission it self; the Words whereof are, *Et ad omnes illos qui alicui vel aliquibus de populo nostro, &c.* of which Number *ante-nati* be: So as they may and ought to have this Surety granted to them, as well as to any other Subjects. See *Dyer fol. 304 & Pl. 306. a.*
- Irishman.* An *Irishman* born is a natural-born Subject, and capable of, and inheritable to Lands in *England*, and therefore may have this Surety.
- Infidel.* But it may be questioned, whether an Infidel, Pagan or Jew, shall have this Surety granted to them. For in Law they are *perpetui inimici*; there is between Christians and them perpetual Enmity, and can be no Peace: Neither can they get any Thing within this Realm, nor maintain any Action at all. *12 H. 8. 4.*

C H A P. CXVIII.

How this Surety of the Peace may be commanded, and how the same Commandment shall be executed.

- Parol.* THE Justice may command this *Surety of the Peace* either by *Word* only, or by *Writing*.
- 14 H. 7. 8.* 1. By *Word only*, the Party being in his Presence; as if in the Presence and Hearing of the Justice, one Man doth threaten another, or shall make an *Affray* or *Affault* upon another, or do the like Thing tending to the Breach of the Peace, the Justice may command him by *Word* to find Sureties for the Peace.
- 14 H. 7. 9.* Also if one shall demand this Surety against another, who is then in the Presence of the Justice, and will be sworn that he is afraid of him, the Justice may by *Word* command the same Party to find Sureties for the Peace.
- 14 H. 7. 8, 9.* And the Justice in such Cases may (by *Word only*) command the Constable, or any other known Officer, or his own Servant being then present, to arrest such Party to find Sureties for the Peace, and to take the Party into his or their Custody, &c. and if the Party shall refuse to find such Sureties, then the Justice of Peace may commit him to the Gaol.

(a) But if the Party (against whom this Surety of the Peace is demanded) be *absent* it is otherwise; for a Justice of Peace cannot send for or command any Man to be arrested

rested or brought before him, or to be imprisoned, (*who is not in his Presence*) by Word only, but he must make his Warrant or Precept in Writing. And *Popham*, Chief Justice, said, That the Justices of the King's Bench, when they send for any of the King's Subjects, it is either by Writ, or by Warrant, or by a Tipstaff: But the Tipstaff (said he) is by Prescription, except that the Party be in *Westminster-Hall*, &c. See the Case between *Woody* versus *Bokers & Read-head*, *Termino Mich. Ann. 2 Jac. 1. Regis Rotul. 480. in Banco Regis.*

(d) 2. By Precept or Warrant in Writing, and under the Justice his Seal; and this must be directed to some Officer or other indifferent Person, and must contain the Cause, and at whose Suit, to the Intent the Party to be bound may provide his Sureties, and take them with him. By Writing.

The Form of which Precept, see *postea* Tit. *Warrants*, cap. 169.

The Justice of Peace may make his Warrant to bring the Party *before himself*, (to find Surety for the Peace) by the Opinion of *Wray*, Chief Justice; for he that maketh the Warrant, for the most part, hath the best Knowledge of the Matter, and therefore he is the fittest to do Justice in such Case. And yet the most usual Manner is, to make such a Warrant to bring the Party before the same Justice, or some other of the Justices of the Peace of the same County, &c. And Judge *Fineux* his Opinion was, That where a Justice of Peace doth make any Warrant for the Peace *ex officio*, (*sc.* by Force of the Commission, and not by Virtue of a *Supplicavit*;) there the Party may chuse to appear before him or any other Justice in that County: And that the Party may have his Action of false Imprisonment against the Officer, if he do otherwise compel him. Otherwise it is in the Execution of the Writ of *Supplicavit*, as you may see here *postea*, *sub hoc titulo*. Before whom to be brought. Co. 5. 59. Br. Peace 9. Bull. Part 3. P. 78. 21 H. 7. 22.

Who may serve this Warrant, and whether the Officer may make his *Deputy*; and whether they need shew their Warrant or no; and whether they may break open the Doors, &c. See hereof Tit. *Warrants postea*.

The Constable (or other Officer) before he arrest the Party upon such a Warrant, ought first to acquaint him with the Matter, and withal to require or charge the Party in the King's Name, to go (with him) before the Justices to find and put in Sureties according to the Warrant: And if the Party shall refuse to do this, *sc.* shall refuse either to go before the Justices, or to find Sureties, then the Officer (by the Words of the Warrant) may and ought forthwith to arrest him, and may convey him to the Gaol without carrying him to any Justice, and there the Party shall remain until he shall voluntarily offer and find Sureties. (a) And then such Officer ought to be at the next Sessions of the Peace, there to deliver in his Warrant, and to certify all that he did thereupon. How it shall be executed. 5 Ed. 4. 13. Lamb. 92. Yet some Precedents are, Quod Captivus, &c. P. R. 20. and Cromp. 2. 5. Br. F. Imp. 18.

(d) But if the Party shall yield to find Sureties, then the Officer may not absolutely arrest him; but yet the Officer is not bound to go up and down with the Party, to find Sureties, but may keep the Party until he can procure Sureties to come to him: And if afterwards the Party shall make any Resistance, or shall offer to go away, then the Officer may arrest him, and by Virtue of that Warrant may carry him to the Gaol, and may also imprison him in the Stocks, until he can provide Aid to carry him to the Gaol.

When the Party cometh before the Justices of Peace by Force of this Warrant (or by Force of any other like Warrant for the Peace, Good Behaviour, or a Riot, or the like) the Party must offer Sureties to the Justice of Peace, or else the Justice may commit him to Prison; for the Justice needeth not demand Surety of him. 14 H. 7. Br. Peace 7. and Mainp. 39.

Also after that the Party shall be brought before the Justice, if he shall refuse to find Sureties, the Officer, without any new Warrant or Command, may carry the Party to Prison, and that by the Words of the first Warrant: And if he shall refuse thus to do that, then, &c. See the Form of the Warrant. Co. 5. 59.

If the Officer do arrest the Party, and do not carry him before some Justice of Peace, to find Sureties, &c. or upon the Refusal of the Party, if the Officer shall arrest him, and do not carry him to the Gaol, in both these Cases the Officer is punishable by the Justices of Peace for this Neglect, (by Fine at their Sessions:) And also the Party arrested may have his Action of false Imprisonment for the Arrest. (a) For where the Officer doth not pursue the Effect of his Warrant, it will not excuse him of that which he hath done. *21 H. 7. 23. a. 3 H. 7. fol. b. Brian & Br. Faux. Imp. 21.* 5 Ed. 46. P. R. 20.

(d) And if the Party be imprisoned for Default of Services, and after he who demanded the Peace against him happen to dye, or shall release the Peace, in these Cases the Justice of Peace may make his *Liberate* or Warrant for the Delivery of such Prisoner; for after such Dye or release. Liberate.

such Death or Release, there is no Cause to continue the other in Prison. Also any Justice of the Peace may (upon the Offer of such Prisoner) take Surety of him for the Peace, &c. and may thereupon deliver him.

4 E. 3. 16.
2 H. 7. 24.
Br. Privilege
35, 52.
Lamb. 96.

If the Party imprisoned for not finding Sureties hath a Suit depending in the *Common Pleas*, he may by the Course of that Court, by a Writ of Privilege, be discharged of his Imprisonment, if the other Party be not ready in the Court at the Day of the Return of the Writ, to pray there new Sureties of the Peace. But *quære*, for it may be, he which demanded the Peace, hath no Notice of the removing of his Body, and then, how can he be ready in the Court of *Common Pleas* at the Day? And therefore it may seem a hard Case so to be defeated of this Surety.

Execution of
Warrant.

If the Party hath gotten Sureties, then if the Warrant proceed *ex officio* (and not upon the *Supplicavit*) and be a general Warrant (*sc. to come before me or some other Justice*) the Party may go before any other Justice of Peace to offer his Surety; yet he shall not inforce the Officer to travel to a Justice out of the Division or Limit where they be dwelling, without good Cause: Nay, it is at the Election of the Officer, who is the Minister of Justice, to carry the Party attached to any other Justice of Peace that he will: For it is more Reason to give this Election to the Officer, who in Presumption of Law is a Person indifferent, and is sworn to execute his Office duly, than to the Delinquent himself, who by Presumption will seek Shifts, and weary the Officer. (a) This hath been so adjudged.

Co. 5. 59.
B. Faux. Imp.
11.
B. Peace. 9.

Refusing.

(d) If the other Justice of Peace, before whom the Party so attached shall come, shall refuse to take such Surety, being offered to him, this is punishable: For such Justice of Peace ought to take it, and to bind him by Recognizance: But yet that must be done in all Points, as the Form of the Precept doth require: And thereupon the same or other Justice of the Peace, having so taken Surety for the Peace, may and ought, upon Request, to make his *Superfedeas* to all Officers, and to all other Justices of Peace of the same County, and thereby the said Party shall be discharged from finding other Surety, and from any other Arrest for the same Cause: But by such *Superfedeas* the other Justice cannot discharge the first Warrant of the first Justice, until the Party be bound indeed; nor can give any other Day to the Party to appear at any other Sessions, &c.

Lam. 98.

Superfed. by a
Justice of
Peace.
Cromp. 145.

Supplicavit.

Also a Justice of Peace of the County, by a *Superfedeas*, cannot discharge a Warrant awarded by his Fellow Justice, by Force of a *Supplicavit* to him directed out of the *Chancery* or *King's Bench*, to take the Surety of the Peace of one resident in that County.

Also when a Man doth fear the Surety of the Peace will be demanded against him in the Country, or doth hear that such a Warrant for the Peace is already granted against him by a Justice of Peace; in either of these Cases, he may give Surety of the Peace before any other Justice of the Peace of the same County where he dwelleth, and thereupon may have a *Superfedeas* from the Justice of Peace, &c. But in such Case it is fit that the Party be urged by such Justice to put in sufficient Sureties, and that he be bound towards the King and *all his People*, and to appear at the next Sessions.

Lam. 101.

If any Officer, having a Warrant from a Justice of Peace to arrest a Man to find Surety of the Peace, shall receive a *Superfedeas*, out of the *Chancery* or *King's Bench*, or from any Justice of the *King's Bench*, or from any Justice of Peace of that County, to discharge the same Surety of Peace, and yet will urge the Party, by Force of his Warrant, to find new Surety for the Peace, the Party may refuse to give it; and if he be arrested or imprisoned for such Refusal, he may have his Action of False Imprisonment against such Officer; for such *Superfedeas* is a Discharge of the former Precept or Warrant.

The Form of a *Superfedeas* granted by a Justice of Peace, see *postea*, Tit. *Warrants*.

Lam. 59.

And this *Superfedeas* is sufficient, though it neither name the Sureties, nor contain the Sums wherein they are bound; but yet it is the better Form to express them both. See 2 H. 7. 1.

Superfed. from
above.
F. N. B. Br.
81. a. & 238. c.

If the Party shall mislike to be or stand bound to the Peace, by the Justices of Peace in the Country, then may he (either before or after that he is bound in the Country) go or send to *London*, and there give Surety for the Peace, (either in the *King's Bench*, or in the *Chancery*): And thereupon the Party may have a *Superfedeas* (out of the Court where he hath given such Surety) to restrain the Justices of Peace of the County from taking any Surety of the Peace of him; and then the Justices of Peace of the Country after the Receipt of such *Superfedeas* must forbear to make any Warrant for the Peace against the Party. And if any Justice of Peace have granted out any such Warrant against the said Party, the said Justice must make his *Superfedeas* to the Officers, thereby commanding them

them to surcease, to put his former Warrant in Execution, and so to discharge it, and the Party of an Arrest or Imprisonment thereupon. See more *postea*, *sub hoc titulo*.

The Form of a *Superfedeas* for the Peace or Good Behaviour out of the *King's Bench*, see *Libr. Intr.* 454.

The Form of a *Superfedeas* for the Peace out of the *Chancery*. See *Fitz.* 238.

Note, That this *Superfedeas* out of the *Chancery* may be procured at any Time in the Vacation and out of Term. *F. N. B.* 236. a.

(a) These Writs of *Superfedeas* from the *Chancery* or *King's Bench*, are Commands to the Justice of Peace to stay him from binding the said Party to the Peace, which otherwise he might not deny.

(d) If the Justices of Peace shall not surcease after a *Superfedeas* out of the *Chancery* or *King's Bench*, to them delivered, an *Attachment* will lie against him or them for such *Contempt*, and besides, they may be fined and imprisoned for it. Lam. 102.

Yea, such a *Superfedeas*, coming out of those High Courts to the Justices of Peace, they ought thereupon to surcease, although such a *Superfedeas* should be awarded against Law.

If such a *Superfedeas* shall be directed to the Justices of Peace and Sheriff; that Justice to whose Hands it shall be delivered may keep it, and may deliver the Label to the Party.

And in these and the like Cases, the Justice of Peace shall do well to send to the next general Sessions of the Peace, as well the said *Superfedeas* (if it come to his Hands) as also the Recognizance which he had formerly taken of the Party (if he have taken any) for the Recognizance might be forfeited before the *Superfedeas* was purchased; or if it were not forfeited, yet the Conusor is not endamaged thereby.

If the Party shall procure such *Superfedeas*, out of the *Chancery* or *King's Bench*, after that he is bound by Recognizance before the Justice of the Peace to keep the Peace, &c. and to appear at the next Sessions, *Quere* whether the Party sending by his Servant such *Superfedeas* to the Justices of Peace at the next Sessions, be thereby discharged of his Appearance there, the Recognizance also being certified thither by the Justice. Lam. 115,
116.
Cromp. 139,
140.

It seemeth to some, this Difference is to be holden therein, *sc.* if the Party were bound (before the Justice of Peace) to keep the Peace *against all Men*, &c. and shall after procure such a *Superfedeas*, testifying that he hath found Surety in the *Chancery*, &c. *against all Men for ever*, and shall send this to the Sessions, this shall discharge his Appearance at the Sessions; otherwise if the *Superfedeas* shall testify that he hath found Surety but till a certain Day (which is after the next Sessions.) But yet it seemeth safest in both Cases for the Party to appear to save his Recognizance. See to the like Purpose the Case in 28 *H. 8.* *Dyer f. 25.* where a Man being arrested by the Sheriff upon a *Capias*, found Sureties for his Appearance at the Day, and there came a *Superfedeas* to the Sheriff; and it was moved, whether it were necessary for the Defendant to appear, or not, to save his Bond; or that his Appearance or Surety were discharged by the *Superfedeas*: And the Opinion of the Court was, That he ought to appear for the saving of his Bond. Also the Precedents of Entries are, that the Party bound did shew his *Superfedeas* in Court, and prayed Allowance thereof; and was thereupon discharged. 28 H. 8.
Dyer 25.
Cromp. 140.
Lib. Intr. 453.

(a) But because divers contentious Persons, deservedly fearing to be bound to the Peace or Good Behaviour by the Justices of Peace in the Country, do oftentimes procure themselves to be bound in the *Chancery* or *King's Bench*, upon insufficient Sureties, or upon colourable Prosecution of some Person, who will be ready at all Times to release them at their own Pleasure; whereupon his Majesty's Writ of *Superfedeas* is often directed to the Justices of Peace, &c. requiring them to forbear to arrest or imprison the Parties for the Causes afore said; by Means whereof the said contentious Persons do greatly disturb their Neighbours, and affront the Justices of Peace, to the evil Example of others; therefore it is enacted by the Statute made 21 *Jac. 1.* That all Writs of *Superfedeas* to be granted by or out of either of the said Courts of *Chancery* or *King's Bench* shall be void; unless such Process be granted upon Motion in open Court, and upon such sufficient Surety as shall appear unto the Court, upon Oath, to be assessed at 5 *l.* Lands, or 10 *l.* in Goods in the Subsidy-book at least, &c. And unless it shall also appear first unto the said Court, that the Process of Peace or Good Behaviour is prosecuted against him or them, desiring such *Superfedeas*, *bona fide*, by some Party grieved, in that Court out of which such *Superfedeas* is desired to be so awarded and directed. 21 Jac. 1. c. 8.
Superfedeas.

C H A P. CXIX.

Concerning the Recognizance for the Peace.

Recognizance. THIS Recognizance which the Justice takes for the keeping of the Peace is rather of Congruence than by any exprefs Authority given him. *Fitz.* 82. a. 7 H. 4. 34. *accord.*

And this Recognizance for the Peace, if the Justice doth take it by Force of the Writ of *Supplicavit*, then he ought to execute it, and to do in all Things as the Writ directeth him; but where such Writ prescribes not the Sum, &c. that rests in his own Discretion.

Lam. 103. But if he taketh the Recognizance *ex officio*, and by Force of the Commission, and so as a Judge, and not as a Minister; then it resteth in the Discretion of the same Justice of Peace wholly to appoint and allow the Number of Sureties, their Sufficiency in Goods or Lands, the Sum of Money wherein they shall be bound, and to limit the Time how long the Party shall be bound, and such other Circumstances.

Sureties and Sum. In the Book 7 H. 4. f. 34. a. you shall find the Principal to be bound in 1000 l. and four Sureties, every of them in one thousand Marks before Justices of Peace, and for the keeping of the Peace.

Br. Im. 18. *Quære*, If Justices of Peace may not examine upon their Oaths the Sureties concerning their Sufficiency; it seemeth to be the Usage in the Courts at *Westminster*: And Mr. *Crompton* saith, that the Justices of Peace in their Sessions may do it. *Crompt.* 294.

The most usual Manner and safest Way for the Justice of Peace, is to take two Sureties at the least, besides the Party himself, and to bind them by Recognizance to the King, *viz.* *Domino Regi*: And it must always be for the keeping of the Peace.

And yet by the Opinion of Mr. *Marrow* (who wrote in the Time of King H. 7.) a Justice of Peace might have taken this Surety by a Pawn only to him.

Also, by his Opinion, a Justice of Peace might have taken this Surety by an Obligation made to himself, by the Name of Justice of Peace.

Fitz. N. Br. 81. D. Yet if a Justice of Peace had enjoined a Man upon Pain of 20 l. to keep the Peace, this had been nothing worth: But in this Case and the former two Cases, and the like, this one general Reason may be given for all, *sc.* that a Man cannot be bound to the King, but only by Matter of Record, and therefore such Surety taken by Pawn or Obligation, or such Injoining of the Peace, seems nothing worth to bind the Party.

The Form. Besides, by the Statute 33 H. 8. cap. 39. there is a plain Law made, in these and the like Cases, which willet, that all Obligations, &c. which shall be taken for the King, shall be made in the King's Name, and by these Words *Domino Regi*: And if any Person shall make or take any Obligation or Recognizance to the King's Use in any other Manner, he is punishable by Imprisonment at the King's Pleasure, &c.

Time. A Justice of Peace may take a Recognizance, and thereby may bind the Party to keep the Peace for one Year, or for a longer Time, (by his Discretion) yea, he may bind the Party during his Life upon reasonable Cause. (a) And this the Justice may do either by his own absolute Authority, or upon Complaint to him made, and upon good Cause shewed; as if the Offender be a common Barrator, a Rioter, or else in the Justice's Conscience a dangerous Person: But if such Surety be so taken during the Offender's Life, the Justice of Peace can never release that afterwards; and therefore he must be well advised how he granteth such Surety.

(d) If the Recognizance be made to keep the Peace generally, without any Time or Day limited, it shall be construed to be during the Party's Life.

Recognizance. A Justice of Peace, intending to take a Recognizance for the Peace, and yet maketh no Mention there, nor in the Condition thereof, that it is for the Preservation of the Peace, it seemeth to be void, as being taken *coram non Judice*: For a Justice hath no Authority to take a Recognizance generally, but for Matters concerning his Office specially.

Lam. 106. If the Recognizance be, that the Party bound shall not beat nor maim A. it is not good, because it ought to be for the Keeping of the Peace (generally) and the Peace may be broken by burning the House of A. or the like.

Time. If the Recognizance do not limit any Time of Appearance for the Comuzor, but be generally to keep the Peace; yet it is good, for the Time of Appearance is referred to the Discretion of the Justice, and the chief Scope is, the Keeping of the Peace. *Marrow. ib.*

Also

Also (by his Opinion) if the Recognizance do limit a Time of Appearance, but no Person named, before whom the Party so bound shall appear, then may he appear, in any Place out of the Sessions where he will, before that Justice of Peace which took the Recognizance. *Ibidem.*

But in the two last Cases, if a Recognizance should be taken in such Manner at this Day, I should think it safe for the Party to appear at the next Sessions for the Peace, and there to record his Appearance. See more *postea, sub hoc titulo.*

(a) If the Recognizance be to appear before the Justice of Peace within forty Days, next after the Date or Taking of the Recognizance, and before the End of the forty Days, a General Sessions of the Peace shall be holden, &c. The Party now ought to appear at the same Sessions. *Cromp. 123.* See the like Matter, *Br. Condition 280.*

Also if these Words be in the Recognizance, *sc.* That he shall appear before the same Justice & *sociis suis*, then must he appear at the next Sessions.

(d) If the Recognizance be to appear at any other Sessions after (and not at the next Sessions) 'tis good; and yet by the Statute 3 *H. 7. cap. 1.* it is enacted, That every Recognizance taken for the Peace, by the Justice of Peace, and *ex Officio* shall be certified, (*sc.* sent or brought in) at the next Sessions of the Peace, and there delivered to the *Custos Rotulorum*, that the Party so bound may be there called; whereby it may seem that every Recognizance taken for the Peace now, ought to be, to appear at the next Sessions. *Cromp. 141. P. Just. 106.*

If the Recognizance be in twenty Pounds to be levied of his Lands *only*, or of his Goods *only*, yet it is good; and this Word *Only* may seem void: For the Acknowledgment of the Recognizance before a competent Judge, both maketh it a Debt, and implieth the ordinary Means of Law to come unto it. See hereof *postea Tit. Recogn.* *Lam. 107.*

If the Recognizance be to keep the Peace towards the King and *all his People*, but not towards any Person certain, 'tis good.

So if the Recognizance be to keep the Peace towards *A. only*, it seems good, or to keep the Peace towards *A. and his Servants*, without being bound *towards the King and all his Subjects*, it seems good. *F.N.B.80.G. Cromp. 141.*

But the best Form is, to bind the Party to keep the Peace towards the King and all his People; for first the Words of the Commission are to find Surety, *Erga nos & populum nostrum*: And again, the common Usage is so; and besides, it may otherwise prove dangerous to the Party who hath Cause to crave this Surety of the Peace; for the other Party who shall give me just Cause to crave this Surety against him (because he will not be bound to the Peace towards me) he will perhaps pray to bind himself to the Peace to *A.* who is his Companion, and then if the Justice of Peace shall so bind him, then may he and *A.* go before another Justice of Peace (and that within one Week) and there *A.* may release him of the Peace, and so I (trusting that he is still bound) may be after beaten, maimed or slain by him, or his Procurement. *The best Form of a Recognizance.*

So then, though the Recognizance being taken in any Manner as aforesaid, may prove sufficient to bind the Party to the King; yet it will not excuse the Justice of Peace from Blame, and therefore it is safest for the Justice of Peace to follow the received Form.

The Form of the Recognizance for the Peace see *postea, Tit. Recognizance, cap. 168.*

The Recognizance for the Peace, being thus taken, if it were by Virtue of the Writ of *Supplicavit*, the Justice ought to return the Writ, and to certify under his Seal his doing therein into the Court from whence the *Supplicavit* proceeded; and he may also send such Recognizance so taken by him, with his Certificate, or else he may keep the Recognizance in his Hands still, until he shall receive a *Certiorari* out of the *Chancery*, directed to him for removing it. See more *sub hoc tit. postea.* *Recognizance to be forfeited. Supplicavit.*

But if this Recognizance for the Peace was taken by the Justice *Ex officio*, then he ought to certify, send, or bring the Recognizance to the next Sessions of the Peace, so that the Party bound may be called thereupon; and that if the Party make Default of Appearance, the same may be then and there recorded. *3 H. 7. 1. P. Just. 106.*

If a Man do forfeit his Recognizance (either for Default of Appearance or for Breach of the Peace) the Justices may not award any Process for the Forfeiture, but must certify the Recognizance, with the Cause of the Forfeiture, into some one of the King's Courts at *Westminster, sc.* into the *Chancery, King's Bench* or *Exchequer*, that from thence Process may go out against the Party; and so ought it to be, if it be presented by the Jury, that the Party hath forfeited his Recognizance by Breach of the Peace. *Lamb. 570. Process.*

If the Justice of Peace shall not certify such Recognizance at the next Sessions, the said Statute of 3 *H. 7. 1.* limiteth no Penalty; and yet see *Brook, Tit. Peace 11.* That the Justice shall forfeit 10*l.* if he do not certify the Recognizance of the Peace at the next Sessions; *Certified.*

sions; but Mr. *Brook* there mentioneth the Statute of 3 *H. 7. cap. 3.* which Statute was only for Bailment of Prisoners, and certifying the same, and so seemeth to mistake the Statute.

Cromp. 169. If he which demanded the Peace shall *release* it, before the said next Sessions, then, though the Justice of Peace shall not certify the Recognizance, the Statute is not transgressed; for the Party shall not be called in such Case upon his Recognizance. But it is better to certify the Recognizance, for peradventure it was forfeited before the *Release* made.

Recognizance removed. Also, he that demanded this Surety, or he that is bound to the Peace, may by a *Certiorari* remove such Recognizance into the *Chancery* or *King's Bench*, before the Justice hath certified the same to the Sessions, in case the Justice shall not certify the same thither. *3 H. 7. 1. Br. Peace 11. Fitz. 81. F. N. B. 81.* And then the Party bound need not appear. See *hic postea*, The Form of the Justice's Return of such *Certiorari*, and of the Recognizance.

New Surety. If the Justice of Peace was deceived in the Sufficiency of the Sureties, he or any other Justice, may afterwards compel the Party to find and put in other sufficient Sureties, and may take a new Recognizance for the same; for that the Precept is *Ad inveniend. sufficientem securitatem*. But if the Sureties die, the Party Principal shall not be compelled to find new Sureties. See more *postea, sub hoc tit. & postea tit. Bailment, cap. 166. Part 2.*

C H A P. CXX.

What Things shall discharge this Recognizance (of the Peace) or the Party of his Appearance at the Session.

Superfedeas. **W**Hether a *Superfedeas* out of the *Chancery*, &c. shall discharge the Party of his Appearance, see *antea*, Chap. 118.

39 H. 6. 26. Br. Surety 10. and Def. 60. He who is bound to the Peace, and to appear at a *certain Day*, must appear at that Day, and record his Appearance, although he who craved the Peace, cometh not to desire it may be continued, otherwise the Recognizance shall be forfeited.

Proclamation. And if a Man be bound to keep the Peace *towards the King and his People*, but not towards *any Person certain*, and to appear at such a Sessions, the Court at that Sessions may make Proclamation, That if any Man can shew Cause, why the Peace granted against such a one shall be continued, that he speak, &c. And if no Person cometh to demand the Peace against him, or to shew Cause why it should be continued, then the Court may discharge him. But if a Man be bound as aforesaid, and especially to keep the Peace towards *A.* there, tho' *A.* cometh not to desire the Peace may be continued, yet the Court by their Discretion shall do well to bind him over till the next Sessions, and that may be to keep the Peace against *A.* only, if they shall think good: For it may be that *A.* who first craved the Peace is sick, or otherwise letted, so as he cannot come to that Sessions to demand the Continuance of the Peace; and in some Places in such Case, they ordinarily use to bind him over for two or three Sessions together, by Order among themselves.

Lam. 112. And yet by the Course of the *Common Pleas*, one that was imprisoned for the Peace (being removed thither by a Writ of Privilege) was there discharged, for that he which demanded the Peace, came not at the Day (of the Return of the Writ) to pray Continuance thereof. See more *antea*, Chap. 118, 119.

2 H. 7. 4. Br. Surety 13. If the Justice of Peace shall not *certify the Recognizance* to the Sessions, yet the Party ought to appear, and to record his Appearance. See such a Matter of a Sheriff, who took Bond of one to appear in the common Bench, at a certain Day, &c. although the Sheriff return not his Writ, &c. yet the Party must appear to save his Bond. *Vide 18 Ed. 4. 18.* for this last Case.

Appearance. If the Party who is bound to appear, is so sick that he cannot appear, nor by any Means travel at the Day, yet his Recognizance in Strictness of Law is forfeit, and so it is by the Course of the Courts at *Westminster, ut dicitur*; yet in this Case, upon the due Proof of such his Sickness, I have known the Justices of Peace (in their Discretion) have forbore to certify or record such Forfeiture or Default; and that they have taken Sureties for the Peace of some Friends of his present in Court, until the next Sessions; for that the principal Intent of the Recognizance was but the Preservation of the Peace. But *quare*, how

how this is warrantable by their Oath; besides, the Party so bound, might (by a *Certiorari*) have removed his Recognizance into the *Chancery* or *King's Bench*, before the Day of his Appearance, and then he should not have needed to appear at the Sessions, for that the Justices there should have no Record whereupon to call him.

(a) But the Civil Law in such Cases is more favourable; for with them the Rule is, *Citatus ad locum non tutum non arētatur comparere*: As if the Plague shall be hot in the Place or Town where the Party is to appear, or where their Court is held. This is a good Excuse in their Law, *ut dicitur*.

So if there shall be any other inevitable Accident, whereby the Party shall be hindred, as by any *great Snow*, Inundation of Waters, or by any Fall, or other Hurt or Sickness, whereby he is in Danger of Death: In these and the like Cases, the Civil Law doth dispense with Default, referring these Things *Arbitrio Judicis*.

See Mr. *Brook*, Tit. *Saver de Default* 17, 28, 45 & 48. and divers other Books, shewing, That the Common Law doth allow divers Cases to save a Default of not appearing in Court, the same being pleaded and proved, as *Imprisonment*, *Inundation of Waters*, *Tempest*, and *Sickness*. Vide *Lib. Intr.*

(d) If the *Husband* be bound, that he and his *Wife* shall appear at such Sessions, and that they shall keep the Peace in the mean Time, &c. and at the Day the Husband doth appear, but not his *Wife*. Here Mr. *Crompton* saith, the Recognizance is not forfeit; for if there shall be Cause to continue this Surety of the Peace against the *Husband and Wife*, he shall be bound, and not the *Wife*; and therefore the *Wife's* Appearance seems not greatly material. *Baron and Feme. Crompt. 144.*

If a Man be bound to the Peace during his Life, or generally, without any Time or Day limited, in such Case neither the King, the Justice of Peace, nor the Party, can discharge this Recognizance, during the Life of the Party so bound, by Release or otherwise. *Br. Peace* 17. *Release. 21 E. 4. 40. Lamb. 113.*

The Justice of Peace, who upon his own Discretion, hath compelled one to find Surety of the Peace upon a certain Day, and hath taken Recognizance for his Appearing, &c. may upon the like Discretion release the same before that Day; and that such a Release will discharge the Recognizance taken by that Justice, if it were not forfeited before, and will also discharge the Party so bound of his Appearance; for that here all this Business depends only upon the Discretion of the Justice of Peace who bound him. *Fitz Just. de P. 9. Lamb. 113. Crompt. 139.*

If a Justice of Peace shall grant the Peace at the *Request of another* (i.e. at the Suit of *A.*) and the Recognizance be taken to keep the Peace against *A.* only, then before the next Sessions may *A.* only release it (and none other) and that Release being certified at the next Quarter-Sessions, will discharge the Party so bound of his Appearance, so as he shall not be called upon his Recognizance; for that Release being so certified, is now become of Record as well as the Recognizance.

If the Recognizance were to keep the Peace *Versus cunctum populum* & *præcipue versus A.* yet may the same *A.* release it: For although this may seem popular, and that all others shall have Interest therein as well as *A.* Yet as it appeareth, by the Word *Præcipue*, it was specially taken for his Safety: But the contrary was holden by all the Justices, 21 E. 4. 48, *ſc.* That the Party at whose Suit the same was granted, cannot release the same. And Mr. *Lambard* alloweth best of that Opinion; nevertheless the Usage now is, and long hath been, as is first aforesaid. *Br. Peace 17. Lamb. 113.*

But (in these former Cases) although this Surety of the Peace be released, and the Parties agreed, yet the Recognizance shall not be cancelled by the Justice of Peace, for peradventure it was forfeited before such Release made: And therefore the Justice of Peace shall do best, nay, ought to certify such Recognizance, together with the Release, to the next Quarter-Sessions.

The Form of the Release of the Justice of Peace see *postea* Tit. *Release*.

The Form of the Release of the Party see *ibidem*.

Note, That the Party who first demanded the Peace, may release the same before the same Justice of Peace that took the Recognizance, or before any other Justice of Peace.

Note also, That to release such Surety of Peace by Deed under his Hand and Seal, is nothing worth.

(a) But yet it is now holden, That neither the Justice of Peace, nor the Party can discharge the Recognizance of the Peace by their Release out of the Sessions. For first the Recognizance is made to the King, and therefore none but the King can release

or discharge the same. Secondly, The Recognizance is taken for the Appearance of the Party, &c. (as well as for his Keeping the Peace) and the Release of the Justice, or of the Party, cannot discharge the Appearance of the Party bound. And therefore notwithstanding that the Justice of Peace, out of Sessions, shall make or take any Release of the Peace, yet it shall be safe for the Party bound to appear to save his Recognizance; and upon the Certificate made by the Justice of Peace to the Sessions of such Release, the Conusor shall be there discharged (at least) against the Party who craved the Peace.

And in Truth, the *Appearance* of the Party bound, seemeth requisite notwithstanding any *Release* made. First, To save his Recognizance, as aforesaid: Secondly, That others may object against him (in the open Sessions) if he hath broken the Peace, so as he may be there indicted, &c.

Discharge.

(d) Note also, The King can in no Case release or pardon the Surety of the Peace, nor such Recognizance (taken in the Behalf of any of his Subjects) until it be forfeited, for the Mischief that may come to the Party thereby, but being forfeited, then the King, and none other may release and pardon the Forfeiture.

Death.

1 H. 7. 1.
Br. Peace 15.

But the Death or Resignation of the King dischargeh this Surety of the Peace taken by his Subject: For the Recognizance is to keep the Peace of the King (*then being*) and when he is dead, &c. it is not his Peace.

Lamb. 116.

Also the Death of the Recognisor (*sc.* of the Party principal that is bound) dischargeh his Surety of the Peace and the Recognizance.

Forfeited.

Lamb. 116.

Also the Death of the Party, at whose Suit the Peace was taken, dischargeh the Recognizance, if it were to keep the Peace against him alone.

But yet in these three former Cases, such Death shall not discharge the Recognizance, if it were forfeited before; and therefore it shall be best for the Justice of Peace to send to the next Sessions such Recognizance, (notwithstanding such Death) else the King may be defrauded of a Forfeiture, if any were before.

21 E. 4. 40.
Br. Peace 17.

The Death of the *Sureties* shall not discharge the Recognizance, neither shall the Party principal be compelled to find new Sureties after their Death; for if the Peace be broken after their Deaths, their Executors shall be charged therewith; and there is no Mischief by their Death; yet *alii eontra ibid.* (a) That the Principal shall be compelled to find new Sureties.

Superfedeas.

Also such Surety for the Peace may be discharged by a *Superfedeas* made by another Justice of Peace of that County, or by a *Superfedeas* out of the *Chancery* or *King's Bench*.

21 E. 4. 40.
10 H. 7. 21.
Br. Rec. 21.

(d) If the King and the Recognisor be at Issue upon the Breach of the Peace, and the King waives the Issue; yet is not this Recognizance discharged, but may be sued again upon a new Breach of the Peace afterwards.

C H A P. CXXI.

What Act shall be (or makes) a Forfeiture of the Recognizance taken for the Peace.

What is a Breach of the Peace.

Lamb. 117.

Words.

18 E. 4. 28.

Br. Peace 16.

22 E. 4. 35.

Crompt. 135.

WHatsoever Act is a Breach of the Peace, the same is a Forfeiture of this Recognizance.

And first, this Breach of the Peace may be committed by using any *threatning Speeches* to another; therefore all *Menacing*, or *Threatning to kill or beat another* to his Face, is a Forfeiture of his Recognizance; otherwise, if the Party so threatned *be absent*. And yet if the Party so bound shall threaten to kill or beat *A.* who is absent, and after shall *lie in wait* for him to kill, or beat him, this is a Forfeiture of his Recognizance.

Affault.

So *Affaults*, *sc.* to *strike at*, or *offer to strike at a Man*, although he never hurt nor hit him; this is a Forfeiture of this Recognizance. See *Crompt. 137. b. & 40 E. 3. fol. 40.*

Affrays.

Much more all *Affrays*, or violent and malicious Batteries, Strikings, Beatings, Woundings, or other Misintreatings of the Person of another, are Forfeitures of this Recognizance.

The Difference of these Three are, Menacing beginneth the Breach of the Peace, Assaulting increaseth it, and Battery accomplisheth it.

(a) Or thus, Battery is the Wounding or Beating another.

Affault is, when one unlawfully sets upon the Person of another, offering to beat him, although he beats him not, or striking at him, though he strikes him not.

Hither also belongeth Lying in wait, Befetting his Mansion-House, and not suffering his Servants to go in and out, &c.

Menaces are threatening Words to beat another, or the like, for fear whereof he dares not go about his Business.

(d) For Breaches of the Peace, without Word or Blow given, as to go with Weapons, or Company unusual, which be in *Affray de pais*.

If he who is bound procureth another to break the Peace, and that it be done indeed; *Command.* this is a Forfeiture of his Recognizance. *Br. Peace* 20.

Also Imprisonment, or Arresting of another without Warrant, is a Forfeiture of this *Lamb.* 130. Recognizance.

So to thrust another into the Water, whereby he is in danger of drowning.

So to ravish a Woman against her Will.

So to commit Burglary, Robbery, Murder or Manslaughter (all which are to the Person of another) or to procure the same.

So to do any Treason against the Person of the King.

(a) This is a Breach of the Peace, and a Forfeiture of this Recognizance: For although the Words of the Recognizance usually be, *Quod gerat pacem erga cunctum populum Domini Regis, & præcipue erga A. B.* (and is not *erga ipsum Dominum Regem & cunctum populum, &c.*) Yet because this Fact is done against the Head of the Body of the whole Realm, it is to be adjudged a Prejudice and Hurt *Ad cunctum Populum*, and a Breach of the Peace in the highest Degree.

(d) Note, That the Act which must make a Forfeiture of a Recognizance for the Peace, must be *done or intended to the Person of another* (by the Opinion of Mr. *Mar-* *row.*) And the Book of 2 *H.* 7. imports as much, saying, that this Surety of Peace is not broken without an Affray, Fighting, Beating, or the like. *Mar. lect. 7. 2 H. 7. 2. b.*

Also to be riotously assembled, is a Breach of the Peace, and a Forfeiture of this *Marr.* *Lamb.* 311. Recognizance. Nay, if two Justices of Peace shall record a Riot upon their View (against a Man so bound to the Peace) although it were no Riot, &c. yet he cannot plead *Not Guilty* in a *Scire facias* upon his Recognizance.

Also to wear Armor, or Weapons not usually worn, or to go with an unusual Number of Attendants, seems also to be a Breach, or Means of Breach of the Peace, and a Forfeiture of this Recognizance, for they strike a Fear and Terror in the People, and be in *Affray del pais*. See *Br. Surety* 12.

He that is bound to the Peace, ought to carry himself well in his Behaviour and Company. See *antea sub hoc tit.*

Yet the having of Weapons or Company unusual, are in some Cases allowed and law- *Weapons just-* *ful,* and are no Breach of the Peace. See hereof *postea Tit. Possè Comitatus.* *fiabile some-* *times.*

Also though Assaults and Batteries be for the most part contrary to the Peace of the Realm, and the Laws of the same, yet some are allowed to have a Natural, and some a Civil Power over others; so that they may (in reasonable and moderate Manner only) correct and chastise them for their Offences, without any Imputation of Breach of the Peace; yea, they may (by the Law) justify the same.

And therefore the Parent (with Moderation) may chastise his Child within Age.

So may the Master his Servant or Apprentice. *Ex. 21. 20, 21.*

So may the Schoolmaster his Scholars.

So may a Gaoler (or his Servant by his Command) his unruly Prisoners.

So may any Man his Kinsman that is Mad, &c. and none of these shall be in Peril *Plow. 13.* therefore to forfeit any Recognizance of the Peace.

Note, That the Master may strike his Servant with his Hand, Fist, small Staff or Stick for Correction; and though he do draw Blood thereby, yet it seemeth no Breach of the Peace, as appeareth by the Statute of 33 *H.* 8. *cap.* 12. *Master and Servant.* *P. Fighting 1*

And where the Servant shall be negligent in his Service, or shall refuse to do his Work, &c. There the Master may chastise his Servant for such Negligence or Refusal; so as he doth it not outrageously.

But if the Servant shall depart out of his Master's Service, and the Master happen after to lay hold of him, yet the Master in this Case may not beat or forcibly compel his said Servant against his Will to return or tarry with him, or do his Service; but either he must complain to the Justice of Peace for his Servant's Departure, or he may have an *38 H. 6. 25.* *Br. Faux* *Imp. 17.* *5 El. 4.* *P. Labor 6*

Action of Covenant against his Servant, if being required to do his Service he shall refuse it. See *antca* Tit. *Labourers*.

38 H. 6. 25. And as the Master without the Breach of the Peace cannot by Beating or Force, compel his Servant to serve him against his Will; no more can a Guardian compel his Ward by Beating or by Force to come unto him, or to tarry with him against his Will.

21 Ed. 4. 6. Also the Schoolmaster, with a Rod, may chastise his Scholar which is careless and
Lib. Intr. 613. negligent in Learning, or that shall abuse his School-fellows, or for other the like Occasions.

21 Ed. 4. 45. Also it is lawful for the Parents, Kinsmen, or other Friends of a Man that is Mad or
22 Aff. p. 56. Frantick (who being at Liberty, attempteth to burn an House, or do some other Mis-
Br. F. Imp. 35. chief, or to hurt himself or others) to take and put him into an House, to bind or chain him, and to beat him with Rods, and to do any other forcible Act to reclaim him, or to keep him so as he shall do no Hurt.

An Officer. Also if a Constable, Serjeant, Bailiff, or other Officer of Justice, or any other being of
Lib. Intr. 612. their Company, for the better executing of their Office, shall be forced to strike any Per-
Stamf. 13, 14. son that will not yield to their Arrest, or that shall resist, or fly from their Arrest, they
21 H. 7. 39. shall not be in any Danger to forfeit any Recognizance of the Peace, by any such Assault or Striking, but may well justify such Act.

In Defence of any Person. Also it is no Breach of the Peace for any private Man to beat, strike, or wound ano-
Lib. Intr. 611. ther in Defence of his own Person, from killing, wounding, or beating, but is a Thing
16 Ed. 4. 11. justifiable. And yet, if another shall assault me, if I may escape with my Life, or with-
12 Ed. 4. 6. out being wounded, maimed, or hurt, it is not lawful for me to beat or wound the other who first made the Assault, but I must first flee, or go from him so far as I can. 25 E.

3. 42. 2 H. 4. 8. 33 H. 6. 18. Br. Trn's 28, 71. Cro. 137. *hic*.

(a) *Sed vim vi repellere licet, modo fiat moderamine inculpatæ tutelæ.*

Non ad sumendam vindictam, sed ad propulsandam injuriam. Co. L. 162.

By the Civil Law, he shall not be said to have done a Wrong, who for his Safe-guard, after the same Manner whereby he is assaulted, doth defend himself, as when a Man is assaulted by Weapons, he may resist with Weapons: But if he do exceed Measure, in repelling an Injury; as if being wronged in Words, he shall resist with Weapons, and by such Resistance do beat or wound the other Party, he which is so beaten or grieved, may have his Action, and shall recover Damages, &c.

And to prescribe some Temper and Moderation in the Resisting of verbal or actual Injuries, one hath these Verses:

*Res dare pro rebus, pro verbis verba solemus,
Pro busis busas, pro trufis reddere trufas.*

Things must be recompensed with Things, Buffets with Blows,
And Words with Words, and Taunts with Mocks and Mows.

Or rather by the Law of God and Nature, we should practice this Lesson.

— *Per te nulli unquam injuria fiat,
Sed verbis aliisque modis fuge lædere quemquam,
Quod nulli nolles, aliis fecisse caveto:
Quodque tibi velles, aliis præstare studeto.*

If one trained Soldier hurt another by Mischance, and not willingly, or by Negligence, it is excusable in an Action of Trespass or Assault. *Hobart's Reports, Weaver's Case, p. 189.*

(d) If two or more do agree together to play at Back-sword, Foot-ball, or such like, and one of them doth wound and hurt another, the Party hurt, shall not have an Action of Trespass therefore against the other; for that it was by Consent, and to try their Valour, and not to break the Peace. *Fitz. Bar. 244.*

Lamb. 132. Yet if such a Man were before bound to the Peace, such Act seemeth to be a Forfeiture of his Recognizance. See *Br. Coron. 229.* For although such Sports be suffered, yet they are not lawful.

In Defence of others. Also it is no Breach of the Peace, for a Man to beat him that doth assault and would beat, wound, or ill intreat his Wife, Father, Mother, or Master, but is justifiable.

So if the Wife shall beat him, that shall assault, and would beat or evil intreat her Husband.

So if the Father or Mother shall beat him that doth assault, and would beat or evil intreat their Child, being then within Age, and not able to defend itself.

But though the Servant may lawfully beat him that doth assault, and would beat or evil intreat his Master or Mistrefs; yet the Servant cannot justify the Beating of another, in Defence of the Father, Mother, Brother, Sister, Son, or Daughter of his Master or Mistrefs, for he oweth no Obedience or Duty to any of them.

By some Opinions, the Master cannot justify the Beating of him that doth assault and would beat his Servant: But the Master with a Sword, Staff, or other Weapon, may defend his Servant assaulted from being beaten, in Respect of the Loss of his Service. Yet Mr. *Lambard* and Mr. *Crompton* are of Opinion, that the Master may beat another in Defence of his Servant.

Neither can the Farmer or Tenant justify such an Act in Defence of his Landlord, nor a Citizen, &c. in Defence of the Mayor (or Bailiffs) of the City, or Town Corporate, where he dwelleth.

(a) And yet where the Life of any Person is in Danger by beating of another, there any Stranger may lawfully resist it, and that with Force, and beating of him which offereth such Violence. *Vide 21 H. 8. 2. b. hic.*

(d) Also the Law doth tolerate a Man to be at another at for the Preservation of his Goods; and therefore he that shall attempt by Force to take away my Goods wrongfully, whether they be Goods whereof I have a lawful Property, or such Goods whereof I have only a Possession by the Bailment of another: I may justify to defend the same by Force; and if I shall hurt or beat such a Person, it is no Breach of my Recognizance for the Peace. But if I kill him, it is Felony, and then a Breach of the Recognizance.

(a) If another Man will take away my Goods, I must first lay my Hands upon him, and disturb him; and if he will not leave, then I may beat him, rather than he shall have or take away my Goods.

The same Law is in every Case, where another shall attempt by Force to take away, or to put me out of Possession of my Land, Freehold, Copyhold or Lease, or to stop or turn my lawful Highway, or my ancient River or Water-course leading to my Mill. In these, and the like Case, if I shall disturb him therein, whereupon he doth assault, and attempt to beat me, I may justify to beat him again, as well in Defence of my Person, as of my Possessions, but not to kill him.

The same Law is also in every Case, where an Offender is by Order of Law punished with Whipping, Stocks, Pillory, or otherwise, for any Offence by him committed, contrary to the Laws or Statutes of the Realm: There is no Peace broken, nor any Recognizance of the Peace forfeited by him or them, which shall lawfully execute any such Punishments.

Note farther, that there are divers Things which may be done against the Peace, and divers Offences, for which an Indictment *contra pacem* will lie; and yet the Committing or doing of such Offence or Act, shall be no Forfeiture of the Recognizance for the Peace: For that the Act that shall be a Forfeiture of such a Recognizance, must be done or intended unto the Person as aforesaid, or *in terrorem populi*.

Therefore to enter into Lands where he ought to bring his Action, or to disseise another of his Lands.

Or to enter into Lands or Tenements with Force, being without Offer of Violence to any Man's Person, and without publick Terror. *Crom. 136.*

Or to do a Trespass in another Man's Corn or Grass.

Or to take away another Man's Ward.

Or to take away another Man's Goods wrongfully, so it be not from his Person. *Mar. lect. 7*

Or to steal or take another Man's Horse, or other Goods feloniously, being not from his Person.

All these, and the like, be Breaches of the Peace, and yet these will make no Breach of the Recognizance, nor Breach of the Peace, within the Meaning of the Commission of the Peace. *7 H. 7. 8*

Note, That if a Man be bound in such a Recognizance for himself and his Servants, if any one of them break the Peace, the whole Recognizance is forfeited. *Et sic in similibus.*

Note

P. R. 5.
P. Justific. 3.
Lamb. 132.
Crompt. 136.
9 E. 4. Fitz.
Bar. 102.
contra.

Lamb. 132.

In Defence of my Goods.

9 E. 4. 21.
19 H. 6. 31.
65.

Lib. Intr. 611.

Possession.

10 Ed. 4. 6.
3 H. 4. 9.
11 H. 6. 33.

In Execution of Justice.

Lamb. 132.

Where Things done Vi & Armis, break not the Peace.

Note also, That the Sureties may plead that the Party Principal hath not broken the Peace, although upon Issue the same shall be found against the said Principal; for they are Strangers thereto. *Fitz. Averment* 46.

C H A P. CXXII.

*Concerning the Writ of Supplicavit.**Supplicavit.*

THE Forms of this Writ, out of the Chancery, are of divers Sorts, as you may see, *Fitz. N. B. So. d. & Register* 89.

To whom directed.

By which Forms of the Writ it appeareth, that it may be directed to the Justices of Peace, or to one of them; or to the Sheriff, or to every of them, to cause the Party that is to be bound, to come before him or them, to find Surety for the Peace. And this Writ may be, that the Principal shall be bound in such a Sum, and the Sureties in such a Sum certain, (and that may be in what certain Sums the Demandant will) or the Sums may by the Writ be referred to the Justice of Peace, &c. with the Clause therein contained, *Pro qua respondere volueris*. And the said Writ is farther, that if the Party shall refuse, &c. that they shall commit him to the Gaol, *Quousque*, &c. and that when they have taken such Surety, they do certify the Recognizance (which they have so taken) under their Seals, and return the Writ into the Court from whence the same was awarded, and that without Delay.

And for that this Writ is of divers Forms, the Justice of Peace must have a Care that he do execute the same in every Behalf, as the same shall direct and appoint him.

Execution of it.

When the Writ doth refer the Sum (wherein the Principal and his Sureties shall be bound) to the Justices, &c. then it resteth in their Discretion; but yet it is then safe for them to take good Sureties, and to bind them in good Sums, and the rather, when the Clause is in the Writ, *Pro qua respondere volueris*.

21 H. 7. 20. Br. Peace.

When this Writ is directed to the Sheriff, and to all the Justices of Peace of that County, and is delivered to any one of them, he only to whom it is first delivered, ought to execute it (in every Behalf,) *ſc.* He only shall make a Warrant, &c. returnable before himself, and he only shall take Sureties, and make Return thereof (only) without any other.

The Form of a Warrant for the Peace, upon a *Supplicavit*, see *postea*, Tit. *Warrants*.

Superſedeas.

Also the same Justice of Peace after such Surety taken, may make the Party a *Superſedeas* to discharge him from any other Arrest, or to deliver him being in Prison for the Peace, (at any other Man's Suit.) *Crompt. 237. b.*

The Form of such *Superſedeas* see after Tit. *Precedents*.

21 H. 7. Br. Peace, 9.

The Party who is attached upon this Writ of *Supplicavit*, cannot be bound before any other Justice of Peace, but only before him from whom the Warrant proceeds; neither can another Justice of Peace (by a *Superſedeas*) discharge such a Warrant made by his fellow Justice, by Force of this Writ.

Deputation. 9 E. 4. 32. F. Faux Imp. 4.

The Justice or Sheriff, to whom this Writ shall be delivered, may make a Deputy herein, *ſc.* may make his Warrant to the Bailiff, Constable, or other Person indifferent, to apprehend the Body, or to cause the Party to come before him (the said Justice or Sheriff) to find Sureties, &c. And that if he shall refuse, that then the Constable, &c. shall carry him to Prison, there to remain, until he shall find Sureties; and yet the Writ of *Supplicavit* is to commit the Party to the Gaol, if he shall refuse before the Justices, (*Si coram vobis, vel te recusaverit, &c.*) (a) But the Justice or Sheriff cannot give their Power to another to take this Surety; for that is a judicial Power which cannot be assigned over: Neither can they make any Deputy therein, but they must take this Surety themselves; and the Bailiff or Constable who apprehended the Body, cannot take this Surety. *Br. Office* 39. & *Faux Imp.* 34.

Roll's Rep. Part 2. p. 348.

A *Supplicavit* is directed to the Sheriff, and four Justices of Peace, that they or any Two of them shall take a Recognizance; the Writ is executed by two Justices which take the Recognizance, and the Sheriff returns it as taken by them, and good. *Leonard's Case, Trin. 21 Jac. Roll's Rep. Part 2. p. 348.*

(a) If the Party shall make Resistance upon the Execution of this Writ, the Officer may take *Posse Comitatus*, to aid him to arrest such Party. See *postea* Tit. *Posse Comitatus*.

tatus. (a) Or else the said Justice may make his Warrant to the Sheriff, to apprehend the Party, and upon Resistance, the Sheriff may take *Possé Comitatus* to arrest the Party.

(d) He that is to be bound to the Peace, by Force of this Writ of *Supplicavit* out of the Chancery, is to be bound against him only that sueth out the Writ, as appeareth by the Form of the Writ aforesaid. F. N. B. 80; D.

But yet at this Day it is used otherwise, and I once received out of the Chancery a special Writ of *Supplicavit*, directed *Custodibus pacis, ac vic' & eorum cuilibet*, commanding us to take Sureties for the Party to be bound, *Quod ipse damnum vel malum aliquod alicui de populo nostro, & imprimis eidem Job. &c.* (that sued out the Will) *non fac. nec fieri procurabit, &c.* Recognizance.

Also by this Writ of *Supplicavit*, the Party (against whom the Writ is sued forth) shall be bound to the Peace for ever (if he be taken); for the Writ containeth or mentioneth, not that he shall be bound to keep Peace until any certain Time, but generally (*ad sufficientem securitatem inveniendam sub pena, &c.* And therefore to prevent this, the Party (before he be attached) may come into the Chancery, and there find Sureties, and be bound until a certain Day, that he shall do no Hurt, &c. unto the Party that sued forth the *Supplicavit*; and thereupon he shall have a *Superfedeas* out of the Chancery, directed to the Justices of Peace, and to the Sheriff, or to one of them, commanding them to surcease to arrest the said Party, or to compel him to find any Sureties, &c. And that if they have arrested or imprisoned him, for this Cause, and none other, that then they deliver him, &c. *Fitz. 81. a.* The Form of the *Superfedeas* see *Register 89.* Time. F. N. B. 80; D.

And if the Party against whom this Writ is sued forth, cannot travel, (or else will not travel) to bind himself in the Chancery, then he may cause some of his Friends to be bound, or to find Sureties in the Chancery for him, according to the *Supplicavit*; and thereupon they may purchase a *Superfedeas* out for him, directed to the Justices of Peace, and to the Sheriff, and by this *Superfedeas*, the Justices and the Sheriff shall be commanded to take also Surety of the Party himself, in the Country (according to the Writ of *Supplicavit*) that he shall keep the Peace, &c. Avoidance. F. N. B. 81. a. Cromp. 142.

Also, if the Party happen to be arrested and imprisoned upon this Writ, yet if he can procure a *Superfedeas* out of the Chancery, it seemeth by the Words in the End of the *Superfedeas*, that this will discharge him of the Arrest or Imprisonment. Superfedeas.

Now after the Party is arrested and imprisoned (upon this Writ) the Means for him to procure a *Superfedeas* out of the Chancery, must be: After the Arrest.

1. Either to get some of his Friends to be bound in the Chancery for him, and they to get a *Superfedeas, ut supra.*

2. Or else to get a Certificate to the Lord Chancellor, from three or four Justices of Peace in his Behalf. (a) Signifying, That the Party Plaintiff never demanded the Peace in the Country; and farther, That the Plaintiff is a contentious Man, and the other Party of good Fame: And upon such Certificate (*dicitur*) they will either discharge the Party, or else grant him a *Superfedeas.*

(d) This Writ of *Supplicavit* is granted (or may be granted) in the Chancery or King's Bench, upon great Cause shewed and proved there, and is (or ought to be) granted upon Oath, that the Party is in fear, &c. of some bodily Hurt, &c. Where. F. N. B. 79. H. Lamb. 86. Co. 8. 37.

But this Writ of *Supplicavit* hath often been procured rather of Malice, and for Vexation, than upon any just Cause. And Sir Edward Coke speaking of such as maliciously shall purchase any special *Supplicavit* of the Peace, (and that by Fraud and Malice, to enforce the other Party, *Ad redimendam vexationem*, to give them Money, or to yield them other Composition) brandeth them as Barrators and Oppressors of their Neighbours; oppressing thereby the Poor and Innocent by Colour of Law, which was ordained to protect the Innocent from all Oppression. Neither was this a Wrong only to the Party thus maliciously vexed, but also to all the Justices of Peace in that County, taxing them (*tacite*) as though the Demandant could not have Justice at their Hands in such Case, whereas perhaps the Demandant never desired the same at any of their Hands. And besides, the said Justices of Peace (having in all Likelihood, Knowledge of each Party, and their Behaviours) or any one of the Justices of Peace, might and would, and ought to have yielded the Demandant, upon Request and just Cause shewed to them, as sufficient and good Security in the Country, every Way for his Safety; (*viz.*) as many and able Sureties, and better known, and to have been bound in as great Sums, and for as long Time, if the Cause should so require. So as what should

See more before in this Title.

move them to seek (with more Trouble, Charge and Delay to themselves) that Security above, which they may have more speedily, and with less Charge and Trouble at home, I see not, but only or chiefly the Vexing and Oppression of their Neighbours, as aforesaid.

(a) And for that this Manner of Oppression grew so common; therefore by the Statute made 21 Jac. 1. c. 8. it is now enacted, That all Proceſs of the Peace or Good Behaviour, to be granted out of the *Chancery* or *King's Bench*, against any Person whatsoever at the Suit of any other, shall be void, unless such Proceſs shall be granted upon Motion first made before the Judge or Judges of the same Court, sitting in open Court, and upon Declaration in Writing upon Oath then exhibited, for the Causes for which such Proceſs shall be granted; and unless that such Motion and Declaration be mentioned to be made upon the Back of the Writ, the same Writing to be there entered of Record. And if after it shall appear to the said Courts, that the said Causes expressed in such Writing, be untrue, then the Court may award Costs and Damages to the Party grieved, and may also commit to Prison the Offenders, until they pay the said Costs and Damages.

(d) Now to conclude this Business: If the Surety of the Peace be taken by Virtue of a *Supplicavit*, then must the Justice of Peace make Return of the Writ, and Certificate of his Doings, under his Seal, into the Court from whence the *Supplicavit* did proceed; which may be done in this Manner:

First, Let him write upon the Back of the *Supplicavit*, thus:

The Return of
the Supp.

The Execution of this Writ appears in the Schedule thereto annext.

Then may the Certificate or Schedule be thus, and be filed to the Back of the Writ.

I John Cotton Knight, one of His Majesty's Justices of Peace for the County of Cambridge, do certify into the Chancery of our said Lord the King, that I, by Virtue of this Writ, first delivered to me by the within-named A. B. have caused R. T. named in the said Writ, personally to come before me on the Day of And I also caused the said R. T. then and there to find sufficient Security of the Peace, according to the Form and Effect of the Writ aforesaid. In Witness whereof I have to this Certificate set my Hand and Seal on the Day of in the Year, &c.

The Return of
a Certiorari.

The Justice of Peace may also therewith send the Recognizance, if he will; or may keep and stay the Recognizance until a *Certiorari* come to him for it.

And of the Re-
cognizance.

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

Lib. Intr. 435.

Write upon the Back of the *Certiorari* thus:

Certiorari.

By Virtue of this Writ I J. C. Knight, one of his Majesty's Justices of Peace for the County of C. do certify the Tenor of the Security of the Peace, whereof Mention is made as in the Schedule annext to this Writ.

And then write the Recognizance *verbatim*, in this Manner here under following, and thereto set your Seal.

The Schedule or
Certificate.

Let it be remembered, that the Day of (reciting the whole Recognizance to the End). In Witness whereof I the said J. C. have hereunto set my Hand and Seal, &c.

And file this Schedule (or Note of the Recognizance) to the Back of the *Certiorari*.

F. N. B. 81.

The Form of the *Certiorari* you may see F. N. B. 81, 82, C. *Vide postea* Tit. *Certiorari*.

F. N. B. 11. B.

Also this Form of a Certificate may serve where a *Certiorari* is brought to a Justice of Peace to remove a Recognizance of the Peace or Good Behaviour taken by him *ex officio*, without any Writ of *Supplicavit*. See more *antea*, *sub hoc* Tit. *Surety*, &c.

Lamb. 111.

And if the Justice of Peace shall not return the *Supplicavit*, nor Certificate of his Doings therein, until a *Certiorari* come to him for it, yet 'tis no Danger to him.

Release.

Also if the *Supplicavit* be against divers, and the Demandant will release his Prayer of the Peace against one of them, then that Release ought to be certified for him, and the Writ must be served and executed for the rest: Or else *Non est inventus* may be certified for him, and the Writ executed for the rest.

Peace and
Good Beha-
viour.

By the Book 30 *Assisarum plac.* 14. it appeareth, that a Man may be compelled to find Sureties both to the Good Behaviour, and for the Peace: (a) For there one that had beaten a Woman in *Westminster-Hall*, was bound to the Peace towards the Woman, and was also bound to the Good Behaviour towards the King.

Br. Surety 11.

2 H. 7. 2. b.

(d) And yet the Good Behaviour includeth the Peace, and he that is bound to the Good Behaviour, is therein also bound to the Peace. See the usual Forms of both Recognizances, & *hic postea*.

But if the Recognizance taken for the Good Behaviour, be only *quod bene se gerat*, &c. *Quere* how far these Words will extend. See 2 H. 7. 2. b. (a) where the Justices held, That the Good Behaviour might be forfeited by the Number of his People, and by the Arms (or Weapons) and the like, although they break not the Peace. And they thought that he who is bound to the Good Behaviour, ought to carry and demean himself well in his Carriage, and in his Company, not doing any Thing which shall be a Cause of Breach of the Peace, or to put the People in Fear or Trouble; and so shall be intended of all Things which concern the Peace; but not in Misdoing of other Things, which touch not the Peace. See *hic postea*.

C H A P. CXXIII.

Surety for the Good Behaviour.

THIS Surety for the *Good Behaviour*, is granted by the Justices of Peace, as well *Nature.* by the Authority of the Commission of the Peace the first *Assignavimus*, as also by P. Juff. 18. Force of the Statute 34 Ed. 3. cap. 1.

And this Surety is of great Affinity with that of the Peace, and is provided chiefly for Lam. 212. the Preservation of the Peace, as that other is, as you may observe out of the usual Forms P. R. 18. of the Recognizances; yea by some Opinions it differeth little or nothing from that of the Peace; but that there is more Difficulty in the Performance thereof; and the Party so bound, may sooner fall into the Danger of it, and of his Recognizance. For the Peace Lam. 119. (say they) is not broken without an Affray committed, Battery, Assault, Imprisoning, P. R. 18. or Extremity of Menacing; whereas the Good Behaviour may be broken, and the Party's Recognizance forfeited without any of these: As namely,

1. By the extraordinary Number of People attending upon the Party bound. *Recognizance how broken.*
2. Or by his wearing Arms, or other Weapons more than usually he hath done, or more than be meet for his Degree. *2 H. 7. 2.*
3. Or by using Words or Threatning, tending or inciting to the Breach of the Peace.
4. Or by doing any other Thing which shall tend to the Breach of the Peace, or to put the People in Fear, although there be no actual Breach of the Peace.

Yet note, These four last Matters, as they are the Breaches of the good Behaviour; so are they also Cause to bind a Man *to the Peace*; yea, they are Breaches of the Peace, and a Forfeiture of the Recognizance of the Peace. *Vide Tit. Sureties for the Peace.*

The Book 2 H. 7. fol. 2. before recited, concludeth, That the Justices were not all certainly advised how those Words, *de se bene gerendo*, should be taken: Mr. Brook abridging thereof, Tit. *Surety* 12. saith, that it was holden, That he who is bound to the Peace, ought to demean himself well in his Port, (*sc.* Behaviour) and Company, not doing any Thing that may be the Cause of the Breach of the Peace, or to put the People in Fear or Trouble; yet the Book seems to mean this of the *Good Behaviour*. *Peace and Good Behaviour, how they differ.*

But though this extraordinary Number of Attendants, and wearing Arms, are *Breaches as well of the Peace, as of the good Behaviour*; yet the Good Behaviour doth include the Peace, and besides importeth some greater or other Matters of Misbehaviour, and for which the Surety of the Peace is not to be granted, (although they also are against the Peace and Quiet or good Government of the Land) and you shall find that this Surety of the *Good Behaviour* is grantable in divers other Cases, in which the *Surety of the Peace* is not grantable. *See Fitz. Surety 21.*

The Surety of the *Good Behaviour* is to be granted at the Suit of divers, and those being Men of Credit, and to provide for the Safety of many, whereas the *Surety of the Peace* is usually granted at the Request of one, and for the Preservation of the Peace chiefly towards one.

Also this Surety of Good Behaviour, is most commonly granted either in open Sessions of the Peace; or out of the Sessions, by *two or three Justices of the Peace*; whereas that of the Peace is usually granted by *one Justice*, and out of Sessions.

And yet by the Words of the Commission, as also by the common Opinion of the Learned, one Justice of Peace alone, and out of the Sessions, may grant this Surety of the Good Behaviour (and that either by their own Discretion, or upon the Complaint of others) as they may that *of the Peace*. *14 H. 7. 2. Lam. 123*

But this is not usual, unless it be to prevent some great and sudden Danger; especially against a Man that is of any good Estate, Carriage or Report.

Also this Surety may be granted at the Suit of some one Person.

But the more dangerous this Surety is to the Party bound, the more Regard there ought to be taken in granting it: And therefore, it shall be good Discretion in the Justices, that they do not grant it, but either upon sufficient Cause seen to themselves, or upon the Suit and Complaint of others, as aforesaid, and the same very honest and credible Persons.

By Supplicavit.

Also this Security of Good Behaviour, is often taken by the Justice of Peace, by Virtue of a special Writ in the Nature of a *Supplicavit*, directed out of the *Chancery* or *King's Bench*; and then the Justice of Peace upon such a Writ is to proceed as a Minister, as in Case for the Peace, *mutatis mutandis*. See before *Tit. Sureties for the Peace, and Supplicavit*.

I once received out of the Chancery such a Writ directed to the Justices of the Peace in the County of *Cambridge*, and to the Sheriff of the said County: And to every of them (and grounded upon the Stat. 34 *Edw.* 3.) commanding us and every of us, to take four Sureties (besides the Party) whereof every one should have Lands of such yearly Value, or Goods of such a Value; and to bind the Sureties every one in such a Sum, and the Party in such a Sum; That he shall be of *Good Behaviour* henceforwards towards us and all our People, and shall attempt nothing contrary to the said Statutes, &c. and therein I proceeded as a Minister only.

(a) The Party against whom such a *Supplicavit* for the *Good Behaviour* shall be granted, before he be attached thereupon, may go or send up, and give Surety above in the *Chancery*, &c. (as here before, for the Peace) and thereupon he shall have a *Superfedeas* out of the Court directed to the Justice of Peace and Sheriff, and to every of them, commanding them to surcease to arrest the said Party, or to do any Execution of the said Writ of *Supplicavit*; and that if (before the Coming of the said *Superfedeas*) they have taken any such Security for the *Good Behaviour* of the Party, that then they presently release such Surety found by him, the former Writ of *Supplicavit* notwithstanding.

C H A P. CXXIV.

For what Cause this Surety for the Good Behaviour shall be granted.

Where to be granted.

1. **I**T is chiefly to be granted (by the Justices of Peace out of their Sessions) in these Cases following; *viz.* First, against common Barrators, common Quarrellers, and common Breakers of the Peace. See what Barrators be, *Tit. Barrators*, before.

P. Just. 18.

2. Also it is grantable against Rioters. See hereof before, *Tit. Riots*.

3. Also against such as shall lie in Wait to rob, or shall be suspected to lye in Wait to rob, or shall assault, or attempt to rob another, or shall put Passengers in Fear or Peril.

4. Also against such as be generally feared, or suspected to be Robbers, by the Highway.

Cro. 115. b.

5. Also against such as are like to commit Murder, Homicide, or other Grievances to any of the King's Subjects in their Bodies.

6. Also against such as shall practise to poison another.

I lately granted the *Good Behaviour* against one, for that he had bought Ratsbane, and mingled the same with Corn, and then wilfully and maliciously did cast the same among his Neighbours Fowls, whereby most of them died; and it was holden to be a good Cause to bind the Offender over, by the whole Bench. (a) And since I have known it allowed as a good Cause by the Judges of Assise.

7. The Justice of Peace also upon his own Discretion (and without Complaint) may bind to the *Good Behaviour* any other Person which in his Presence or Hearing shall misbehave himself in some outrageous Manner of Force or Fraud, and may commit such Person to the Gaol, if he refuse to be bound. *Sir Francis Bacon* 11.

P. Just. 18.

34 E. 3. c. 1.

(d) It is also grantable against such as be of evil Name and Fame, generally, but more especially against such as are defamed or detected in any of these Particulars following:

13 H. 7. 10.

1. First, against those that are greatly defamed for resorting to Houses suspected to maintain Adultery, or Incontinency.

2. Also against the Maintainers of Houses commonly suspected to be Houses of common Bawdery.

One that had such lewd Women found in his House, was bound to his good Behaviour, Crom. 140.
(by *Wray, Anderson, and Manwood*) 28 *El.*

3. Also against common Whore-mongers and common Whores; for Bawdery is an 1 H. 7. 7.
Offence temporal, as well as spiritual, and is against the Peace of the Land. 27 H. 8. 14.

Upon Information given to a Constable, that a Man and a Woman be in Adultery or 13 H. 7. 10.
Fornication together (or that a Man and a Woman of evil Report, are gone to a sus- Br. Trav. 432.
pected House together in the Night) the Officer may take Company with him; and if he find them so, he may carry them to Prison; or he may carry them before a Justice of Peace, to find Sureties for the Good Behaviour.

4. Also against *Night-walkers* that be suspected to be Pilferers, or otherwise like to 13 H. 7. 10.
disturb the Peace, or that be Persons of evil Behaviour, or of evil Fame or Report general-
ly, or that shall keep Company with any such, or with any other suspicious Person in the
Night.

Against such as by Night shall *evesdrop* Mens Houses.

Against *Night-walkers*, that shall cast Mens Gates or Carts, &c. into Ponds, &c. or
shall commit other like Misdemeanors or Outrages in the Night Time.

5. Against suspected Persons who live idly, and yet fare well, or are well apparelled,
having nothing whereon to live; except upon Examination, they shall give a good Ac-
count of such their Living.

6. Against common Haunters of Ale-houses or Taverns, and common Gamesters; but
more especially if they have not whereon to live.

7. Against common Drunkards; but by the Stat. 4 *Jac.* 1. 5. it seems such Offenders Drunkards.
must be thereof twice lawfully convicted, (a) *sc.* by the Presentment of the Offences at
the Assizes, Quarter-Sessions of the Peace, or in the Court-Leet, and thereupon a due
Proceeding to Conviction, by the Verdict of another Jury; or by the Confession of the
Offender in Court.

But now by the Stat. 21 *Jac.* 1. *cap.* 7. any one Justice of Peace, or any Head-officer
in any City, &c. hath Power to convict any Person of Drunkenness, &c. See *hic antea*
Tit. Alehouses.

And for the second Offence of Drunkenness, any one Justice of Peace may, upon his
View, Confession of the Party, or Proof of one Witness upon Oath, as it seemeth, bind
such Offender to the Good Behaviour. 21 *Jac.* 1. *cap.* 7.

(d) 8. Against all such as use to go in Message for Thieves, see Stat. 18 *E.* 2.
P. Lect. 1.

For all these former Offenders, and the like, are evil Members in the Commonwealth,
and such their Demeanor and Living is greatly to be suspected, (and besides, do seem to be
more properly said against the Peace of the Land, than *Arroutry* in the Case before, 1 *H.*
7. 7.) and therefore it seemeth reasonable, just and expedient, that the Justices of Peace,
upon their Discretion, should convene such Persons before them, and examine them and
their Courses of Life; and if they cannot give a good Account of such their Courses, then
to bind them to their good Behaviour.

Also the Good Behaviour seemeth grantable, against such as shall make false Outcries,
or shall raise Hues and Cries without Cause; for these are Disturbances of the Peace.
Cromp. 179.

If one Man do levy *Hue and Cry* upon another without Cause, either of them may be Hue and Cry
attached, and bound over, as Disturbers of the Peace, *P. R.* 156. (a) 29 *E.* 3. *Fitz.*
Trespas 252. *tamen quere* concerning him upon whom the Hue and Cry is levied: Ex-
cept that he be either a Man of evil Fame, or that there be some Felony committed, &c.

(a) Also it seemeth grantable against Cheaters and Coufeners.

Libellers also may be bound to their *Good Behaviour*, as Disturbers of the Peace, whe- Libels.
ther they be the Contrivers, the Procurers, or the Publishers of the Libel: For such Li- P. R. 1. 2.
belling and Defamation tendeth to the raising Quarrels and Effusion of Blood, and are See Co. 5. 125.
especial Means and Occasions tending, and inciting greatly to the Breach of the Peace.

(a) *Libellus* literally signifieth a little Book.

By Use it hath also two other Significations: First, it signifieth the original Declaration
of any Action in the Civil Law.

Secondly, it signifieth a criminous Report of any Person, unlawfully published, and is
called an infamous Libel.

Another describeth it thus, *Famosus libellus est qui impingit delictum aliquod notabile.*

This Libelling may be done after divers Manners.

Co. 5. 125.

1. By scandalous Writings, be it in Book, Ballad, Epigram or Rhyme, either in Metre or Prose.

2. By scandalous Words, Scoffs, Jests, Taunts or Songs, maliciously repeated or sung in the Presence of others.

3. By Pictures or Signs, as by hanging of Pictures of Reproach, or Signs or Tokens of Shame, or Disgrace, near the Place where the Party thereby traduced doth most converse: As the Pictures of the Gallows, Pillory, Cucking-stool, Horns, or such like.

And in such Cases it is not material whether the Libel be true or false, or the Party thereby scandalized be living or dead, or be of good Name or evil.

And these Libellers, as also their Procurers, and the Publishers thereof, may be punished in other Manners.

1. Either they may be indicted for the same.

2. Or the Party grieved may have his Action upon the Case, and recover his Damages. *Libr. Intr. fol. 13.* But this it seems, when the Words are actionable.

If therefore any Man shall find a Libel, and would keep himself out of Danger; if it be made against a private Man, the Finder may either burn it, or else he must presently deliver the same to some Magistrate.

But if it concerns, or be made against a Magistrate, or other publick Person, the Finder ought presently to deliver the same to some Magistrate, to the Intent that by the Examination and Industry of such Magistrate, the Author may be found out.

Causes.

(d) Also this Surety of the *Good Behaviour*, is used to be granted against the putative Father of a Bastard-child. See *Tit. Bastardy*.

It seemeth also grantable against unlawful Hunters in Parks, after their Examination taken. See before *Tit. Hunting*.

Also it shall be granted against him that shall *abuse a Justice of Peace*, Constable, or other Officer of the Peace in executing their Office.

(a) *A.* assaulted a Constable in doing his Office, it is a good Cause to bind him to the Good Behaviour. *Fitz. Bar. 202. Cromp. 135.*

The Sheriff's Bailiff, upon a Warrant from the Sheriff, to make Execution of the Goods of *A.* went into the House of *A.* finding the Doors open, and *A.* shut the Doors upon the Bailiff, and so detained him a Prisoner in his House; and Sir *Robert Haughton*, one of the Judges of the *King's Bench*, thought it a good Cause to grant out Process of the *Good Behaviour* against *A.* for thus abusing an Officer of the Law. *Anno 17 Jacobi Regis.*

9 E. 4. 3.

(d) A Justice of Peace seeth a Man break the Peace, (*ſc.* make an Assault or Affray upon *A.*) and he chargeth him to keep the Peace, and the other answereth that he will not, the Justice may bind him to the *Good Behaviour*.

Words.

See Exod. 22,

23.

For if (as one saith) Contempt or Contumely, used to the Person of a Man's Better, neither Policy for Example, nor Religion for Peace, may tolerate, much less may any use Contempt towards, or abuse such as are in Authority, especially when they are executing their Office.

Nay, it seems that he who shall use Words of Contempt, or *contra bonos mores*, against a Justice of Peace, though it be not at such Time as he is executing his Office, yet he shall be bound to his Good Behaviour.

(a) But it was adjudged between *Dean and Garret*, *T. 41 El.* That *Good Behaviour* is not requirable for unseemly Words spoken of a Magistrate or Justice of Peace, when he is not in the Execution of his Office; and it was resolved in Sir *William Bruncker's Case* *B. R. P. 23 Car. 1.* That a Justice of Peace cannot commit one, until he find Sureties for the *Good Behaviour*, unless the Party be thereof convicted, or at least indicted, and it seems reasonable so to do, unless for any Offence committed against a Justice of Peace personally: And so also it was adjudged *M. 29 El.* That to call a Mayor Fool, unless it be when he is in the Execution of his Office, is not Cause to imprison or bind to the *Good Behaviour*. *Mo. Rep. p. 247.*

Co. 11. 98.

(d) If a Citizen or Freeman of a Town Corporate, shall use Words of Contempt, or *contra bonos mores*, against the Chief Officer of the City or Town, or his Brethren, they are good Causes to commit him to Prison, until he shall find Sureties for his Good Behaviour; for Obedience and Reverence ought to be yielded to the Magistrate, for that they derive their Authority from the King; and *obedientia est legis essentia*.

Justice of Peace.

Also he that shall abuse a Justice of Peace his Warrant, may be bound to the Good Behaviour. See after, *Tit. Warrants*.

A Man complaineth of a Riot, or Forcible Entry, so that the Justices of Peace are assembled to inquire thereof; then the Party that complained will not prosecute the Matter; it seemeth that the said Justices of Peace may bind him to the Good Behaviour for thus deluding them.

And so of such as shall charge another with Felony before a Justice of Peace, and yet will not give Evidence, &c. See before Tit. *Felony*.

A. is bound to keep the Peace against *B.* only, and getteth a *Superfedeas*, and after *B.* releaseth him; after *A.* is arrested for Surety for the Peace at another Man's Suit, and sheweth his first *Superfedeas*, it seemeth he shall be bound to his Good Behaviour for this Deceit. Cromp. 13.

(a) Yet, whatsoever Act or Thing is of itself a Misbehaviour, or is against the *Good Behaviour*, is Cause sufficient to bind such an Offender to the Good Behaviour: For the Magistrate ought to maintain all Civil Authority.

(d) Also by the express Words of the Statutes, the Offenders here under named shall be bound to their Good Behaviour. By Statute, who are to be bound to their Good Behaviour.

1. Disturbers of *Preachers*, 1 M. 3. P. 1.
2. Destroyers of *Fish-Ponds*, &c. or *Stealers of Fish*, after lawful Conviction, &c. 5 Eliz. 21.
3. Takers of *Hawks* or *Hawks Eggs*, out of other Mens Ground, after lawful Conviction, &c. 5 El. 21.
4. Unlawful Stealers, Hunters, or Killers of *any Deer* or *Conies* in the Night or Day-Time, in any Park or Warren, after lawful Conviction, &c. 3 Jac. 1. 13.
7 Jac. 13.

But all these former Offenders must be bound at the Sessions.

5. *Popish Recusants*, absenting themselves from Church twelve Months, shall be bound in the King's Bench. 23 El. 1. P. Recusants 1.

6. He that is *attainted of Felony*, and hath a Pardon for the same, shall within three Months find Sureties for his Good Behaviour; but he shall be bound before the Sheriff and Coroners, who shall return the same into the Chancery. 10 E. 3. 3.
P. Pardon 5.

Also he that is *acquitted of Felony*, if he be of evil Fame, or of evil Behaviour, the Justices of Peace upon their Discretion, may bind him to his Good Behaviour. Cromp. 135.

7. Such Persons as shall disturb the Execution of the Statute concerning the punishing, or *conveying of Rogues*; any two Justices of Peace may bind them to their Good Behaviour. See before, Tit. *Rogues*. 39 Eliz. 4.

8. So of such as shall disturb the Execution of the Statute for the Relief, Setting on Work, or *Settling the Poor*. See before, Tit. *Poor*.

9. The Mother of a *Bastard Child* (which may be chargeable to the Parish) for her second Offence shall be committed to the House of Correction, there to remain, until she can put in Security for her Good Behaviour, &c. See before, Tit. *Bastardy*. 7 Jac. 1. 4.

10. Such as have their *Houses infected*, or be themselves infected with the Plague, and being commanded to keep their Houses, shall disobey, &c. they shall be bound to their Good Behaviour for one whole Year. See before, Tit. *Plague*. 1 Jac. 1. 31.

What Act shall be a Forfeiture of the Recognizance taken for the *Good Behaviour*, see here before. Forfeiture of the Recognizance.

Also the Party bound to his Good Behaviour for offending against any of the Statutes here beforementioned, if he shall afterwards offend against any the said Statutes, he shall thereby forfeit such his Recognizance. Lamb. 121.

(a) To be drunken is a Breach of the Good Behaviour, as Sir *Nicholas Hyde* did deliver it in his Charge at *Cambridge*, Lent Assize, *Anno tertio Caroli Regis*.

One bound to the *Good Behaviour* at the Prosecution of *Stamp*, and he said to him, *Thou art a quarrelsome Fellow, and a Scurvy Knave*; and adjudged these Words were no Breach of the Recognizance; but to speak such Words to an *Officer* in the Execution of his Office, is a Breach of the Good Behaviour, for it may be an Impediment and a Disgrace to him in the Execution of his Office. And to say of a Merchant that he is a Bankrupt, is no Breach of such a Recognizance. So one said of a Mayor playing at Tables, *he is a Fool*, this is no Cause to imprison a Man; but if he were in the Execution of his Office, it is otherwise. *Stamp's Case*, H. 20 Jac. 1. B. R. Rol. Rep. Part 2. p. 272. & fo. 200. Words.

A Trespass done, and Indictment and Conviction for the same, *quod vi & armis clamsum fregit & averium cepit & abduxit & adhuc detinet*, is not a Breach of the Good Behaviour: So likewise, for saying of another he is a Lyar, a Drunkard, and I will make him a poor Rogue, for they are not Words which menace Battery, and he ought

to do such Act as imports an Intention to do Violence to his Body ; as to say, I will meet with thee.

(d) The Form of a Warrant for the Good Behaviour. *Vide postea Tit. Warrants.*

The Form of the Recognizance for the Good Behaviour. See after *Tit. Recognizance.*

Release.

Lamb. 126.

Whether the Surety of the *Good Behaviour* (taken upon Complaint) may be released by any special Person, some do doubt, because it seemeth more popular than the *Surety of Peace* ; yet others do hold, that it may be released, either by the Justice of Peace himself that took it, in Discretion, or by the Party upon whose Complaint it was granted, even as that for the Peace may.

Superfedeas.

P. R. 22.

Cromp. 237.

Cromp. 146.

Certiorari.

It seemeth also a *Superfedeas* of the *Good Behaviour* may be granted by the Justices of the Peace (as well as for the Peace, *mutatis mutandis*) upon good Sureties taken by the said Justices, of the Party to be of the Good Behaviour.

If a Man be bound to the Good Behaviour (before the Justice of Peace) and to appear at the next Assises or Sessions, yet the Party bound, may by a *Certiorari* remove the Recognizance into the Chancery or King's Bench before the Day, and then he shall not need to appear at the Assises or Sessions ; for they shall have no Record whereupon he may be called there.

C H A P. CXXV.

Forcible Entry, and Forcible Detainer.

Common Law.

Lamb. 138.

Cromp. 76.

THE Common Law being the Preserver of the Common Peace of the Land, hath always abhorred Force, *Co. 3. 12.* and yet before the Reign of King *Richard* the Second, any Man might have entred into Lands and Tenements with Force and Arms, and also to have kept and detained them with Force, where his Entry was lawful.

And at this Day, if a Man doth enter into any Lands or Tenements with Force, or Multitude of People, where his Entry is lawful, he is not punishable by Action, either at the Common Law, nor by Action upon any Statute ; for where the Title of the Plaintiff is not good, there he hath no Cause of Action, although the Defendant doth enter with Force : But in such Case he that entred with Force must be indicted upon the Statute ; or otherwise Complaint may be made thereof to the Justices of Peace ; and as well upon such Indictment, as upon such Complaint, the Offender shall be punished ; yet the Party (*ousted*) shall not be restored without Indictment, and the Force thereby found. *Vide antea, Tit. Forcible Entry.*

15 H. 7. 17.

Br. For. 11.

Statutes.

5 R. 2. c. 7.

Plo. 86. b.

And for the better Restraining of such Force and Forcible Entries into Lands and Tenements, and to inflict Punishment upon the Offenders therein, it was first provided by the Statute 5 *Rich. 2.* that no Man should enter into Lands or Tenements with Force or Multitude, though he had good Right or Title to enter.

15 Ric. 2. c. 2.

But this Statute provided no speedy Remedy, or extended to *holding with Force*, nor gave any special Power therein to the Justices of Peace, but upon a general Inquiry, in a general Sessions of the Peace, (and not otherwise) and therefore by another Statute made 15 *Rich. 2.* it was further provided, that if any Man should detain (or hold) with Force, after such Forcible Entry made, upon Complaint thereof made to any Justice of Peace, he shall presently take and come with the Power of the County, and shall go and view the same, &c. and if he do find any holding the same forcibly, that then they should be imprisoned in the Gaol by the same Justice, as convict, by the Record of the same Justice ; there to remain until they have made Fine and Ransom to the King.

8 H. 6. c. 9.

Yet neither of the former Statutes extended to those that *entred peaceably, and then held with Force*, nor yet doth give any Remedy, if the Parties who made the Entry with Force, removed before the Coming of the Justice of Peace, nor yet ordained any Pain against the Sheriff, if he did not obey the Precepts of the said Justices, to execute the said Statute, when the said Justices would inquire of the same. And therefore the Statute of 8 *H. 6.* doth give Remedy, first where any Man shall enter with Force, or shall enter peaceably, and after detain, hold or keep Possession by Force. Also these two last Statutes of 15 *R. 2.* and 8 *H. 6.* do enable any one Justice of Peace to give present Remedy, *viz.* to remove the Force, and commit the Offenders, in Cases of Forcible Entry, or holding against the aforesaid Statute.

And the said Statute of 8 H. 6. extendeth further, reaching the Offenders, if they were removed or gone before the Coming of the Justices; giving an Inquiry and Restitution, and also punishing the Sheriff that shall not obey the Precepts of the Justice in this Behalf.

So that these Statutes do now give full Remedy, and do prohibit, and are made against these Degrees or Sorts of Force, *viz.* against,

1. Such as enter peaceably, and then hold forcibly.
2. Such as enter with Force, and then hold peaceably:
3. Such as do both enter forcibly, and hold forcibly.

Fitz. 248. c.
Lamb. 143.

I have (here before) already shewed in some Measure how the Justice of Peace shall demean himself in the Execution of these Statutes; now I will proceed to give him some further Light in this Business, in these Particulars following.

1. First, What is a Forcible Entry, and what is a Forcible Holding within the Meaning of these Statutes.
2. Who may commit a Forcible Entry, &c. and upon whom.
3. Where a Force, or Forcible Holding, is justifiable, or lawful.
4. What, and how many several Remedies the Party hath, that is so put out, or kept out of his Possessions.
5. The Manner of Proceeding of the Justice of Peace by Inquiry.
6. Of Restitution to be made to the Party so put out, by whom and to whom.
7. What Causes there may be for staying the Justice of Peace from making Restitution.

C H A P. CXXVI.

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

(a) **F**ORCE, in the Common Law, is most usually applied to the evil Part, and signifieth unlawful Violence used either to Things or Persons. *Co. L.* 161. *b.*

(d) Our Law taketh Knowledge of two Manners of Force; the one may be termed a Force in Judgment of Law, which accounteth every private Trespass to be a Force; so as if I do but pass over another Man's Ground without License, he may have his Action of Trespass against me, why or wherefore with Force and Arms, &c. See *Co. L.* 257.

The other Manner of Force is more apparent, and always carrieth some fearful Shew and Matter of Terror with it.

This last Sort of Force is that which is prohibited by these Statutes, and therefore Note, that every Force, punishable by these Statutes, must have one of these Badges, *sc.* it must be either *Manu forti*, with Force or strong Hand, or *Multitudine*, with Multitude of People. *Lamb.* 145. and 5 *R.* 2. *cap.* 7.

Manu forti, *viz.* either with apparent Violence (in Deed, or in Word) offered to the Person of another, as threatening Speeches, turbulent Behaviour, or Violence, or else that they be furnished with offensive Weapons (by them not usually born) whether they offer Violence or Fear of Hurt to any other there or no, and this may be done by one Person only.

Multitudine, *sc.* with Company more than usually they have attending them, 10 *H.* 7. 12. Now the Law calleth a Multitude when there be three * or more in one Company.

(a) And yet Sir Edward Coke upon *Littleton* 257, saith, that he never read it restrained by the Common Law to any certain Number, but left to the Discretion of the Judges, or Justices.

(d) If therefore one or more Persons shall come weaponed (especially with Weapons not usually born) to a House or Land, and shall violently enter thereinto, this is a Forcible Entry, within the Meaning of these Statutes.

Much more, if (being so entered) he or they shall there offer Violence, or Fear of Harm to the Person of any that is in Possession thereof; most of all, if he or they shall forcibly and furiously expel and drive another out of his Possession.

So it is, if one shall enter peaceably, (the Door being open, or only latched,) and after he is in the House, he shall forcibly put another out of his Possession.

* The Edition of this Book in 1727 has it, Ten or more; and adds, Multitudinem decem faciunt.

Forcible Entry
Lamb. 146.

So it is, if he or they who shall enter peaceably, shall after their Entry offer apparent Violence, Threatnings, or Fear of Harm to the Person of any that is in Possession, to the Intent to get him out, and to make him leave the Possession, though they do not put him out, much more if they get Possession thereby.

If he or they that have entred peaceably, shall after use Words to any in Possession to this Effect, as to say, they will hold it or keep it, though they die for it, or in spite of the other, or such like, or other threatening Words; this maketh it a Forcible Entry.

Lamb. 146.
Cromp. 69.

So it is, if divers Persons shall come with Weapons (not usually born by them) to an House that is open, or to Ground, and shall there enter peaceably without any Disturbance; yet this is a Forcible Entry, for it shall be intended, that they would have used Force if they had been resisted.

So it is, when the Master entred into an House, or Land, being attended with a greater Number of Servants than usually do wait on him.

Co. L. 257.
10 H. 7. 12.
Br. For. 30.
Lamb. 146.

Note, that though a Man do actually use no Force in his Entry; yet if he do come so appointed either with Weapon or Company, that other Men may be reasonably afraid that he meaneth to make his Way by Force, rather than he will fail of his Purpose, it seemeth to be a Forcible Entry.

(a) And if three or more shall enter peaceably (upon another being in Possession) and shall continue there peaceably, though this be no Forcible Entry or Detainer, yet it may prove a Riot in regard of the Number.

Force twofold.

Now there are two Sorts of Forces, as is aforesaid, *ſc.*

1. An Actual Force; as with Weapons or Number of Persons, &c. not usual.

2. A Force implied in Law; as every Disseisin, Rescous and Trespass implieth a Force, and is with Force and Arms. *Co. L. 157.*

Trespass.

(d) Also every Entry into another Man's House or Ground which is made with Force (*ſc. manu forti* or *cum multitudine* either with apparent Violence offered to the Person of any other, or furnished with Weapons or Company, which may offer Fear) though it be but to cut or take away another Man's Corn, Grass, or other Goods, or to fell or crop Wood, or do any other like Trespass, though he do not put the Party out of his Possession, yet this is a Forcible Entry, and an actual Force punishable by these Statutes. See *Lamb. 145.*

(a) Breaking into an House, though no Person is in it, this is a Forcible Entry; but not if the Door had been opened with a Key. *2 Roll. 2.*

'Tis Force to put back a Bolt, or draw the Latch. *Ibid.*

Lamb. 145.

(d) But if the Entry were peaceable, and they cut or take away any other Man's Corn, Grass, Wood, or other Goods without apparent Violence or Force, though such Acts are counted a Disseisin with Force, yet they are not punishable by these Statutes, *ſc.* the Justices of Peace are not to remove, imprison, or fine such Offenders.

Cromp. 70.
11 H. 4. 16.

Also, if one or more shall enter into another Man's House or Land peaceably, and there shall by Force or Violence, cut or take away any Corn, Grass, or Wood, &c. or shall forcibly or wrongfully carry away any other Goods there being; this seemeth to be a Forcible Entry, punishable by these Statutes.

20 H. 6. 11.
Br. Force 1.

So it is, if a Man shall distrain with Force for a Rent (be it due or not due) this doth countervail any Entry with Force. *Lamb. 147.*

By Words.

And in these Cases of Trespass only, the Justice of Peace (upon Complaint to him made) may remove such Force; and upon View thereof, may imprison and fine such Offenders.

If a Disseisor hath entered peaceably, and shall presently threaten to kill the Disseisee (if he re-enter) this seemeth a Forcible Entry in the Disseisor.

2 H. 7. 16.
Br. For. 25.
Cromp. 70.

But Note, that a Forcible Entry cannot be without an actual Entry, for the Words of the Statute be, *Whoſoever doth enter, &c.*

Note also, if one that hath Right to enter upon Land, shall go with divers in his Company, and with Weapons, over the Land whereto he hath Right to the Church, Market, or some other Place; this is no Entry with Force, except he shall express his Intent, that he doth enter there claiming the Land.

Note also, That if a Man shall enter with Force (into House or Land) although he obtained not the actual Possession thereby, yet shall he be imprisoned and fined for the only entering with Force; but Restitution is not to be made, but only where there is a Forcible Putting out, or a Holding another out of his Possession.

Lawful.

If by fair Means, a Man (whose Entry is lawful) shall persuade or intice them which are within the House, to come out, and then the Door being open or latched only, he shall

shall enter peaceably, without Multitude, offensive Weapons, or other Violence; this Entry is justifiable.

So it is, if he shall enter peaceably, and then by gentle Perswasions send them out that are within the House, and after shut the Door and keepeth them out; this is justifiable, so that afterwards he holdeth it not forcibly, nor useth Violence or threatening Speeches.

So it is, if I shall take a Man being out of his House, and then put or send into the House my Servant (or some other) in peaceable Manner, and do hold away the other by Imprisonment of his Person; this is no Forcible Entry nor Detainer within these Statutes, but a false Imprisonment, punishable by Action only. Lamb. 149.

So it is, if he whose Entry is lawful, shall enter peaceably into his House (the Doors being open or latched only) and being so entred, shall continue and abide there peaceably; this is justifiable. And if they which were before in Possession, shall put him out forcibly, this is a Forcible Detainer of their Parts.

(a) Forcible Detainer is a violent Act of Resistance by strong Hand of Men weaponed with Arms, or other Account of Fear in the same Place or elsewhere; by which the lawful Entry of the Justices, or any other is barred or hindred. Forcible Detainer.

(d) Forcible Detainer must be understood of a forcible With-holding the Possession of Lands or Tenements, and not of the Person of a Man, as before. Forcible Detainer.

Note also, Though the Entry were at first peaceable and lawful, yet if there be after a Holding by Force, it is punishable by the Statute, except where there was at the first a lawful and peaceable Entry, and thereupon a lawful Possession, peaceably continued by the Space of three Years together without Interruption: For there a Man may hold and keep such Possession with Force against all others (saving against the King's Officers). Lamb. 149. 8 H. 6. c. 9. P. Forc. 4. Lamb. 164.

If the Justice of Peace shall come to the House or Place that is supposed to be holden with Force, and there shall find the Doors or Gates shut, and he or they within shall deny, or will not suffer him to enter, this is a Forcible Holding and Detainer, though there be no Weapons shewed or used, and though there be but one Person in the House, or upon the Ground. Lamb. 148. P. R. 4. 1. Cromp. 7c.

So it is, if when the Justice of Peace entreth the House or Ground, he shall find there any Persons armed, or having Armour or other Weapons (not usually born by them) lying ready by them. This is Forcible Detainer. Ibid.

So it is, if the Justice of Peace shall find in the House any great Number of People, Ib. other than the ordinary Family or Company.

Also, if a Man shall enter peaceably into a House, and after shall bring into the same more Weapons than he and his ordinary Family do usually wear, or shall make any Use of such Weapons as he doth find in the House, to defend his Possession therewith: These are Forcible Detainers within these Statutes. P. R. 41.

If a Man that hath peaceably entred into an House, and will place Men with Force, (with Guns or other Weapons) in some other House or Place not far distant, to the Intent that they may be ready to assault such as shall enter upon him: This is a Detainer with Force. Ib.

So it is, if the Disseisor of an House or Land, shall forestal the Way of the Disseisee, with Force and Arms, so that the Disseisee dareth not enter, or come near thereto for Fear of Death, &c. Lamb. 149. Cromp. 69.

(a) So if a Man shall distrain for a Rent-Service, or a Rent-Charge, and a Rescous shall be made unto him. This is a Disseisin with Force. Co. L. 161. b.

(d) So it is, if a Man shall keep his Cattle in another Man's Ground by Force, claiming Common there, where he hath no Common. And in this Case, the Justice of Peace upon Complaint to him made, may remove this Force; and upon View thereof, may record it, and commit such Offenders to Prison, and may fine them, but cannot award Restitution. P. R. 39.

Also there may be a Forcible Detaining the Possession by Word only without any forcible Act.

As if *A.* hath wrongfully, though peaceably entred into the House, or upon the Land of *B.* and hath put out *B.* and shall presently threaten or say to *B.* That if he do come thither again to enter, he will kill him: This seems a Forcible Entry by *A.* And if *B.* shall afterwards come again to make his Entry, and then *A.* shall threaten to kill him, if he entereth there, this is a Forcible Detainer in *A.* By Words. Lamb 149. Cromp. 70. P. R. 39.

And to threaten to maim, beat or to do other bodily Hurt to *B.* in the Case afore-
said, amounteth to a Forcible Entry or Detainer, for that Death may insue upon such
39 H. 6. 50. Beating or Hurt. See 39 *H. 6. 50. 7 E. 4. 21.* But to threaten to burn the House,
Br. Druces 12. or to spoil his Goods therein (if *B.* shall come thither, to enter again); this seemeth not
116. to amount to any such Matter, for that *B.* may afterwards have his Action for the Burn-
ing of his House, or Spoiling of his Goods, and shall thereby recover Damages, to the Va-
lue thereof, &c.

Cromp. 70. Also when *B.* shall come to make his Entry as afore said, if *A.* shall say to him, that
he will not open the Door; this is no Forcible Detainer.

Cromp. 73. So it is if *A.* be in Possession of an House, or hath a Lease thereof at the Will of *B.*
and after *B.* entreteth into the House, and commandeth *A.* to go out, and leave him in
the Possession, and *A.* will not go out, this is no Force; for refusing or denying only to
go out, is no Force, unless there be withal some forcible Act or threatening Speeches.
Where no Fact, *Ubi factum nullum, ibi fortia nulla.* Where there is no Fact, there is no Force. *Co.*
no Force. 4. 43.

A. mortgageth his House to *B.* upon Condition, That if *A.* shall pay to *B.* such a
Day 40 *l.* then the said Mortgage and Feoffment to be void, and by Agreement of them
both, *A.* the Mortgagor continueth the Possession, until the Day of Redemption, at which
Day *A.* payeth not the 40 *l.* and after *B.* cometh to re-enter, and *A.* keepeth the Posses-
sion by Force: This is a Detainer by Force in *A.* This was Mr. *Richard Godfrey's* Op-
inion between *Willows* and *Turger.*

Cromp. 69. The Disseisor maketh a Gift in Tail to *B.* who keepeth the Land with Force, at the
Lit. 429. Time when the Disseisee maketh his Claim, which Claim is made within the View so
near as he dareth, for Fear of Death, Battery, or other bodily Hurt, if *B.* after such
Claim shall continue the Possession with Force, he may be thereof indicted, &c. for this
amounteth to a new Entry, and a Detainer with Force by *B.*

And note, that wheresoever my Entry is lawful, if the Possession be detained, or holden
from me by Force, I may pray the Aid of the Justices of Peace to remove such Force, as it
seems.

Lamb. 147. If a Man hath a Rent or Common of Pasture out of another Man's Land, and coming
Cromp. 70. to distrain for his Rent, or to use his Common, is so forcibly resisted by the Tenant
P. R. 39. of the Land, that he cannot, or dareth not, either distrain for his Rent, or take the Bene-
fit of his Common; this is a Holding with Force in the Tenant, and punishable by these
Statutes.

Crom. 69. So it is, if the Tenant of the Land shall forestal the Way with Force and Arms, or
shall threaten him (who hath the Rent or Common) so that he dareth not come to distrain
for his Rent, or to take his Common.

Ibid. So it is, if a Man shall distrain for his Rent, and the Tenant of the Land shall make
Rescous with Force and Arms.

Br. Imp. 70. And in these Cases of a Rent or Common, the Justice of Peace upon Complaint to him
made, may remove such Force, and upon View may record it, and may therefore im-
prison and fine such Offenders, but cannot award Restitution, *ſc.* Cannot restore the
Party to his Rent or Common, which are to be taken, and used in another Man's Land,
for Restitution is not to be made, but only of House or Land, as you may see hereafter.

The Persons. One Person alone may commit or make a Forcible Entry or Detainer, if he do it with of-
Lam. 174. fensive Weapons, not usually born, or do use turbulent Behaviour, Violence or Threats,
Co. 1. 257. &c. to the Affray or Terror of others; or do refuse to suffer the Justice of Peace to enter.

Who may be guilty of it. An Infant of the Age of eighteen Years, by his own Act may commit a Forcible Entry
Cromp. 69. or Detainer; and so he may, though he be under Eighteen, (a) if he be of the Age of
Discretion, (*ſc.* of the Age of fourteen Years.) See *Perk. f. 10. b.* And the Justices may
fine him therefore. But yet it shall be good Discretion in the Justice of Peace to forbear
the Imprisonment of such Infants. See *Br. Imp. 43, 45, 75, 101. & hic post. Tit. Im-
prisonment.*

For an Infant shall suffer no Imprisonment or corporal Pain for any Offence by him
committed against any Statute, wherein an Infant is not expressly named.

But yet he may forfeit the Penalty of a Penal Statute, and so by a Penal Statute may
forfeit and lose his Goods, if he be of the Years of Discretion. See *Doct. & Stud.*
147, 148.

Infant. And an Infant of the Age of eighteen Years, may be a Disseisor with Force, and may
be imprisoned for the same. 22 *Edw. 4. Old Nat. Br. 128.*

(d) But if an Infant commandeth another to enter, or hold with Force to his Use, which is done accordingly; yet the Infant shall not be punished for such Offence, for the Commandment therein was void.

Also a *Feme Covert*, (by her own Act) may commit a Forcible Entry or Detainer; and upon the Justice's View of the Force, she shall be imprisoned therefore, (and she may be fined in such Case): But such Fine set upon the Wife, shall not be levied upon the Husband; for the Husband shall never be charged for the Act or Default of his Wife, but when he is made a Party to the Action, and Judgment given against him and his Wife. *Co. 9. 72. and Co. 11. 61. (a)* And if upon the Trial it be found to be her only Act, she only shall be taken and imprisoned.

Feme Covert.
Cromp. 69.
16 Aff. 7.
Br. Impr. 45,
53.
See more after
in the Tit.
Riot.

(d) Divers do enter with Force to the Use of *A.* who is not then present with them, but doth after agree thereto: This Agreement after maketh *A.* to be a Disseisor, but not to be punished for the Force. *Quære*, if *A.* had counselled, consented or agreed thereto before the Entry. It seemeth, that a Commandment, Consent or Agreement before or after, though it may make one a Disseisor; yet it is not to be punished by the Justice of Peace upon these Statutes, for that a Forcible Entry cannot be adjudged against a Man, without an actual Entry be also made by him, or he at least present.

2 H. 7. 16.
Br. Force 25.

But if *A.* that shall command or counsel others thereto, shall also be present at the Time of the Entry, although he doth then nothing, yet he is now become a Principal, and punishable by these Statutes.

Consent.
Vide 17 Aff.
pl. 14.

If divers do come in one Company, to enter into Lands, &c. where their Entry is not lawful, and all of them but one did enter, and demean themselves in peaceable Manner, and one only doth enter with Force, or (after Entry made) doth use Force and Violence. This shall be adjudged a Forcible Entry in them all (though the Force were against their Will;) for where divers come in one Company to any Place, to the Intent to do any unlawful Thing, be it Robbery, Homicide, Riot, Affray, or any Trespass, here the Act of one of them shall be adjudged the Act of all that are present, and every of them shall be adjudged a principal Doer, altho' they stand by and do nothing. So, though some of them came without any Intent of Evil, if they came together in Company with the other Offenders, or if they came after; yet if they be either aiding or countenancing the Offenders, they shall be also adjudged principal Doers, as well as the other. (a) And yet *Finneux* Chief Justice, 2 H. 8. made a Difference where their Intent at the first was to do an unlawful Act, and where not. *Cro. 161. See Co. L. 157.*

Co. 9. 67, 112,
& 115.
See thereof
after in Tit.
Murder.
Fitz. Coron.
314. 350.

(d) An Indictment upon the Statute of 8 H. 6. for the King, is not good; for the King cannot be disseised, nor put out of his Freehold; neither can the King bring any Action upon the Statute of 8 H. 6. nor any other Action which might prove him out of Possession of the Land. *P. R. 39. b.*

The Persons put
out.
Co. 1. 46. &
10. 112.

And if the King's Termor be put out by Force, he cannot prefer a Bill of Indictment (upon the Statute of 8 H. 6.) that he was put out, and the King disseised: But he must have an Information of Intrusion in the *Exchequer*.

Cromp. 69.

Yet upon Complaint made to a Justice of Peace by the King's Termor, of any such Force, the Justice of Peace may, nay ought to amove the Force, and upon his View thereof to record it, and to commit the Offenders to Prison, and may fine them; and after such Force removed, the King's Termor may presently re-enter (if he can) in peaceable Manner.

The King's
Tenant.

If a Forcible Entry or Detainer shall be made upon any Lessee for Years, Tenant at Will, or upon a Copyholder, whether it be by a Stranger, or by the Lessor, or by the Lord, the Justices of Peace upon their View thereof, are to remove such Force, and may commit to the Prison the Parties which made such Entry, or which shall hold it with Force, and may fine them: But whether the Justice of Peace might make Restitution, and set them (*ſc.* The Lessee for Years, Tenant at Will, or Copyholder) into their Possessions again, hath been much questioned.

Lessee for
Years.
Copyholder.

Some hold Opinion, That the Justices of Peace might put them in Possession again; and of this Opinion was Mr. *Marrow* and Mr. *Lambard*; and to maintain this Opinion, these Reasons may be given.

Restitution
upon View.
Lamb. 159.

First, for that the Words of the old Statutes warrant it; for the Statute of 15 R. 2. in the Preamble thereof, as also the Statute of 8 H. 6. in the Body thereof, hath this Word [*Possessions*] which Word most properly doth extend to a Lease for Years, &c.

Again, that Clause of the Statute 8 H. 6. which provideth the Restitution, is thus: If it be found that any doth contrary to this Statute, then the said Justices, &c. shall put the Party so put out, in full Possession, &c.

Now it cannot be denied, but that he which by Force expulseth a Lessee for Years, Tenant at Will, or a Copyholder, doth contrary to this Statute; also they be the Parties put out.

Again, the same Mischief and Inconvenience which these Laws do labour to remove, is to Lessee for Years, Tenant at Will, and to the Copyholder.

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

And we may find it usual, that where Statutes are made for to remedy any common Mischief, there to help Things in the same Degree, one Action, Thing, Place and Person, hath in Construction been taken for another: And a good Expounder, saith Sir *Edw. Co. 11. 34.* maketh every Sentence to have his Operation to suppress all the Mischiefs before the said Act, and principally those that are specified in the Act.

Co. 3. 7. &
11. 73.

And again, saith he, It is the Office of the Judges always to make such Construction of Statutes as may repress the Mischief, and advance the Remedy, and to suppress all Evasions which may continue the Mischief, and to add Force and Life to the Cure and Remedy, according to the true Intent of the Makers of the Statute.

Restitution.

Others hold the contrary, *sc.* That Lessee for Years, nor Copyholder, or Tenant at Will, could not have Restitution by the Hands of the Justice of Peace; and this seemed to be the common Opinion. Their Reason was,

Raft. 174.

For that the Words in the Statute of 8 H. 6. (in that Clause which specially provideth the Restitution) are thus. The said Justices, &c. shall reseise the Lands or Tenements, and thereof shall put the Party in full Possession, &c. Which Words [*Lands or Tenements*] are only to be understood of them that have Inheritance, or a Freehold at the least. But to this it may be answered, That the said Statute of 8 H. 6. (in the Body thereof) hath these Words, *Where any do make any Forcible Entry into Lands, Tenements or other Possessions, or them hold Forcibly, &c.* Which Word [*Possessions*] extendeth to a Lease for Years, &c. And then the Word [*Possessions*] being in the same Statute, we shall find that a Statute is to be expounded upon all the Parts thereof together, and not upon one Part alone by it self. To which Purpose, see *Lincoln College's Case*, and Doctor *Bonham's Case* in Sir *Edw. Coke's Reports*.

Co. 3. 59. b.
& 7. 118.

But it seems to those which held this last Opinion, That if a Lessee for Years, Tenant at Will, or a Copyholder, be forcibly put out, or held out by any Stranger, if they will have Restitution, their Indictment must be made and preferred in the Lessor or Lord's Name; and the Jury must find that the Lessor or Lord of such Copyhold is disseised, and the Lessee or Copyholder is put out with Force. And hereupon the Lessor or Lord shall have Restitution; and so by their Restitution, their Lessee or Copyholder is restored also: But such Lessee or Copyholder cannot (say they) prefer an Indictment in their own Name, upon the Statute 8 H. 6. for that they have no Freehold.

Crompt. 161.

Indictment.

Cro. 249. a.

And to that Purpose I find some Precedents of Indictments in this Form, that is to say, *into one Messuage at, &c. then being the Freehold of M. D. Esq; with Force and Arms, &c. with strong Hand, and unlawfully upon the Possession of J. L. then Farmer of the said M. D. the said Messuage did enter, and him the said J. L. with Force and Arms, and strong Hand, and unlawfully then did from thence expel and put out, and the said M. D. thereof unjustly disseise, &c.* See after *Tit. Precedents*.

Also by this Opinion, if a Lessee for Years, Tenant at Will, or a Copyholder, be forcibly put out by their Lessor or Lord, such Lessee or Copyholder, hath no Remedy at all by Indictment upon this Statute, for they have no Freehold, and therefore can have no Restitution upon this Statute.

Also by this Opinion, if the Lessee for Years be put out by his Lessor, and after the Lessee putteth out the Lessor again forcibly, the Lessee shall not be indicted; neither shall the Lessor have Restitution upon this Statute, for that the Lessor is not disseised of his Freehold; for the Possession of the Lessee is such a Seisin of the Lessor, that he may have an Assize, if his Lessee be put out.

Crompt. 72.

And so of a Copyholder, not having forfeited his Estate, if his Lord notwithstanding shall enter upon him, and put him out, and the Copyholder shall re-enter upon his Lord with Force, the Copyholder shall not be indicted, nor yet the Lord restored, for the Reason aforesaid.

And so by this last Opinion, the very Mischief specified and intended to be helped by the Statutes, should still remain in all Cases between such Lessees and Copyholders, and their Lessors or Lords, so as there can be no Inquiry nor Restitution in Cases of Forcible Entry or Detainer between them.

But howsoever the Law be taken for the Indictment or Restitution thereupon, yet in Case that Lessee for Years, Tenant at Will, or a Copyholder, be forcibly put out or held

out,

out, either by a Stranger, or by their Lessor or Lord, the Justices of Peace, or any one of them, by the Statute of 15 *Rich. 2. cap. 2.* might safely remove the Force, and upon Cromp. 71. View thereof commit the Offenders to Prison; and then the Lessee for Years or Copyholder, might presently re-enter, if peaceably they would, and so might have his Possession again, without any Restitution made him by the Justices.

(a) A Copyholder may bring an Indictment of a Forcible Entry into his Copyhold upon the Statute 8 *H. 6. cap. 9.* but the Word *disseised* must not be in, and a Justice of Peace may remove the Force. *Poph. 205. Yelv. 81.*

But now by the Statute made 21 *Jac. 1. cap. 15.* it is enacted, That such Justices or 21 Jac. 1. c. 15. Justice of Peace, as by Reason of any Act of Parliament now in Force, are authorized upon Inquiry to give Restitution of Possession unto Tenants of any Estate of Freehold, of their Lands, Tenements, which shall be entred upon with Force, or from them withholden by Force, shall now have the like and same Authority (upon Indictment of such Forcible Entries, or Forcible With-holdings before them duly found) to give like Restitution of Possession unto Tenant for Term of Years, Tenants by Copy of Court-Roll, Guardians by Knights Service, Tenants by *Elegit*, Statute Merchant and Staple, of Lands or Tenements by them so holden, which shall be entred upon by Force, or holden from them by Force.

Now to shew something more, what the Law accounteth to be Force, and what Wea- Weapons. pons be offensive, in these and the like Cases.

Master *Braeton* saith, *Omnes illos dicimus armatos, qui habent cum quibus nocere possunt.* Co. L. 162. Which have any Thing about them, wherewithal they may strike or hurt.

And therefore to have Guns, Bows and Arrows, Cross-bows, Halberts, Javelins, Bills, Clubs, Pikes, Pitchforks or Swords not usually born by the Parties, shall be said to be *vis armata.*

Again, *Si quis venerit cum armis, & dejecerit, vis tamen armata dicitur, sufficit enim terror armorum.*

Si quis venerit sine armis, & in ipsa concertatione, ligna juxerit, fustes aut lapides, Ibid. *vis dicitur armata.*

And so to use casting of Stones, hot Coals, scalding Water or Lead, or any other Thing wherewith one may hurt the Person of another, shall be said to be *vis armata.*

C H A P. CXXVII.

Lawful Force.

WHERE a Force or Forcible Defence is justifiable, and where not.

Force being opposed against the Law, is utterly forbidden; but being used in P. R. 41. the Maintenance of the Law, and with the Warrant of Law, it is allowed, for that it maintaineth the Peace of the Realm: And therefore Force may lawfully be used by all the King's Officers, Ministers and Servants thereunto deputed for the Execution or Advancement of Justice, or of the Judgments of the Law.

And so first it is a lawful Force whereby all Offenders in Treason, Felony and other great Crimes, be pursued, apprehended, carried to Prison and receive their Punishments.

It is a lawful Force, whereby the Sheriff and his Officers do apprehend any Person by Virtue of the King's Writ.

It is a lawful Force, whereby Justices of Peace do remove unlawful Entries or Holdings of Possessions, and repress Rioters, and do arrest and send to Prison such Offenders.

And in these and the like Cases, the King's Officers (*ſc.* the Sheriff, Justice of Peace 3 H. 7. and Constable) may take the Help of others (what Number they shall think meet) to assist Br. Riots 3. them, when Need shall require. See hereof *postea in Tit. Possē Comitatus.*

Also it is a lawful Force, which Justices of Peace, Sheriffs, Coroners and Constables shall use in apprehending or committing to Prison such as within their several Jurisdictions, and in their Presence, shall in any Sort break, or attempt to disturb or break the Peace, and they may therein take the Assistance of others, as aforesaid.

Also in these Cases following, it is lawful for the King's Officers, by Force to break P. R. 14. open a Man's House to arrest Offenders being therein, if the Doors shall be all shut, so as the Officer cannot otherwise enter the House, *viz.*

1. For the Apprehending of any Person for Treason, Felony or Suspicion of Felony. Co. 5 97.
2. Where

2. Where one hath dangerously wounded another, and then flying into an House, the Constable or other Officer upon fresh Suit, may break open the Door, and apprehend the Offender.

So may any other Person besides the Officer. 7 E. 3. 19. *Cromp.* 171.

3. Where there shall be an Affray made in an House, and the Doors shut, the Constable, &c. may break into the House to see the Peace kept.

4. So upon a Forcible Entry or Detainer found by Inquisition, before Justices of Peace, or viewed by the Justices themselves.

27 Aff. 35. 5. Upon a *Capias Utlagatum*, in any personal Action, as also upon a *Capias pro fine*, directed to the Sheriff, the Sheriff may break open the Doors, &c.

6. Upon a Warrant or Process, for the Apprehending of any Popish Recusant, being excommunicate, the Officer may break open the House. 3 Jac. 1. 4. *P. Rec.* 52.

7. Upon a Warrant for the Peace, or Good Behaviour, the Constables may break open the House, by the Opinions of *Popham* and *Clerk*, Justices of Assize, at *Cambridge* Assizes, 3 Jac.

8. Lastly, in all Cases where the King is Party, or hath Interest in the Business, the Officers may break open the Doors, as aforesaid: For no Man's House shall be a Castle against the King.

Co. 5. 91. And yet the Sheriff, nor his Officers may not break open any Man's House, to execute the King's Process (upon the Body or Goods of any Person) at the Suit of any Subject.

Co. 5. 91, 92.
13 E. 4. 9.

But when a House is recovered by any real Action, or by *Ejectione firmæ*, there the Sheriff may break open the House, and deliver Seisin or Possession to the Demandant or Plaintiff, &c. For after Judgment, it is no more (in the Right or Judgment of Law) the House of the Tenant or Defendant.

Co. 5. 91. But note, that the Officer before he break open the House or Doors of any Person, he must signify the Cause of his Coming, and desire that the Doors may be opened unto him.

Forcible Defence lawful.
Co. 5. 91. &
11. 82.
2 H. 7. 39. Note also, although no Man may forcibly keep his House against the King's Officers in the Cases aforesaid, yet every Man's House is (to himself, his Family, and his Goods) as his Castle, as well for his Defence against Injury and Violence, as also for his Repose and Rest. And therefore the Law doth give to Dwelling-houses divers Privileges.

1. First, That it is a Man's Castle for his Defence, as aforesaid.

2. Also a Man's House hath a Privilege to protect him against any Arrest by Force of any Process, at the Suit of any Subject, as aforesaid.

Co. 11. 82. 3. A Man's House (in some Cases) hath a Privilege against the King's Prerogative, for it hath been adjudged, that Salpêtre-men cannot dig in the Mansion-House of any Subject, without his Assent in Regard of the Danger that may happen thereby, in the Night-time, to the Owner, his Family and Goods, by Thieves and other Malefactors.

Co. 5. 91. &
11. 82. 4. If Thieves shall come to a Man's House, to rob or murder him, he may lawfully assemble Company to defend his House by Force; and if he or any of his Company shall kill any of them in Defence of himself, his Family, his Goods or House, this is no Felony, neither shall they forfeit any Thing therefore.

Cromp. 70. 5. Also a Man that is in Possession of a House peaceably, and doubteth that another (who indeed hath more Right to the Possession, and who may enter) will enter upon him, here he which is in Possession, may defend it with his ordinary Company, and may justify to beat the other, which shall attempt to enter upon him: But if he kill him, it is Felony; nay, he in Possession (in this former Case) may not hire any Strangers to aid him, neither may he have his own ordinary Company in Armour, nor otherwise be provided with Bows or Guns to shoot at the other. *Cromp.* 70. a. See after, *Tit. Homicide.*

In Defence of his Person.
21 H. 7. 39.
Br. Riots 1.
Co. 11. 82.
& 5. 91. Also, if a Man being in his House, do hear that another will come thither to beat him, he may lawfully assemble his Neighbours and Friends, &c. to assist and aid him there in Defence of his Person.

And yet if he, or any of his Company, shall kill the other (or any of the other Company) in such Defence of himself or his, this seemeth to be Felony in all of them which be in the House, and in that Action; so as they shall forfeit their Goods thereby. See hereof after, *Tit. Homicide.*

21 H. 7. 39.
Co. 11. 81.
& 5. 91. But if a Man be threatned, that if he come to such a Place, that then he shall be beaten. In this Case he may not assemble any Company to go thither to safeguard his Person; for there is no Necessity of his going thither; besides, he may have Surety of the Peace against such as threatned him.

(a) And if another shall make any Assault upon me, yet if I may escape with my Life, it is not lawful for me by Law to beat the other who made the Assault, *per Markham*; *Quod tota curia concessit.* 2 Hen. 4. fol. 7. *Fitz. Bar.* 72. *Vide hic* before Tit. *Surety for the Peace.*

(d) If there be an Attempt made to beat a Man, his Wife, Father, Mother, or any of his Childen (within Age), he may lawfully use Force to resist it, and may justify the Beating of the other in such Case. *In Defence of others.* 9 E. 4. 28. 16 E. 3. 17. 21 H. 7. 39.

Also the Servant may justify to beat another in Defence of his Master. *Br. Trn's* 217.

(a) But yet by the Opinion of *Eliot*, 21 H. 8. fol. 2. b. it is not lawful forcibly to touch the Person of a Man, except that there be so great Peril, that another is like to perish, if he have not Help. And there I may beat one Man, saith he, to save the Life of another; so that where the Life of another is in Danger, there any Man, though a Stranger, may lawfully resist it, and that with Force and beating of the other.

(d) Also a Man may justify to beat another in Defence of the Possession of his Goods. And if another hath taken away my Goods, I may take them again from him by Force. *In Defence of my Goods.* Crom. 65, 69.

(a) But a Man cannot justify the Wounding of another in Defence of his Goods. And this was the Opinion of *Wray* Chief Justice, *An.* 25 *El.*

And note, that every one may take and detain with Force his own Goods: And the Issue in an Action of Trespafs brought therefore shall be, Whether the Party hath Interest or Title to the Goods, or no; and not whether he used any Force in getting them; and if it be found for the Defendant, the Force is excused: But the Force used in an Entry into Lands or Tenements, is the material Matter, and punishable, although the Entry might have been lawful.

(d) Also, if there be an Attempt made to disseise me of my Land, or to disturb me of my Highway, or to turn an ancient Water-course from my Mill, I may lawfully use Force to resist it.

A Keeper doth enter and chase upon my Land, pretending this to be within his Purlieu, where it is not. If I command my Servants to beat him off my Ground, this seemeth justifiable in the Defence of my Possession, against such unlawful Claim. Yet *quære.* *Dyer* 327. *Crom.* 68.

C H A P. CXXVIII.

Where Forcible Detainer of Possession is lawful.

THE Statute of 8 H. 6. concludeth thus, *Provided that such as keep their Possession by Force, after that they or their Ancestors, or they whose Estate they have in such Lands, &c. have continued their Possession in the same three Years or more, shall not be endangered by Force of that Statute.* 8 H. 6. c. 9. 31 *El.* 11. P. Force 4.

(a) And by Force of this Statute and Proviso, every Heir, and every Feoffee, may justify to keep their Houses and Possessions by Force, where they or their Ancestors, or their Feoffors, or they whose Estates they have, have been in peaceable Possession thereof by the Space of three Years, or more. *Cro.* 187.

(d) This Proviso must (as it seemeth) be thus construed, *sc.* That where a Man is seised (of a lawful Estate or Possession) of an House or Lands, and he or his Ancestors, or they whose Estate he hath therein, have continued the Possession of the same peaceably by the Space of three whole Years together without Interruption, and his Estate not ended, there he may hold and keep such Possession with Force, against all others, yea, it seemeth, if he shall hire Strangers to aid him, to keep such Possession, or shall have his Company in Armour, he is not punishable by these Statutes: But he may not resist the Justices of Peace that shall come to view this. 22 H. 6. 6. 1. b. *Br. Force* 6. 22 & 29. *See the Statute of* 31 *El.* 11.

And if he shall be indicted for such his Forcible Holding (after three Years such quiet Possession) he may plead such his lawful and peaceable Possession, by the Space of three Years next before such Indictment, and thereby he shall avoid both the Imprisonment and Fine; and also shall debar the other Party of his Restitution. Neither may the Justices of Peace remove him from his Possession, though it be found by the Inquisition taken before them, that he held that House or Land by Force, after three Years lawful and peaceable Possession, as aforesaid. P. R. 37.

But here it seemeth, that these four Diversities are to be observed:

6 & 7 E. 6. First, Where the Party in Possession did enter peaceably, and where forcibly: For if
 22 H. 6. 8. a Man enter forcibly, and after continue his Possession peaceably by the Space of three
 Lamb. 65. Years without Interruption, yet (it seems) he shall not be aided by these Statutes.
 Br. Reft. 12.

Br. Force 22 Secondly, Where the Party in Possession hath continued his three Years Possession
 & 39. peaceably, and where by Force.

For if after a lawful and peaceable Entry, a Man shall continue or hold his Possession
 by Force, this is a Forcible Holding or Detainer, and punishable by the Statute of 8 H. 6.
 and three Years of such Possession shall not aid him.

21 H. 6. 18. b. Thirdly, Where the Party in Possession, is in by Right, and of a lawful State, and
 F. Entry 20. where by Wrong. And therefore if the Disseisor (or other Person that cometh in by a
 Br. Force 6. wrongful and unlawful Title) hath continued such his Possession peaceably by the Space
 Vide 23 H. 8. of three Years, without Interruption; he shall not be aided by either of these Statutes of
 P. seq. 8 H. 6. or 31 El.

14 H. 7. 28. For if a Disseisor hath continued his Possession forcibly, by the Space of twenty Years
 Br. Force 10. together, yet he may be indicted upon the Statute of 8 H. 6. before a Justice of Peace, of
 the Forcible Detaining of the same; and the same being found, the said Justice of
 Peace is to re-seise the same, and to award Restitution to the Party disseised, or so
 put out.

Fourthly, Where the Party hath continued such his Possession three Years without In-
 terruption, and where his Possession hath been interrupted or discontinued.

For if a Man hath been in peaceable Possession of Land, &c. by the Space of three
 Years, and above, by a good Title, and then is disseised and expelled by Force, and the
 Disseisee re-entreteth peaceably; or the Disseisor is therefore indicted upon the Statute of
 Br. Force. 8 H. 6. and the Disseisee is thereupon restored, and is in Possession accordingly; yet in
 Dyer 141. these Cases the Disseisee cannot justify the Detainer of the Possession of those Lands by
 22 & 29. Force, because his Possession was once interrupted: But after (such Interruption and
 Re-entry, or Restitution) if he shall continue a peaceable Possession again for three
 Years together, then he may justify the Detainer of the Possession thereof by Force, by
 Virtue of the Proviso in the Statute of 8 H. 6.

23 H. 8. If a Disseisor hath continued his Possession peaceably three Years, and after the Disseisee
 Br. Force doth re-enter, or doth make his Claim so near as he dareth, and then the Disseisor re-
 c. 22. enters again, or continueth his Possession (after such Claim) here the Disseisor cannot
 Litt. 429. justify to hold the same with Force; for by the Re-entry or Claim of the Disseisee, the
 first Disseisin and Possession of the Disseisor was determined, and the Disseisor is in of a
 new Disseisin.

Dyer 141. Also, if he that hath been a lawful Possessor of Lands by the Space of twenty Years
 together, be once clearly and wholly removed from the Possession of the same Land, he
 cannot come with Force, or Multitude, to put himself in Possession thereof again, and
 to detain the same with Force, because his Possession was once interrupted: And if he be
 indicted (upon the Statute of 8 H. 6.) for such Forcible Entry, he shall not be relieved
 (touching the Restitution) by the Statute of 31 Eliz. for that he had not the Occupation
 of the said Lands, nor had been in quiet Possession thereof by the Space of three Years
 together, next before the Day of such Indictment found.

C H A P. CXXIX.

*How many Remedies the Party hath, which forcibly is
 either put out or kept out of the Possession of his Houses
 or Lands, &c. contrary to these Statutes.*

1. Action upon FIRST, the Party so grieved (having an Estate for Life, in Tail, or Fee) may have
 the Statute of his Assise or Action of Trespas of Forcible Entry upon the Statute of 8 H. 6. against
 8 H. 6. such Disseisor; and therein if the Defendant be attainted of Force, he shall fine to the
 4 H. 4. c. 8. King, and also answer to the Plaintiff his treble Damages, and treble Costs of Suit; and
 1 R. 2. c. 9. also the Plaintiff shall thereupon have a Writ of Restitution to restore him to his for-
 8 H. 6. c. 9. mer Estate.
 P. 2. F. N. B. 348.
 c. & 240. a. P. R. 39. 9 H. 6. 19. Fitz. 21. 15 H. 7. 17. Co. L. 257.

But (this Action being at the Suit of the Party, and only for the Right) is only where the Entry of the Defendant was not lawful: For if a Man entereth with Force, where his Entry is lawful; as if a Disseisee shall enter upon the Disseisor with Force, he shall not be punished by Way of Action: But yet he may be indicted upon the Statute, and upon such Indictment found, the Party put out (*ſc.* the Disseisor) shall be restored; for the Indictment is for the Force, and for the King. And here the Offender (*ſc.* the Disseisee) shall make Fine to the King, although his Right be ever so good. Br. Force 29 & 18.

Secondly, Also the Party so grieved, if he will lose the Benefit of his treble Damages and Costs, he may be aided, and have the Assistance of the Justices of Peace, and that after divers Sorts. First, He may purchase a Writ out of the *Chancery* (directed to the Sheriff only, or to the Sheriff and Justices of Peace, and to every of them) for to remove the Force. And this is upon the Statute of *Northampton*, 2 E. 3. cap. 3. the Form of which Writ you may see. *F. N. B.* 249. *f.* 2. Writ upon the Statute of Northampton. Lamb. 178.

But upon this Writ, the Justice of Peace is to proceed only as a Minister, and to certify his Doings herein; and that Justice of Peace to whom the Writ shall be delivered, ought for to execute it, *ſc.* he may remove the Force: But here he may not put the Party in Possession again, who was put out. Lamb. 176. Cromp. 74. 162.

For the Manner of the Justices proceeding herein, see in the other Title of *Forcible Entry* before.

Thirdly, Also the Party grieved may, at the General Sessions of the Peace within the same County, prefer his Bill of Indictment, upon the Statute of 8 H. 6. for such Forcible Entry or Detainer: Which being found there, the Complainant shall be restored to his Possession by a Writ of Restitution, granted out of the same Court to the Sheriff. 3. Indictment in Sessions. Dyer 187. Cromp. 165.

Fourthly, Also the Party so grieved, for a more speedy Remedy, may complain to any one or more Justices of the Peace of the same County, of the said Force; and thereupon the said Justices of Peace may, *ex Officio*, and without any Writ, either do Execution of the Statute of *Northampton*, as aforesaid; or else must go to the Place where such Force is, to see it, and to remove it, and to arrest and commit the Offenders, and shall also keep a Special Sessions to inquire of the said Force. And if upon such Inquiry such Force shall be found, then the said Justice shall restore the Party grieved to his Possession again; and here no other Justice of Peace can grant a *Superſedeas* to stay the same Restitution. 4. By the Justices of out Sessions. Remedium plus Festinum.

See more hereof before in the other Title of *Forcible Entry*.

Also the Party grieved may remove such Indictment, found either at such General or Special Sessions, by a *Certiorari* into the *King's Bench*, and the Judges of that Court may award a Writ of Restitution, to the Sheriff of the County, to restore the Possession to the Party.

Now when the Justice of Peace shall make such Inquiry, he shall direct his Precept or Warrant to the Sheriff, commanding him to cause to come before the said Justice, at some Town there near, twenty-four sufficient and indifferent Persons dwelling near to the said Lands or Tenements (whereof every one shall have in Freehold Lands or Tenements, forty Shillings by the Year at least) to inquire upon their Oaths of such Force, &c. See before in the other Title of *Forcible Entry*. Inquiry.

Upon Default of Appearance of those Jurors, the Justice of Peace may award an *Alias*, 8 H. 6. c. 9. and after that *Pluries infinite*, till they come; but so that at the Day of the second Precept or Writ, the Sheriff must return forty Shillings in Issues, upon every one of them, and at the third Writ five Pounds; and at every Day after the double. Lamb. 168.

And although any of such Jurors shall not have forty Shillings Freehold Land *per Annum*, yet their Presentment of such Force is good for the King, so as the Offenders shall fine therefore to the King; but whether the Party shall have Restitution upon such a Presentment, it being pleaded or shewed at that Time of the Restitution to be made, seemeth a Doubt. Lamb. 155.

If the Sheriff shall return smaller Issues upon the Inquirors than the Statute doth appoint, yet the Party indicted shall not impeach the Inquiry therefore. Lamb. 156.

Neither is it Cause to impeach the Inquiry, though the Justice of Peace do not go to see the Place where the Force is. *Marrow.*

And it is convenient upon such Inquiry, that the Evidence be given openly to the Jury, to the Intent it may appear to the Justice of Peace, or Court, whether there shall be reasonable Cause to stay Restitution or no, after the Indictment found. See Dyer 122.

Of Restitution to be made to the Party put out.

- Restitution.* I Will here shortly recite the Words of the Statute, which for this Business of Restitution will give the better Light.
- 8 H. 6. c. 9. And if upon such Enquiry, it be found before the said Justices that any have done contrary to this Statute (viz. have entred, or held with Force) the said Justices of Peace, &c. shall rescise the said Lands or Tenements so entred upon, or holden, and put the Party so put out, in full Possession of the same Lands and Tenements so entred upon and holden, as before.
- P. R. 35. Here we see that after such Forcible Entry or Holding so found by Inquiry, the said Justices of Peace, &c. shall rescise the said Lands or Tenements, and shall remove the Force (sc. all such Offenders as shall be found in the House, or upon the Lands, that either entred or held with Force) and, upon the Prayer of the Party so put out, the said Justices of Peace shall restore him to his Possession again.
- And herein the Justices of Peace need not stay or stand upon the Right and Title of either of the Parties.
- Br. Force 27. But no Restitution shall be made, but where the Forcible Entry or Detainer is first found by Inquisition.
- Indictment the Form.* Concerning this Inquisition or Indictment, the Justices of Peace shall do well to peruse and regard the same, to see if it be sufficient; for the Justices of Peace ought not to award Restitution, where the Indictment shall appear to them to be any way insufficient in the Law, either in Matter or Form.
- Crompt. 166.
- Lamb. 156, 257. 1. First, Therefore to have Restitution, the Putting out (by express Words) must be in the Indictment, and found by the Inquisition: For another Man may enter upon me, and yet not put me out, and then there needeth no Restitution to be made by the Justices.
- And this Putting out is to be understood only of House or Land, and not of a Rent, Common, and Advowson, and such like, into which an actual Entry cannot be made; and therefore none shall have Restitution, but such only as are put out of House or Land.
- Sid. 102. (a) And the *Estate* must be set forth, for 'tis not sufficient to alledge generally that *possessionatus fuit*, because Tenant at Will may be *possessed*; but he is not within either of the Statutes.
- 2 Roll. Abr. 81. An Entry into two Clofes *prati sive pasturæ* not good for the Uncertainty.
- Raym. 67. The Indictment was for a Forcible Entry into a Copyhold, (viz.) that the Defendant *ejecit & disseisivit*, void, because Disseisin is applicable only to a Freehold, it ought to be *ejecit, expulit & amovit*.
- Lamb. 481. (d) 2. Also the Indictment ought to express the Quality of the Thing entred upon, &c.
- Br. Force 23. sc. Whether it be a Messuage, Cottage, Meadow, Pasture, Wood, or Land Arable: For
- 2 Rol. R. 46. if the Indictment be, *that by strong Hand they did enter the Tenement, &c.* it is void for the Uncertainty, because the Word *Tenement* may extend to either of them.
- 14 H. 6. 16. 3. Also the Indictment must have these Words, (viz.) *yet hold out*, otherwise the
- Br. Force 13. Party shall have no Restitution; and yet these Words be not in the Statute: But without these Words in the Indictment, it may be supposed and thought, that he which put me out, hath left the Possession again, or that I have gotten it again; and then the Restitution is needless.
- So as in every such Indictment, these Words are material, sc. *Expulerunt, & adhuc extra tenent*. And for lack of either of these Words, no Restitution shall be made or awarded.
- Lamb. 145. 4. Also one of these two Words, *with strong Hand*, or *with Multitude*, seem to be
- * But the best material in the Indictment; unless they be implied by * reciting the Statute of 8 H. 6. and concluding against the Form of the Statute, or by some other Words in the
- Way is not to recite the Statute, for if 'tis misrecited in any Thing, the Indictment will be quashed.* Cro. Eliz. 93, 96, 106, 307. 1 Bull. 218.

For the Form to be used in these Indictments, see more after Tit. *Indictments*.

If a Man shall be restored upon an insufficient Indictment taken before the Justices of Peace, and this be removed into the *King's Bench*, the Court there will cause the Party to be restored, that before was put out by the Justices of Peace. Cromp. 162.

Also if Error or Insufficiency be in the Indictment, taken before the Justices of Peace, and yet a Precept or Writ of Restitution is awarded by them, any two of those Justices which were present at the Taking of the said Indictment, upon the Prayer of the Party, may (at another Sessions, or out of the Sessions) grant and award a *Superfedeas* to the Sheriff, to stay the same Restitution, if the Sheriff had not made Restitution before the *Superfedeas* came to his Hands. Cromp. 165 & 166. b.

But no other Justice of Peace (besides those which were present at the Taking and Finding of the said Indictment) can grant a *Superfedeas*, if the Indictment were found at a special Sessions. (a) And if it were found at the Quarter-Sessions, yet the *Superfedeas* shall be granted under the *Teste* of one of those Justices only which were present at the finding of the Force. *Ibidem*. Dyer 137.

(d) A Man is indicted that he entred with Force, and held with Force, and upon the Traverse it was found, that he entred with Force, but not that he held with Force; yet this Indictment seems good enough, and the Party shall be restored. Cromp. 165.

So two are indicted of a Forcible Entry and Detainer, and upon the Traverse it is found, that the one entred with Force, and the other held or detained with Force, yet the Party shall be restored. Ibid.

If it be found by one Inquest, that *A.* put me out by Force, and by another Inquest, that I did put out *A.* by Force, either of us may pray to have Restitution against the other: But he that is first restored is in the worse Case; for the other may have Restitution afterwards, and then he that had Restitution first, is without Remedy, by the Hands of the Justices of Peace; saving that he may re-enter, if he can peaceably, or have his Action. Cromp. 166. Br. Force 6.

If it be found by one Inquest, that *A.* put me out by Force, and by another Inquest taken at the same Sessions, that *B.* did put me out by Force, I may chuse upon whether of these Indictments I will be restored: And if I have Restitution against *A.* and this be returned, I cannot have Restitution upon the other. But if (upon the Writ of Restitution) it be not returned that I have Restitution, then I may afterward have Restitution against *B.* upon the other Verdict, if *B.* hath re-entred upon the first Restitution made to me. *Marrow*. Several Indictments. Cromp. 166.

A. is disseised, or put out with Force by *B.* and after *B.* is put out with Force by *C.* and all this is found by one and the same Inquisition. Here *B.* may have Restitution against *C.* (for *B.* hath more Right to the Possession than *C.*) and then may *A.* have Restitution against *B.* But upon this Inquisition, if *A.* have Restitution first, then *B.* shall not have any Restitution; otherwise, if these had been found by several Inquisitions.

(a) If an Inquisition be removed into *B. R.* by *Certiorari*, there can be no Restitution, if the Defendant doth not traverse the Force, or plead three Years quiet Possession before the Force. 1 Vent. 265. 1 Salk. 260.

C H A P. CXXXI.

Who shall award and make this Restitution.

AFTER the Force is found by the Inquest, the Justice of Peace (before whom 'tis found) may himself put the Party in Possession again; or he may make his Precept (under his own *Teste* alone) to the Sheriff to do it. Dyer 137.

The Form of the Precept to the Sheriff to make Restitution, see *postea* Tit. *Precedents*.

But no other Justice of Peace hath any Authority (by the Statute) to grant or award Restitution, but only he or they before whom the Force was found by Inquisition. Nay the Justices of Oyer and Terminer, nor the Justices of Gaol-delivery cannot grant Restitution, nor the Justices of Peace at their General Sessions of the Peace, cannot grant this Restitution, except the Indictment were found before them. (a) And yet by some Opinions, if it shall happen that the Justice of Peace, before whom such an Indictment shall be found, before Restitution made shall happen to die or to be removed, then

may the Residue of the Justices of Peace at their General Sessions, grant a Writ of Restitution.

Co. 11. 65. (d) Also the Justices of the *King's Bench* (in Regard of their supreme Authority in
4 H. 7. 18. all Cases of the Crown) either upon Certificate, or Delivery (to them made by the Justice of Peace before whom such Force was found) of the Presentment of such Force; or if the said Presentment or Indictment shall be removed before them by *Certiorari*, in both these Cases the Justices of the *King's Bench* may award Restitution. See before in the other Title *Forcible Entry*.

Fitz. Ent. 36.
& Cro. 159.

Lamb. 161.

But neither the Justices of the *King's Bench*, nor any other (besides him or them that made the Inquiry) can personally restore the Party, but only by way of Precept to the Sheriff.

The Sheriff (if need be) may take the Power of the County, to execute the Precept of the Justices of Peace herein.

Lamb 160.

And if the Sheriff upon such a Precept, or upon a Writ of Restitution from the Sessions, &c. shall return that he cannot make Restitution for Resistance, &c. he shall be amerced for making such a Return, because in such Cases he might have taken the Power of the County to assist him therein. See the like Case, *Fitz. Execution* 147.

See Dyer 123
& 187.

(a) Note, That the same Justice or Justices of Peace, before whom the Force was found by Inquisition, and which have granted his or their Warrant to the Sheriff, to make Restitution, may afterwards grant his or their *Superfedeas* to the Sheriff to stay the same Restitution. But no other Justice or Justices of Peace, hath or have Authority to grant any *Superfedeas* in such Case, &c.

Sid. 287.

Indictment for a Forcible Entry into a Meadow, the Defendant tendered a Traverse, but the Justices refused it, and awarded Restitution; this being removed into *B. R.* the Court declared, that the Justices ought to have accepted the Traverse, for the first Finding is in Nature of a Presentment, which ought to be tried presently upon the Traverse, and if it be found no Force, no Restitution ought to be awarded.

1 Vent. 308.

Where the Justices find a Force, and make a Record of it on their own View, they cannot grant Restitution, but must commit the Offender.

C H A P. CXXXII.

To whom Restitution shall be made.

THIS Restitution ought to be made to him that was put out, and to none other; for so are the Words of the Statute.

P. R. 38.

Therefore if the Father be out by Force, and dieth, his Heir shall not have Restitution; yet here the Justices may imprison and fine the Offenders: For by such Forcible Entry they have broken the Peace. See *antea*, in the other Title of *Forcible Entry*.

Lamb. 156.

Also, if after the Death of the Father, a Stranger abateth, or entreth into his Land by Force, before the Heir hath gotten actual Possession, the Heir shall not have Restitution, because he had but a Possession in Law, descended upon him.

Fitz. 248. h.

The Disseisor doth put the Disseisor out with Force, the Disseisor shall be restored: For the Right or Title is not commonly disputable or material; but by Words of the Statute, he that is in such sort (*sc.* forcibly) put out, shall be restored.

Dyer 122.

Yet it seemeth in this Case, that upon Traverse tendred by the Disseisor, and his Right appearing, the Justice of Peace may stay Restitution. See hereof after under this Title.

Br. Force 6.
Fitz. Ent. 20.

Also, if the Disseisor be restored again, yet the Disseisor may after re-enter peaceably, or have his Assise.

Cromp. 163.

But if the Disseisor shall enter peaceably upon the Disseisor, and so they both shall abide and continue there together for divers Days, and after the Disseisor doth put out the Disseisor with Force, and is thereof indicted; Here the Disseisor shall not be restored, for the Disseisor's Possession was avoided in quiet Manner at the first Entry of the Disseisor, and so the Disseisor had no Possession in the Eye of the Law when he was put out.

Cromp. 162
& 164.

If the Disseisor shall enter peaceably, the Disseisor and his Family being abroad, and after the Disseisor shall keep his Possession with Force, the Disseisor shall not be restored, by Reason of the eign Title of the Disseisor, and for that he entred peaceably. See *antea*, in the other Title of *Forcible Entry*.

But here the Disseisee shall be imprisoned and fined for keeping his Possession with Force; for *Forcible Keeping or Detaining* is as well prohibited as *Forcible Entry*.

And here note, That the Being of a Man's Wife, Children or Servants, in the House, Possession. or upon the Land, do preserve his Possession; but his Cattle being upon the Ground, Cromp. 164 &c. do not preserve his Possession. Affise 418.

Also when two are in Possession of an House, &c. and the one claimeth by one Title, and the other by another Title, here the Law shall adjudge him to be in Possession, who hath the best Right. So that if *A.* shall wrongfully enter upon *B.* and they both shall continue in the House, and after *B.* shall put out *A.* with Force; *A.* shall not be restored, for *A.* never gained any Possession by his Entry. Lit. 140. Perk. 45.

Two Jointenants, or Tenants in Common, and one of them doth forcibly put the other out of his Possession; he that is so expelled, may have an Action of Trespass of Forcible Entry against his Companion, upon the Statute of 8 H. 6. And thereupon he shall have a Writ of Restitution to restore him to his former Estate: But what the Justice of Peace can do herein, *Quære*, for that his Entry and Possession is lawful through the whole Land, in respect of his own Moiety and State. See 8 E. 4. 8. Fitz. 249. P. R. 36.

Two Jointenants be put out by Force and one of them only sueth to have Restitution, Restitution shall be made unto him. Lamb. 158

Lessee for Years, or a Copyholder, &c. may pray, and shall have Restitution, as well as he in the Reversion, or the Lord.

If Lessee for Years be put out of his Term by Force, and die, tho' after his Death this Force be found by Inquisition, taken by a Justice of Peace; yet his Executors shall not be restored to that Land (by the Justice) for that they are not the same Person that was put out. P. R. 38.

(a) The particular Tenant, as Tenant for Years, or a Copyholder, shall be restored notwithstanding the Lord or Lessor (who have the Freehold) will waive it, or disagree to it as to themselves; and thereupon this Case happened. The Lord of a Manor commanded *A. B.* and *C.* to enter with Force upon his Copyholder, which they did, and an Indictment is preferred *quod expulerunt* the Copyholder, and disseised the Lord with Force, and the Lord laboured that no Restitution should be made; for that, as was alledged, Restitution was to be made out of respect to the Freehold: Yet the Court granted Restitution to the Copyholder. For the Court ought to reform the Wrongs in their several Degrees; and that is, to restore the Copyholder first who is expelled. And so was done, as was said by Justice *Williams* in the Case of the Lord *Norris* who withstood a Restitution to his Lessee. *Sir Andrew Noel's Case, Yelv. p. 81.*

The Words of the Statute of 21 Jac. 1. 15. are to be strictly taken, and shall not be extended by Equity, and to that Purpose this Case happened; an Indictment of Forcible Entry was, *Adtunc exist. liber. ten. B. ad voluntatem Domini secundum consuetudinem manerii.* The Party in this Case could not be restored, because it is not said *per Copians rotulorum cur'*. And it may be she was Tenant by the Verge, and not by Copy. But it was holden, that a Copyholder's Widow that held *per bancum* should be restored. *Latch, p. 182.*

C H A P. CXXXIII.

What Causes there may be for staying the Justice of Peace from granting Restitution.

ALthough the Party indicted for a Force shall not be heard nor suffered to give his Title in Evidence, to excuse himself of his Forcible Entry or Detainer, to save his Fine due to the King for such Force (which Fine he shall make, tho' his Right be ever so good); yet to the Restitution (which the Complainant shall demand, if the Force be found) the Defendant shall be heard to disprove the Title of the Complainant, or what he can say otherwise for the Stay of Restitution. *Quære*, and see before in the other Title of *Forcible Entry, contra.* Lamb. 157. Cromp. 167. Br. Force 11. Dyer 127.

Now the Defendant (or Party indicted) for the Stay of Restitution, may at the Time of the Restitution to be made, plead or alledge any of these Things following.

1. His quiet Possession by three Years together,

2. He

2. He may deliver to the Justices of Peace, or Court, a *Certiorari*. And this is a *Superjedeas* to them. (a) See the Statute 21 Jac. 1. 8. hereafter.

Lamb. 162.

(d) 3. He may tender his Traverse; but Mr. *Lambard* seemeth to doubt whether the Party may be admitted to his Traverse before the same Justices of Peace. (a) And he thinks it safer for the Justices to make Restitution, notwithstanding the Offer of Traverse, or rather wisheth the Justices to deliver, or certify the Presentment into the King's Bench, and so to refer the further Proceeding to them, &c.

(d) 4. He may plead the Insufficiency of the Indictment.

5. He may plead the Insufficiency of any of the Jurors, *ſc.* for not having forty Shillings Freehold Land *per Annum*, (a) and that must not be Antient Demesne or Copyhold, but Charter Land. (d) And in this Case Mr. *Marrow* is of Opinion, That the Party shall have no Restitution. Yet Mr. *Lambard* and Mr. *Crompton* seem to be of the contrary Opinion. *Lamb.* 155. *Crompt.* 165. *Ideo quære.*

Lamb. 156.

And it seemeth (by the Opinion of Mr. *Lambard*), That the Justices of Peace ought not to stay Restitution, save only, either by alledging three Years quiet Possession, or by Removing the Record and Presentment into the King's Bench by a *Certiorari*.

Three Years Possession.

31 El. 11.

For the First, there shall be no Restitution awarded (upon any Indictment of Forcible Entry, or holding with Force) where the Party indicted hath been in quiet Possession by the Space of three whole Years together next before the Day of such Indictment found, if his Estate be not ended; and this the Party indicted may alledge to stay the Restitution, and the Restitution upon this shall be staid by the Justice of Peace, until it be tried, if the other Party will deny or traverse the same. (a) And if the same Allegation be tried and found against the Party indicted, then shall he pay such Costs and Damages to the other Party, as shall be assessed by the Justices before whom the same shall be tried; the said Costs and Damages to be recovered and levied notwithstanding by the Course of the Common Law.

Certiorari.

Crompt. 164.
P. R. 37.

(d) Also if a Man who hath made Forcible Entry or Detainer, be in doubt that he shall be indicted before the Justices of Peace, (upon the Statute of 8 H. 6.) and that thereupon Restitution will be awarded against him, he may have a Writ of *Certiorari* out of the King's Bench ready, and when the Bill of Indictment is found, he may presently deliver it to the Justice of Peace or Court. And this is a *Superjedeas* to them for to stay the Restitution; for that upon this Writ, the said Indictment shall be removed from them into the King's Bench.

And although the Indictment be found after the *Teste* of the *Certiorari*, it is not material, for they be both the King's Courts, &c.

6 H. 7. 16.

Lamb 498.
Crompt. 166.

But if a *Certiorari* comes to remove an Indictment of Forcible Entry taken before the Justices of Peace in the Country, and the Party will not sue to remove it, but suffereth it to lie still, the Justices of Peace may proceed to grant Restitution, notwithstanding the Writ, as *Hobart* the King's Attorney said in 6 H. 7. But *Keble* held Opinion against him; and it seemeth rather, that the Justices of Peace ought *Ex Officio* to send the Indictment away, because they are commanded so by the Writ. And this Writ is a *Superjedeas* of it self to the Justices of Peace, to stay their Proceedings. And if they shall proceed after, it is erroneous.

Crompt. 162.

After Restitution made by the Justices of Peace, if the other Party doth remove the Indictment by a *Certiorari* of a more eign Date than the Indictment, the Justices of the King's Bench may award Restitution back again: For upon the Matter, the Justices of Peace had no Power to make Restitution, for that the *Certiorari* hath Relation from the Date thereof.

Ibid.

See Tit. *Certiorari*, Chap. 195. *infra*.

After Restitution granted from the Sessions, and delivered to the Sheriff, the other Party having a *Certiorari*, delivereth it also unto the Sheriff after the Sessions; the Sheriff shall not surcease thereupon (for he hath no Authority to allow thereof). But if the *Certiorari* were delivered to any Justice of Peace, he may thereupon grant a *Superjedeas* to the Sheriff. And if Restitution were made by the Sheriff before the said *Superjedeas* came to his Hands, then the other Party shall have Restitution back again in the King's Bench, upon the Indictment removed thither.

(a) A Bill of Forcible Entry was found before Justices of Peace, and Restitution awarded, but not executed; a *Certiorari* was delivered to one of the Justices, who refused to open it without consulting with his Companions, and Restitution is made. This was moved in the King's Bench, and the Restitution awarded, and the Justice of Peace chid, in the Case of *Fitz-Williams*. *Yelv.* p. 32.

(a) The

(d) The Tender of a Traverse (to an Indictment of Forcible Entry, upon the Statute of 8 H. 6.) is no *Superjedeas*, but in Discretion; so as the Justices of Peace or Court (notwithstanding the Traverse tendred) may grant or may stay the Restitution at their Discretion, according as the Truth of the Right or Title shall appear to them: And so is the Use of the King's Bench.

Traverse.
Dyer 122

Or else the Justices of Peace (before whom the Indictment was found) may after Traverse tendred, certify or deliver the Indictment into the King's Bench, or to the Quarter-Sessions, and so refer the further Proceedings therein to them.

But if the Party indicted shall tender a Traverse presently, whereupon Restitution is stayed, and after he shall not pursue his Traverse with Effect, (but discontinueth it) and after doth tender another Traverse upon Restitution prayed at another Time; the Justices of Peace or Court, shall do well to proceed to grant Restitution, notwithstanding such Traverse tendred.

Crompt. 165.

And it is the Course of the King's Bench, that he that tendreth the Traverse there (upon such an Indictment) shall bear all the Charges of the Trial, and not the King, nor he at whose Suit the Indictment was found: And the same Reason seemeth upon an Indictment traversed before Justices of Peace.

Crompt. 166.

(a) But upon a Forcible Entry found, and a Traverse tendred, if the Justices of Peace will try the Traverse, it seemeth they ought to cause a new Jury to be returned (by the Sheriff before them) to try the same Traverse. The which may be done the next Day, but not the same Day.

Crompt. 150.
152.

Also after the Indictment of Force found, if a Traverse be tendred, or whatsoever shall be alledged for the Stay of Restitution, it ought to be in Writing (and not verbal only), for upon the Traverse, &c. a *Venire facias* must be awarded, a Jury returned, the Issue tried, a Verdict found and a Judgment given, and Cofts and Damages awarded: And they must have a Record, which must be in Writing, to do all this, and not a verbal Plea. *Vide* 14 H. 8. 16. *Fitz.* And all this must be done at the same Session, if it be desired; or else Restitution is to be granted. It seems also that the King's Pardon will discharge the Forcible Entry or Detainer, and bar Restitution.

Pardon.

And in the Case of *Fawcet*, H. 4 *Jac.* the Forcible Entry was pardoned by a Parliament-Pardon; and the Court was of Opinion, Restitution could not be granted: For by the Pardon, the Strength of the Indictment is gone, but there is a Remedy for the Party by Suit, where he may be sure of the Effect of it. And Justice *Williams* said, That *Thynne* being indicted for an Entry by Force, upon the Lands of the Lord *Stafford*, got the King's Pardon, and pleaded it in Bar of Restitution; and it was adjudged a good Plea.

Yelv. p. 99.
2 *Cro.* 148.
S. C.
Noy 119.
S. C.

On this Subject of *Forcible Entries and Detainers*, see also 1 *Hawk. P. C. Chap.* 64.

C H A P. CXXXIV. (a)

Restitution, where it shall be granted.

IT is generally held as the Law and Course of the Court of King's Bench, that Restitution is a Thing in the Discretion of the Court; and they will grant it or deny it, as the Justice and Reason of the Case shall require: And therefore they will grant it ordinarily in these Cases.

1. If the Indictment removed, be for any Cause appearing in the Body of it, or Caption quashed.

2. If a *Certiorari* hath issued, and the same be not allowed, or Proceedings stayed thereupon; but Restitution be granted after the Allowance or Tender of it.

3. If any indirect Course be used to avoid the Effect of a *Certiorari*, as I remember this Case happened. One *P.* having made a Forcible Entry upon *L.* of Lands in *W.* And being threatned with an Inquiry of a Force, he imployed one *C.* his Attorney, to procure a *Certiorari*, and gave the Names of those that were most likely to be indicted: Which one *R.* the Attorney of *L.* suspecting, by pretending himself to be the Attorney of *P.* spoke to the Clerk in the Crown-Office, understood the Names of those for whom the *Certiorari* was intended to be made, and procured an Inquiry by the Justices in the Country, and such to be indicted as the *Certiorari* was not for. So when

the *Certiorari* came, it was insignificant, and *L.* was restored. But this Matter appearing in the King's Bench, *H.* 1658, Restitution was awarded.

4. If the Justices below shall misbehave themselves, and shall not allow the Plea of three Years Possession well pleaded.

But Restitution being as I said, a Thing discretionary, the Equity and Reason of the Case doth often incline the Court, not to grant it where they may do it, especially if the Party in Possession shall offer to appear, and go to speedy Trial of the Right; and so I have often observed it to be done.

C H A P. CXXXV.

Riots.

IT may plainly appear to all such as have been conversant in our Chronicles, how dangerous to this Kingdom, unlawful Assemblies have been in all precedent Ages, even such as at the first were very small, and began upon small Occasion; yet not being repressed in Time, grew to such Greatness, that they afterwards put in hazard the State. And therefore it is Wisdom for all Justices of Peace, to endeavour to quench the Beginnings and first Sparks of such Assemblies, as knowing, that for Want of timely Restraint, they may soon grow to the like Danger again.

Statutes. Now for the better Suppressing of such unlawful Assemblies, and partly for the better enabling the Justices of Peace therein, there were three Statutes provided by the Wisdom of the Realm, and are remaining yet in Force; That is to say, the Statute of 13 *H.* 4. 7. 2 *H.* 5. 8. & 19 *H.* 7. 13.

13 *H.* 4. c. 7. The Statute of 13 *H.* 4. authorising, nay, upon a great Penalty injoining the Justices of Peace (together with the Sheriff) to arrest, remove and punish the Offenders.

2 *H.* 5. 8. But for that the aforesaid Statute gave no Remedy to the Party grieved, if the Justice of Peace or Sheriff should make Default; as also for the better Stirring up the Justices in this Business, the Statute of 2 *H.* 5. was made, authorising the Lord Chancellor of *England* (at the Instance of the Party grieved) to grant a Commission, to inquire of the Defaults of the two next Justices of Peace and Sheriff, in not executing the aforesaid Statute of 13 *H.* 4. And withal providing, how the Charges of the Justices, about the Suppressing and Inquiry of such Riots, should be born; and also limiting what Punishment, as well the Offenders attainted of such Riots, as also such as should not be ready to assist and aid the said Justice to repress such Rioters, should suffer.

19 *H.* 7. 13. And lastly, for that the two former Statutes did not express of what Sufficiency the Jurors, impanelled to inquire of Riots, should be; nor what Issues they should lose, if they appeared not; nor any certain Punishment was inflicted upon the Maintainers or Embracers of such Jurors: Therefore the Statute 19 *H.* 7. was made. But so much of these Things as concern the Justices of Peace, do appear more particularly here before: And therefore now I will proceed in this Business.

C H A P. CXXXVI.

First, What shall be said to be a Riot, Rout or unlawful Assembly, within the Meaning of these Statutes.

*Br. Riot 5.
Cromp. 68.
P. R. 25.*

WHEN three Persons or more, shall come and assemble themselves together, to the Intent to do any unlawful Act, with Force or Violence against the Person of another, his Possessions or Goods, as to kill, beat or otherways to hurt, or to imprison a Man; to pull down a House, Wall, Pale, Hedge or Ditch; wrongfully to enter upon or into another Man's Possession, House or Land, &c. Or to cut or take away Corn, Grass, Wood or other Goods wrongfully; or to hunt unlawfully in any Park or Warren; or to do any other unlawful Act (with Force or Violence) against the Peace; or to the manifest Terror of the People; if they only meet to such a Purpose or Intent,

*Br. Riot 4, 5.
Lamb. 179.
381.*

although

although they shall after depart of their own Accord, without doing any Thing, yet this is an unlawful Assembly. *Unlawful Assembly.*

If after their first Meeting, they shall ride, go or move forward towards the Execution, of any such Act (whether they put their intended Purpose in Execution, or not) This is a Rout. *Rout.*

And if they execute any such Thing in Deed, then it is a Riot. *Riot.*

And yet by the Opinion of some, a Rout is only where such a Company, of three or more, are so assembled, for their own common or proper Quarrel, and not in the Quarrel of any other Person. As where the Inhabitants of a Town do assemble together to pull down a House, Wall, Pale, Ditch, or other Inclosure, pretending to have Title of Common, or a Way there; or to beat a Man that hath done them some publick Offence. But yet the Word *Rout*, seemeth to have a more large and ample Meaning, as appeareth by the Statute of 18 *Ed. 3. cap. 1.* speaking of Riots that are brought in the Presence of the Justices; and the Statute of 2 *R. 2. cap. 6.* treating of Riding in great Riots. *Br. 4, 5.*

(a) *Finch* described them shortly thus. *Fi. lib. 2.*

An *unlawful Assembly* is, when above the Number of two shall assemble to do any unlawful Act. *Br. 4, 5. Lamb. 180.*

A Rout is, when they set forward to do it.

A Riot is, when they do it in Deed.

But at the Common Law (before the Making of these Statutes) these Facts and unlawful Assemblies committed or done, were no more than common Trespasses; although sometimes by the Discretion of the Justices, a greater Fine was assessed in such Cases than was for other common Trespasses.

(d) Now in Riots, Routs, and unlawful Assemblies, these four Circumstances are to be considered. *Circumstances.*

1st, The Number of the Persons assembled.

2d, The Intent and Purpose of Meeting.

3d, The Lawfulness or Unlawfulness of the Act.

4th, The Manner and Circumstances of doing it.

For the Number, there must necessarily be *three Persons* at the least, so gathered together; for else it can be no Riot, Rout or unlawful Assembly within the Meaning of these Statutes. *The Number*

But an Assembly of an hundred Persons or more (yea, though they be in Armour) yet if it be not in Terror or Affright of the People, and were assembled without any Intent to break the Peace, it is not prohibited by any of these Statutes, nor unlawful. See *infra*.

For the Intent: It seemeth it can be no Riot, &c. except there be an Intent precedent to some unlawful Act, and with Violence or Force. *The Intent. Cromp. 62. P. R. 25.*

And therefore, if divers be assembled, and none of them do know to what End or Purpose they are met; this can make no Riot or Rout, till the Intent be known. *Lam. 183. Cromp. 61.*

If the Master (intending to make a Riot) taketh with him his ordinary Servants, and maketh an Affray or other Outrage with them: This is no Riot in the Servants, except their Master had made them privy to his Intent before, but the Master only shall be punished for this. (a) Yet *quare*, whether this shall be adjudged, or punished in the Master as a Riot.

(d) And in this former Case it is not material, though the Number of his Servants that go with him are above his Degree, so long as they be his Household Servants. *Lamb. 184. P. R. 25.*

If divers being lawfully assembled, shall quarrel or fall out upon the sudden, without any former Intent: This is no Riot, but a sudden Affray. *Affray. Cromp. 62.*

If divers be at an Ale-house, and without any Intention of an Affray they suddenly fall together by the Ears: This is no Riot, but a sudden Affray, because they had no such Intention before. *Lam. 184.*

If a Jury being together, shall fall out and fight: This is no Riot, because they were lawfully assembled. *Ibid.*

Also where there be three or more gathered together, either to execute the Justice of the Law, or for the Exercise of Valour, and Trial of Activity, or for the Increase of Amity or neighbourly Friendship, (and not being met with an Intent to break or disturb the Peace, or to offer Violence or Hurt to the Person of any) such Assemblies be not prohibited by any of these Statutes, nor unlawful; as if the Sheriff, Under-Sheriff or Bailiff, shall take Power (what Number they shall think good) to execute the King's Process, &c. it is lawful: So of other Officers. See more thereof *postea*, Tit. *Posse Comitatus*. *3 H. 7. 1. Br. Riot 2.*

So it is a lawful Assembly, which is gathered together to run at Tilt, &c. by the King's Commandment.

So the Assembly of People, and their Use of Armour upon *Midsummer* Night in *London*, being only for Sport, is lawful; and though it be with a great Assembly of People, and in Armour; yet it being neither in Affright of the People, nor *malum in se*, nor to do any Act with Force or Violence against the Peace, it is lawful.

(a) If Stage-players, by their Shows, occasion an extraordinary and unusual Concourse of People to see them act their Tricks; this is an unlawful Assembly and Riot: For which they may be indicted and fined, as *Coke* said, *M. 12 Jac. 1. Roll's Rep. 2 Part, p. 109.*

(d) Also if divers do assemble and gather together, to drink at an Alehouse; or else to play at Football, Bucklers, Bear or Bull-baitings, Dancings, Bowls, Cards or Dice, or such like Sports: This is neither Riot, Rout nor unlawful Assembly within these Statutes, nor here prohibited: For these Meetings are not with any Intent to offer or do Violence or Hurt to the Person, Possessions or Goods of any other; neither are they *malum in se*, they are in themselves neither evil, nor unlawful, nor prohibited by the Common Law, though otherwise some of them are prohibited by Statute. See before *Tit. Games Unlawful.*

But if any of the Persons assembled together for any the Sports above mentioned (or for the like) came with any Intent or Purpose to break or disturb the Peace, or to offer Violence, or Hurt to the Person of any, and shall make an Affray, or do other Outrage; this seemeth to be a Riot, in so many as came with any such unlawful Intent or Purpose.

Lamb. 84.
P. R. 25.

And if any of the Persons assembled together (to drink or play) at an Ale-house, or for any the Sports above mentioned, or the like, shall fall out suddenly (without any former Intention of an Affray) and in that their Falling out, they shall betake themselves to sundry Parts and shall make an Affray, that this shall be adjudged a Riot in so many of both Sides, as shall be Parties to that Affray or Quarrel. But *quære* hereof, for that it was without any such Intent before their said Assembly, and done only upon the sudden, and upon a sudden Occasion happening after their said Meeting; and again, their said Assembly was at the first lawful, or at least not prohibited by any of these Statutes, nor yet the Common Law. *Co. 11. 87.*

But otherwise, if by Agreement they shall meet again, and fight afterwards, that maketh it a Riot, as being a new Assembly upon the former Quarrel; and so their second Meeting was upon an Intent precedent to do an unlawful Act.

(a) Where a great Number shall assemble themselves, or come into a House, and there detain Possession of the House with Force (though this is neither a publick Fact, or Force, done in the open Sight of the People;) yet this is a Riot, and the Justices of Peace punishable, if they shall not remove such Force, and suppress such Riots. See the Case of *Drayton Bassett* before, *Tit. Forcible Entry.*

C H A P. CXXXVII.

Concerning the Lawfulness or Unlawfulness of the Act.

Lawfulness of
the Act.

NOTE, That the Lawfulness or Unlawfulness of the Thing done or intended, doth not always excuse or accuse the Parties to a Riot, &c. but so, that the Manner and Circumstances of the Act must also be considered.

For every Man may assemble Company to aid him in his House, against Injury or Violence. But if a Man be threatned, that if he come to such a Place he shall be beaten: In this Case, if he shall assemble any Company to go thither with him (though it be to safeguard his Person) it seemeth to be within the Compass of these Statutes, and unlawful.

Br. Riots 1.
Crom. 66.

Every Man in peaceable Manner may assemble a meet Company (and may come) to do any lawful Thing; or to remove, or cast down any common Nuisance.

Co. 5. 101.
& 9. 55.

Every private Man, to whose House or Land any Nuisance shall be erected, made or done, may in peaceable Manner assemble a meet Company, with necessary Tools, and may remove, pull or cast down such Nuisance, (and that before any Prejudice received thereby) and for that Purpose, if need be, may also enter into the other Man's Ground.

Br. Nuisance
14 & 33.
56 Eliz.
Crom. 66.

A Man erects a Wear cross a common River, where People have a common Passage with their Boats, and divers did assemble with Spades, Crows of Iron, and other Things necessary to remove the said Wear, and made a Trench in his Land that did erect the

Wear,

Wear, to turn the Water, so as they might the better take up the said Wear, and they did remove the same Nufance. This was holden neither any Forcible Entry, nor yet any Riot.

But in the Cafes aforefaid, if in removing any fuch Nufance, &c. the Perfons fo afsembled fhall ufe any threatning Words (as to fay, they will do it in Spight of the other; or they will do it, though they die for it, or fuch like Words) or fhall ufe any other Behaviour, in apparent Difurbance of the Peace, then it feemeth to be a Riot; and therefore where there is Caufe to remove any fuch Nufance, or to do any like Act, it is the fafeft not to afsemble any Multitude of People, but only to fend one or two Perfons, or (if a greater Number) yet no more than are needful, and only with meet Tools, to remove, pull or caft down the fame, and that fuch Perfons tend their Bufinefs only without Difurbance of the Peace or threatning Speeches.

For the Manner of doing a lawful Thing, may make it unlawful.

Alfo the Manner of doing an unlawful Act, by an Afsembly of People, may be fuch as that it fhall not be punifhed as a Riot.

As if I fhall afsemble a meet Company to carry away a Piece of Timber or other Thing (whereto I pretend a Right) that cannot be carried without a great Number, if the Number be not more than are needful for fuch Purpofe, although another Man hath better Right to the Thing fo carried away; and that this Act be a Wrong and unlawful: Yet it is of it felf no Riot, except there be withal threatning Words ufed, or other Difurbance of Peace. Lamb. 181.

C H A P. CXXXVIII.

For the Manner and Circumftances.

AS there muft neceffarily be three Perfons at the leaft afsembled together to make a Riot, &c. fo their being together, and their Demeanor muft be fuch, as fhall or may breed fome apparent Difurbance of the Peace; either by threatning Speeches, turbulent Gecture, Shew of Armour, or actual Force or Violence (to the Terror of the peaceable Sort of People, or the imboldning and ftirring up of fuch as are of evil Difpofition) or elfe it can be no Riot, &c. For, as I faid before, the Manner of doing a lawful Thing, may make it unlawful, *& e converfo*.

And therefore if divers in one Company, going to the Church, Fair or Market, fhall go armed; or one going to the Seffions, or the like Afsembly, fhall go with his Servants in Armour (to the Terror of the People) though he or they have no Intent to fight, or to commit any Riot; yet this is a Rout by the Manner of his or their going, being needlefs, difordered, and againft the Law. See 2 *Edw. 3. cap. 3.* Lamb. 182. P. Armor 1.

But in the former Cafes, if they had gone in privy Coats of Plate, Shirts of Mail, or the like, to the Intent to defend themfelves from fome Adverfary: This feemeth not punifhable within thefe Statutes, for that there is nothing openly done in Terror of the People. Crom. 64.

One *N. W.* together with fourfcore Perfons, came with Spades, Mattocks, Piftols, Swords and Daggers in the Night, to a Piece of Ground (where Sir *Tbo. St.* had made a great Wear crofs over the River of *Trent*, in the County of *Nottingham*, to the great Nufance of Paffengers there, &c.) and there they made one or two little Trenches to let out Water, &c. And though it were lawful to make the Trenches, and to debruife the Nufance, yet for that they came with fuch Number, and Weapons, they were deeply fined in the Star-Chamber. 31 Eliz. Crom. 64.

Alfo one *Kemp*, Lord of a Manor, did enter with twenty Perfons, and cut his Copyholder's Corn with Force, for that his Copyholder would not compound with him for his Fine; and although the Entry of the Lord was holden lawful, yet punifhable as a Riot in Regard of his Number and Force. 31 & 32 El. Crom 64

In all Cafes where three (or more) fhall enter into Lands, &c. with Force, upon the Poffeffion of another, where their Entry is lawful, yet it is a Riot, by Reafon of Number and Force; for the Statute of 5 *R. 2.* prohibiteth the Entry with Force or with Multitude of People, although the Entry be otherwife lawful. Crom 64.

C H A P. CXXXIX.

What Persons may commit a Riot, &c.

IF a Number of Women (or Children under the Age of Discretion) do flock together for their own Cause, this is no Assembly punishable by these Statutes, unless a Man of Discretion moved them to assemble for the doing of some unlawful Act, as *M. Marrow* held.

Lam. 184.
Crom. 62.

Yet certain Women, that had apparelled themselves in Man's Apparel, and had pulled down riotously a lawful Inclosure, were punished for the same in the Star-chamber.

Tit. Surety for
the Peace, and
Forcible En-
try.

Also Women and Children may commit a Force, may commit Larceny, and may be bound to the Peace, as Breakers of the Peace.

Co. 3. 72. &
11. c. 61.

Also Women Covert are holden to be within the Stat. of *Mert. cap. 6.* for Ravishment of Wards; and within the Stat. of *Westmin. 1. cap. 20. de Malefactoribus in parcis:* And within the Stat. 8 *H. 6.* of Forcible Entry: And within the Statutes of 1 *El. cap. 2.* and 23 *El.* for Recusancy, although they be not named within any of these Statutes.

Published.

Co. Ibid.
4 E. 4. 26.

Also if a Woman Covert shall commit any Riot, or do any Trespas or other Wrong, she is punishable for it; and for a Trespas done by the Wife, or for a Scandal published by her, the Action lieth against both the Husband and Wife, *sc.* an Action of Trespas, or of the Case, shall be brought against the Husband and Wife, and there the Husband is chargeable to the Damages or Fine, because he is Party to the Action and Judgment. (See *paulo antea*, Tit. *Forcible Entry*.) But if a Woman covert without her Husband be indicted of a Trespas, Riot or any other Wrong, there the Wife shall answer, and be Party to the Judgment only; and in such Case the Fine set upon the Wife shall not be levied upon the Husband; yet after the Husband's Death, such Damages or Fine shall then be levied of the Wife her self; and as for Imprisonment or other corporal Pain, it shall be inflicted upon the Wife only, and not upon the Husband for his Wife's Act or Default.

22 Aff. 87.
43 E. 3. 18.
Br. Imp. 100.

(a) And note, that any Subject of this Realm, for any Injury done to his Person, or done to him in his Lands or Goods, may pursue, and have the Justice of the Law against any other Subject, be he bound or free, be it a Woman or an Infant, be they religious Persons, or be they Persons excommunicate or outlawed, or other Person whatsoever, without any Exception, &c. for the King, by the Stat. of *Mag. Chart. cap. 29.* saith, *Nulli vendemus, nulli negabimus, aut differemus justitiam, vel remedium.* Dyer 104.

Lam. 185.

(d) But if a Mayor and Aldermen, or Bailiff and Burgeffes, or the Fellows of any other Society, do assemble in their common Quarrel, and make a Riot or Rout, this shall be punished in their own private natural Persons, and not in the Body politick.

For Riots, see also Chap. 82. and 1 Hawk. P. C. Chap. 65.

C H A P. CXL.

High Treason.

Defined.
Glanvil.

HIGH Treason (called in Law, *Crimen læse Majestatis*) was always esteemed a grievous Offence, done or attempted against the Estate Regal, (*viz.* against the King the Head, Life and Ruler of the Commonwealth) in his Person, the Queen his Wife, his Children, Realm or Authority; as,

About Life.
25 E. 3. c. 2.
P 1.

To compass the Death of the King, the Queen his Wife, or of their eldest Son and Heir.

(a) To compass the Death of the Father or Mother of the King, or of any of the King's Children, although that such Compassing be not brought to Effect, yet it is Treason, by *Britton* in his Title of *Appeals, fol. 39. Stamf. fol. 1. p. Quære*, for it was Treason before the Statute, but not since, as *Stamf. fol. 1. p.* holds.

To compass the Death of an Usurper of the Crown is Treason, for which the Offender may be arraigned in the Time of another King, as appeareth. *Br. Treas.* 10. Stamf. 2. h.
Co. 8. 28.
Br. 24. 29.

(d) To intend or imagine the Death of the King or Queen, though they bring it not to Effect; *sc.* if they shall declare this by an open Act, whereby it may be known, or to utter it by Words or Letters, is Treason.

To intend to deprive the King, or to say, that he will be King after the King's Death, is High Treason.

(a) M. Glanvil also, and M. Bracton say thus, or to this Effect: *Si quis machinatus fuerit, vel aliquid fecerit in mortem Domini Regis, vel ad seditionem Regis, vel exercitus sui, vel consenserit, consiliumve dederit, vel auxilium procuraverit, seu praestiterit, licet id quod in voluntate habuit, non produxerit ad effectum, tenetur tamen criminis laesae Majestatis reus.* See *Glanv. lib. 14. fol. 110.* & *Bracton, lib. 3. fol. 118. Stamf. 1 v. x.*

One Williams expelled the Middle Temple for Religion, wrote two Books, the one he called *Balaam's Ass*; the other *Speculum Regale*, wherein he took on him the Office of a Prophet, and said the King should die *Anno Dom. 1621.* grounding himself upon the Prophecy of *Daniel* of Time and Times, and Half a Time; and that now was the Time of *Antichrist*; for Sin was at the Highest, and that this Land was the Abomination of Desolation, and the Habitation of Devils, &c. The Court held this to be High Treason, and that by the Common Law; for these Words import the End and Destruction of the King and his Kingdom, and that Antichristianism and false Religion is maintained; which is a Motive to People to commit Treason and Rebellions. It was also resolved, that although he pretended he did it for the King's Information, and as a Caveat and Admonition, because when he had declared the Judgment, he after added (*which God avert*;) yet his good Intention shall not be respected, when his Words and Actions appear to the contrary; and when a Man hath spoken Treason in the Premises, he shall not qualify it, with a *God save the King.* Secondly, It was resolved, that although it seems to be his Opinion and Thought only; yet *in atrocioribus delictis punitur affectus licet non sequatur effectus*; and in this Case *scribere est agere.* Thirdly, It was resolved, That although his Books were inclosed in a black Box, and sent privately to the King; yet it was Treason because his Intent appeared by his Act. And *Yelverton* the King's Attorney said, at Common Law, there were four Manner of Treasons, 1. Rebellion. 2. To deny the King's Title or Power Temporal or Spiritual. 3. To maintain or advance Superior Power to the King. 4. To bear the People in Hand, that the King's Government is Erroneous, Heretical, Unjust. *William's Case, P. 17 Jac. 1. Roll's Rep. Part 2. p. 88.*

And so note, that Treason may be committed by Imagination, and a Resolution to perform or do any Act, although it be not brought to Effect, as in these former Cases. Intent.

This was the Case of * *Bightan* and *Terezb*, who were both hanged, only for that they had a Will to kill the King *Ahasuerus*, and sought to lay Hands on him. *Esther* * The Chamberlain of King Ahasuerus.

2. 21, 22.

(d) If one that is a Mad-man do kill or attempt to kill the King, it is in him High Treason; whereas Petty Treason, Homicide or Larceny, shall not be imputed to such a Person. (a) *Vide Stat. 33 H. 8. cap. 20.* But *Coke 3 Inst. 6.* is otherwise. *Ideo quere.* Co. 4. 124.

(d) One *Constable* pointed to another, saying to his Friends, *Behold King Edward* (who was then dead) and for these Words he had Judgment and Execution as a Traitor. *Dyer 128.* But *Co. 7. 10.* observeth, That the Words were accompanied with other Circumstances, which appear not in our usual printed Books. Dyer 128. Abr.

(a) Treason may be committed by Words, as to say, The King being excommunicated by the Pope, may be lawfully deposed and killed by any Person whatsoever; which Killing is no Murder. *P. 13 Jac. 1. Owen's Case.* Words.

To intend the bodily Hurt of the King, or to affirm that the King is not King, or is an Heretick, Tyrant or Usurper, &c. *Vide Stat. 13 Eliz. cap. 1.* To arrest or imprison the King is Treason, for that is the Way to kill him. *Roll's Rep. 2 Part, p. 89.*

(d) Also to deflower the King's Wife, his eldest Daughter being unmarried, or his eldest Son and Heir's Wife, is High Treason. *25 E. 3. 2.* P. 1.

(a) So it is if any Man shall deflower any other of the King's Daughters; yea, or the Nurseries of any of the King's Children, as Mr. *Briton* writeth, *fol. 43. Stamf. fol. 1. b.*

(d) To levy War against the King, &c. in his Realm, is High Treason. War.

(a) Note, That to detain or hold a Castle or Fortrefs, against the King, is to levy War against the King. See *Br. Treason, 24, 25 E. 3. cap. 2.*

(d) So to conspire to levy War against the King, &c. is High Treason.

Dyer 298.

(a) Also to detain, keep or with-hold from or against the King, any of his Ships, or Ordinance, or maliciously to burn or destroy any of the King's Ships; or maliciously to bar any Haven within any of the King's Dominions; all and every of these are included within these Words, [*To levy War against the King*] and so be High Treason. See *Br. Treason* 24 & *Stat. 14 Eliz. cap. 1. & quære*.

To sell any Armor to the Enemy, or to furnish the Enemy with Weapon or Munition, have been accounted Crimes treasonable. *W. Segar Norroy, of Honour Military and Civil, Page 14.*

If any Person having a Charge, shall yield the same unto the Enemy, this also is a Crime treasonable. *Ibid.*

So all Explorators or Spies, that betray our Secrets, and inform the Enemy thereof, are to be accounted Traitors. *Ibid.*

Dyer 298.

(d) To practice with a Governor of another Country to invade this Realm, is High Treason; although such Practice be not put in Ure.

So to kill one that is sent in the King's Messuige. *22 Aff. Stamf. 1.*

21 E. 3. 23.
Stamf. 1. 1.

To encounter in Fight and kill such as are assisting to the King in his Wars, or such as come to help the King, is High Treason.

These two last Cases were holden to be High Treason, before the Statute of 25 *Ed. 3.*

P. 1.

To be adherent to the King's Enemies (aiding them, or giving them Aid or Comfort, in his Realm, or elsewhere) is High Treason.

(a) To be of Council with another in levying seditious War.

A Subject.

If a Subject shall go beyond the Sea, and there shall adhere, or join himself with the King's Enemies, and there (in such Enmity) shall die or be slain, this seemeth to be Treason, and to be an Attainder in Law, without any more, &c. by the ancient Common Law of this Land; as appeareth, *8 E. 3. Fitz. Dower 106.*

So if a Subject shall join in Battle within the Realm to the King's Enemies, and shall be slain in the Field; by the ancient Common Law of this Realm he shall forfeit his Lands, Goods and Chattels, and his Blood shall be corrupted, without any other Judgment, for that he himself is the Cause that he cannot come to the Trial of Law in his Life-Time. *Pl. 262. a. & 263. a. Vide Stat. 34 E. 3. cap. 12.*

Alien Enemy.

Br. Treas. 32.

Dyer 145.

Vide.

(d) But if an alien Enemy come to invade this Realm, and be taken in War, he cannot be indicted of Treason, but he shall be put to Death by Martial Law. *Co. 7. 6. b.* Otherwise it is of an Alien whose King is in League or at Peace with our King, or who is in this Realm in the Time of Peace, and hath the Benefit of the King's Peace, he shall be indicted or arraigned of Treason, and shall have Judgment accordingly. An *English* Traitor pleading that he is subject to a foreign Prince, shall notwithstanding (upon a *Nihil dicit* recorded) have Judgment as a Traitor. *Dyer 300.*

(a) If any Person shall join the Arms of *England* with his own Arms, it seemeth to be High Treason. See *38 H. 8. Br. Treason 2.*

If any Person shall counterfeit the King's Arms, or the Arms of this Realm, it is High Treason, as *M. Kitcbin* hath it, *fol. 12.*

Seals.

P. 1. 2. 1 M. 6.

Br. 3. 17.

(d) To counterfeit the King's Great Seal, Sign Manual, Privy Signet or Privy Seal, is High Treason. (a) But before the Statute 25 *E. 3.* these were Petty Treason by the Common Law. *Fi.*

Vide 1 H. H.

P. C. 181,

182.

(d) So to take an old Seal from another Patent, &c. and put it to a new Patent, &c. yet *quære* whether this be Treason, or but Misprision. (a) *M. Stamf. fol. 3. c.* saith, that it was adjudged to be Treason in his Time. *Vide ibidem.* And so said Sir *H. Yelverton, Roll, Part 2. p. 51.*

One counterfeited the Crown in the Signet, and left out divers Words of the King's Stile, and added some others that were not in the Stile of Purpose that there might be a Variance between them; yet it was adjudged that this was a Counterfeiting by putting this false Seal to the Paper, and thereby getting the Great Seal to a Patent. *Robinson's Case, M. 16 Jac. Roll's R. Part 2. 50.*

See Braet. lib.

3. f. 119. b.

1 H. H. P. C.

183.

(d) Also *quære* of such, as without Authority shall set the King's Seal upon any Writing, or shall fraudulently thrust a Writing (among others) to the Seal, and so get it sealed.

Money.

23 Ed. 3. c. 2.

1 Mar. 6.

Co. L. 208.

To counterfeit the King's Money, or any other Coin which is current within this Realm, is High Treason.

(a) And the Justices of Peace may inquire thereof, and thereupon may make out Procefs, by *Capias* only, againft thofe which before them fhall be hereof indicted. 3 H. 5. cap. 7.

(d) So to forge or counterfeit fuch Coin, though he uttereth it not.

Br. 27.

(a) And thefe Counterfeitings are where any common Perfon fhall Coin any fuch Money without the King's Warrant.

(d) To forge or counterfeit any Coin though not current by Proclamation in this Realm, is Mifprifion of Treafon. 14 El. 3. 1 H. H. P. C. 210.

To clip, wafh, round, file, impair, diminifh, lighten or falshfy any Coin current with- in this Realm, is Treafon. 5 El. 11. 18 El. P. 5. 6.

To bring any falfe Money into this Realm, knowing it to be falfe, is High Treafon: But to bring fuch Money into *England*, out of *Ireland*, is but Mifprifion, though he knoweth it, and uttereth it, *Quia Hibernia eft quafi membrum Angliæ*.

1 & 2 P. & M. P. 3.

If he which by the King's Warrant doth coin Money (either in *England*, *Ireland*, or elfewhere) making it much lefs in Weight than the ancient Ordinance; or coineth falfe Metal, it is Treafon. 25 E. 3. c. 2. Finch. 3 H. 7. f. 10. Br. Treafon 19.

(a) So to coin any Money, not having Authority or Warrant to do it, is High Treafon. *Speculum Juftic.*

To coin Farthing-tokens is no Treafon, but is punifhable; and fo Sir *Francis Harvey* delivered it in his Charge at *Cambridge* Summer Affifes, *Ann.* 1631.

(d) To utter falfe Money made within the Realm, or other the King's Dominions, knowing thereof, is Mifprifion of Treafon. 3 H. 7. f. 10. Dyer 266.

(a) The Book called the *Mirror of Juftices*, (or *Speculum Jufticiariorum*, written by Mr. *Andrew Horn*) divides thefe former Treafons into two Sorts, *ſc.* *Le Crime de Majeſte*, & *le Crime de Fauſonnerrie*. See alfo *Br. fol.* 118.

Le Crime de Majeſte, 3. x. { Such as fhall kill the King, or fhall compafs to do it.
 { Such as fhall do or procure any Thing, *ad ſeditionem Domini Regis vel Exercitus ſui*.
 { Such as fhall deflower the King's Wife, his Daughter, or the Wife of the King's Heir.

Le Crime de Fauſonnerrie is { Falfifying the King's Seal,
 in two Manners, *ſc.* by { Falfifying his Money.

(d) To kill the King's Chancellor, Treafurer, Juftices of either Bench, Juftices in *Eyre*, Juftices of Aſſiſe, or Juftices of *Oyer* and *Terminer*, being in his or their Place, doing his or their Office, is High Treafon. 25 Ed. 3. 2. P. 1.

(a) But becauſe many other like Cafes of Treafon might happen, &c. it was (by the Statute 25 E. 3. cap. 2.) accorded, That if any other Caſe ſuppoſed Treafon, which is not in that Statute ſpecified, doth happen before any Juftices, the Juftices are not to proceed thereupon, until the Cauſe be declared before the King and his Parliam- ent, &c.

Alfo by the Statute of 1 *Mar. Parl.* 1. & *Seſſ.* 1. it is ordained, That no Act, Deed or Offence, made Treafon, Petty Treafon or Mifprifion of Treafon, by any Act of Parliam- ent or Statute, fhall be taken, deemed or adjudged to be High Treafon, Petty Treafon or Mifprifion of Treafon, but only fuch as be declared to be Treafon, Petty Treafon or Mifprifion of Treafon, in or by the Statute made 25 E. 3. any Statute made before or after the ſaid Statute of 25 E. 3. or any other Declaration or Matter to the contrary not- withſtanding.

(d) Note, That the Counſellors, Procurers, Conſenters, Abettors and Aiders to any of the forenamed Treafons, be all within the Purview of the ſaid Statute of 25 Ed. 3. cap. 2. for in Treafon all the Offenders be Principals. *Acceffory*. *Stamf.* 5. P. 2, 3, 4, 5, 6. 19 H. 6. 476. P. 8.

To conceal or keep ſecret any High Treafon, is Mifprifion of Treafon.

1 & 2 P. & M. c. 10.

And all Receivers and *Acceffories* (to High Treafon) after the Offence, ſeem to be in Caſe of Mifprifion. *Vide poſtea Tit. Acceffory*, cap. 161.

(a) To ſet at large unlawfully, any Perfon that is committed to Priſon or Cuſtody for Treafon, is Treafon by the Common Law. 1 H. 6. fol. 5. Br. Treafon 11.

If a Man that is *Non compos mentis*, do any Act which if done by a Man of ſound Mind were Treafon; it is Treafon in him alfo. *Roll's Part 2* P. 324.

Prison. If one that is in Prison for Felony shall break the Prison, whereby a Traitor being in Vide 1 H. 6 5. the same Prison shall escape, this is Treason (in him that broke the Prison) by the Common Law.

Stamf. 32. 1. So voluntarily to suffer any Person to escape, that is committed to Prison, or but under Arrest for Treason; this is Treason by the Common Law.

Dyer 98. Co. 1. 28. (d) If Two or more do conspire to commit High Treason, and some or any one of them after do commit and execute it; this is High Treason in them all by the Common Law.

Co. 8. Praef. Note also, that the aforesaid Statute of 25 E. 3. cap. 2. is but a Declaration of the Common Law, for all the said Treasons in the said Statute mentioned, were Treason by the ancient Common Law of this Realm.

Treason by Statute. Since which Time of King *Edw.* 3. divers others Offences were made Treason, as appeareth by the Statutes 21 *Rich.* 2. 2 *H.* 5. 6. 3 *H.* 5. 6. 8 *H.* 6. 6. 4 *H.* 7. 18. 22 *H.* 8. 9. 26 *H.* 8. 13. 27 *H.* 8. 2. 28 *H.* 8. 10 & 18. 31 *H.* 8. 8. 32 *H.* 8. 25. 33 *H.* 8. 21. 35 *H.* 8. 1. & 1 *Ed.* 6. 12. all which were repealed again by the said Statute made 1 *M.* *Parl.* 1. or before.

Seal and Money. Also since the aforesaid Statute of Repeal there have been divers other Offences made or declared to be Treason, whereof some were but as an Addition to, or an Exposition of the Treasons before specified, and mentioned in the said Statute of 25 E. 3. cap. 2. viz. the Statutes 1 *M.* 6. 1 & 2 *P.* & *M.* 11. 5 *E.* 11. 18 *Eliz.* 1. and 14 *Eliz.* 3. by which five several Statutes last mentioned the Counterfeiting of the King's Seal, or Abusing his Coin, and Bringing in of false Coin, &c. are in some Particulars more fully prohibited than before, as may herein before appear.

There are also other Offences made High Treason (by Statute made since the Beginning of the Reign of Queen *Elizabeth*) and those especially made for the Preservation of the said Queen, her Heirs and Successors, and of the Dignity of the Imperial Crown of this Realm; and for the Avoidance of the Dishonours, Inconveniencies and Dangers growing to the whole State, by Means of the Jurisdiction of the See of *Rome*, heretofore usurped within this Realm, &c. as hereunder appeareth.

The Bishop of Rome. First, The Maintaining or Extolling the Authority of the Bishop or See of *Rome*, within any the King's Dominions; and the Procurers, Counsellors, Aiders and Maintainers thereof and every of them.

5 *El.* 1. *P.* *Rome* 1.

For the first Offence they shall incur the Danger of a *Præmunire*; the second Offence is High Treason. (a) But no Person shall be tendred the Oath the second Time, but such as have an Office or Ministry in the Church under a Bishop or Archbishop, or Persons refusing to observe the Offices of Divine Service after Admonition, or Depraving the Rites and Ceremonies of the Church, or that shall hear or say Mass.

Books. (d) Also the Bringers over of any *Books*, that shall maintain, set forth, or defend any such Authority; and the Readers and Hearers of such *Books*, that shall justify them;

And such as shall deliver any such *Books* to others, with Allowance and Liking of the same.

Dyer 282. Co. 7. Praef. And the Printers and Utterers of such *Books* within this Realm; all and every such Offenders are (by the Judges) resolved and construed to be within the Meaning of the same Statute, 5 *El.* cap. 1. and their first Offence to be a *Præmunire*, the second is High Treason.

Oath of Supremacy. Again, the Refusal of the Oath for the King's Supremacy (in all Cases, and over all Persons, &c.) after lawful Tender thereof made; the first Refusal is a *Præmunire*, the second is High Treason.

5 *El.* 1. *P.* *Crown* 6 & 8.

(a) The Justices of Peace, &c. may in their Quarter-Sessions inquire of all Things done against 5 *El.* 1. as of Offences against the Peace, and may certify such Presentment into the King's Bench within forty Days after such Presentment made, if in Term-time; or if not, then the first Day of the next Term, or shall forfeit 100 *l.* and the Justices of the King's Bench may hear and determine the Offence, as if the Person offending had been presented upon any Matter in the Statute of 16 *R.* 2.

3 *Jac.* 1. 4. *R.* *Recuf.* 45. (d) The second Refusal of the Oath of Allegiance, being tendred according to the Statute, is a *Præmunire*.

(a) Where the first Tender is before two Justices, and a Refusal thereupon, the Refusal in Sessions after incurs a *Præmunire*, but it seems by 3 *Jac.* 1. 4. a Refusal in Sessions without any precedent Tender makes a *Præmunire*.

(d) Again, to obtain or get from *Rome*, or from any claiming Authority from *Bulls.* thence, any Bull or Writing, (the Effect whereof is, to absolve and reconcile all those ^{13 El. 2.} that will forsake their due Obedience to the King, and yield themselves to the Bishop of ^{P. Crown 7} *Rome*,) or to give or take Absolution, by Colour of any such Bull; or to publish, or put ^{& Præm. 3} in Ure any such Bull; every such Act shall be High Treason, as well in the Offenders, as in the Procurers, Abettors and Counsellors to the Fact.

And all Aiders, Comforters and Maintainers of any such Offender, after the Fact, *Ibid.* shall incur a *Præmunire*.

To conceal such Bull (or Writing) or such Absolution offered them, and not within ^{13 El. 2.} six Weeks to disclose it to some of the King's Privy Council, is Misprision of Treason. ^{P. Rome 4}

(a) To purchase or pursue (in the Court of *Rome*, or elsewhere) any Excommunication, Bull or other Instrument, against the King, his Crown or Realm; or to bring them ^{Præmunire.} within this Realm; or to receive them, or to make Notification or any other Execution thereof, within this Realm, or without, every such Offender, their Procurers, Maintainers, Abettors and Counsellors, shall incur the Danger of a *Præmunire*, ^{16 R. 2.} *cap. 5.*

(d) To practise beyond the Seas or upon the Seas, or elsewhere within the King's Do- ^{23 El. 1.} minions, to absolve, persuade or withdraw any Subject, or any within the said Domini- ^{3 Jac. 1. 4.} ons, from their Obedience to his Majesty; or to reconcile them to the Pope, or to draw ^{P. Rom. 7.} them to the *Romish* Religion (by Argument, Books or otherwise) for that Intent; or to ^{3 Jac. 1. 4.} move them to promise Obedience to the See of *Rome*, or to any other Prince, State or Potentate; every such Person, and their Procurers, Aiders, Counsellors and Maintainers, knowing the same, are all guilty of High Treason.

To be willingly absolved, persuaded, withdrawn or reconciled, as aforesaid, or to pro- ^{3 Jac. 1. 4.} mise any such Obedience, every such Person, and their Procurers, Counsellors, Aiders ^{P. Recuf. 49.} and Maintainers (knowing the same) shall be adjudged Traitors, except they submit ^{& Rom. 7.} themselves according to the Statute, within six Days after their Return into this Realm, *&c. Vide antea Tit. Recufants.*

To conceal any such Offence, and not within twenty Days to disclose it to some Ju- ^{P. Rome 8.} stice of Peace or other higher Officer, is Misprision of Treason by the Statute ^{23 El. 1.}

Again, for any Jesuit, Priest, or other Ecclesiastical Person (born within any the ^{Jesuits.} King's Dominions) and made by an Authority from the Bishop of *Rome*, to come into, ^{27 El. 2.} be or remain, in any of the King's Dominions, contrary to the Statute, is High ^{P. Jesuits 2.} Treason.

To receive, relieve, aid or maintain any such Jesuit, *&c.* (being at Liberty, and ^{P. Jesuits 103.} knowing him to be a Jesuit, *&c.*) is Felony, (a) without Benefit of Clergy, ^{27 El.} *cap. 2.* But that Clause relates to such as had before that Time taken Orders. See the Statute.

(d) To conceal such a Jesuit, *&c. &c.* not to discover them to some Justice of Peace, or other higher Officer, within twelve Days, is punishable by Fine and Imprisonment.

And the Justice of Peace or other such Officer, to whom such a Person shall be dis- ^{27 El. 2.} covered, if within twenty-eight Days they give not Information thereof to some of the ^{P. Jesuits 4.} King's Council, *&c.* they shall forfeit 200 Marks. ^{See Tit. Recu-}

(a) The Pope's Bulls in *Latin* called *Bullæ*, are so called, *Quod Bullis plumbeis ob-* ^{Bulls} *signentur*; and in which *consilium & voluntas Papæ continentur.*

What the ancient Law was for concealing of High Treason, *Braet. lib. 3. fol. 418.* sheweth us, saying, *Si fit aliquis, qui alium noverit inde esse culpabilem, &c. statim & sine intervallo aliquo accedere debet ad ipsum Regem, si possit, vel mittere (si venire non possit) ad aliquem Regi familiarem, & omnia ei manifestare per ordinem:* And he must not stay in any one Place by the Space of two Nights or Days: And if he be negligent therein, he shall be taken as consenting. See more, Misprision, *cap. seq.*

(d) If any of the King's Subjects (not being a Jesuit or Ecclesiastical Person) which ^{Seminaries} are or shall be brought up in any Seminary or College of Jesuits, or Seminary beyond the ^{27 El. 2.} Sea, shall not (within six Months after Proclamation in that Behalf to be made in ^{P. Jesuits 4} *London*, *&c.*) return into this Realm, and within two Days after such Return (before the Bishop of the Diocese, or two Justices of Peace of the County where he shall arrive) submit himself to the King's Laws, and take the Oath of Supremacy, (set forth ^{1 El. 1.}) then every such Person which shall otherways return, or come into this Realm, or any other his Majesty's Dominions, without such Submission, shall be adjudged a Traitor.

For (as one faith) it may justly be feared, not only of all Jesuits and Seminary Priests, but also of all such other (jesuited) Persons whatsoever that shall come into his Majesty's Dominions, or return into this Realm, contrary to this Statute, That it is not Faith, but Faction; not Truth, but Treason; no Religion, but Rebellion, which is the Cause of their Coming,

27 El. 2.
P. Jesuits 5.
To convey, deliver or send, yield or give any Relief, to or for any Jesuit or Priest, &c. or other Person abiding in any Seminary beyond the Seas, &c. is a *Præmunire*.

Agnus Dei.
13 El. 2.
P. Rome 5.
To bring into this Realm any *Agnus Dei*, Crosses, Pictures, Beads, or such like superstitious Things, consecrated by Authority from the Pope, and to deliver them, or to offer or cause them to be delivered to any Subject of this Realm, is a *Præmunire*, as well in such Person, as also in them that shall receive any such Thing, to the Intent to use or wear it.

13 El. 2.
P. Rome 6.
The Person to whom such *Agnus Dei*, &c. shall be offered, must apprehend the Party offering the same, and bring him to the next Justice of Peace, if he can; or else must within three Days disclose his Name and Place of Abode, to the Ordinary or some Justice of Peace in that County: And if he received any Thing, he must deliver the same within one Day to a Justice of Peace of that County, where the Party so receiving the same, shall then be resident or happen to be; and so doing shall be pardoned. And that Justice of Peace within fourteen Days must disclose the same to one of the King's Majesty's Privy Council, upon Danger of a *Præmunire*.

(a) The former Offences against the Statute 5 *Eliz.* 1. and 13 *Eliz.* 2. and 23 *El.* 1. may also be inquired of by the Justices of Peace in the Sessions. *Vide Eliz. cap. 1. & hic cap. 20.*

Copy of the
Indictment.
7 Will. 3.
cap. 3.
Persons indicted for High Treason, or for Misprision of Treason, shall have a true Copy of the whole Indictment, but not the Names of the Witnesses, five Days at least before the Trial, paying for it not exceeding 5 s.

Allowed Coun-
sel and Wit-
nesses on Oath.
And they shall be admitted to make their Defence by Counsel, and by Witnesses on Oath, the said Counsel not exceeding Two, to be assigned by the Court, and to have Access to the Prisoner at reasonable Times.

* No Evidence
shall be given
of an Overt
Act not expres-
sly laid in the
Indictment.
There must be two lawful Witnesses to the same Overt-Act, or one of them to one Overt Act *, and the other of them to another Overt Act of the same Species of Treason, unless the Prisoner confess the same in Court, stand mute, or refuse to plead, or challenge above 35 Jurors.

Traitor out-
lawed.
A Traitor outlawed may come in and be tried, and have Benefit of the Act, where by Law an outlawed Person comes in.

Two distinct
Treasons in one
Indictment.
Where two distinct Treasons are laid in one Indictment, one Witness to one, and another Witness to the other of the said Treasons, shall not be two Witnesses to the same Treason.

Prosecution
within 3 Years.
The Prosecution must be within three Years after the Offence committed, unless for a Design to assassinate and poison the King.

Copy of the
Panel.
The Prisoner shall have a Copy of the Panel two Days before his Trial, and he shall have the like Process of the Court to compel his Witnesses to appear, as is usually granted to compel Witnesses to appear against him.

Indictment
shall not be
quashed for In-
sufficiency.
Indictment shall not be quashed for mis-reciting, mis-spelling, false or improper Latin, unless the Exception is made in Court before any Evidence given; but a Judgment may be reversed by a Writ of Error.

Judgment may
be reversed by a Writ of Error.

Trial of a Peer.
All the Peers who have a Right to sit and vote in Parliament, shall be summoned at least twenty Days before the Trial of a Peer or Peeres for High Treason; and every Person so summoned and appearing, shall vote at such Trial, first taking the Oaths of Allegiance and Supremacy, and repeating the Declaration against Transubstantiation.

The Act doth
not extend to
Impeachments,
or to counter-
feiting the Coin.
This Act shall not extend to Impeachments or other Proceedings in Parliament, nor to Treasons in counterfeiting the Coin, the Great Seal, &c.

Coining In-
struments.
No Person shall buy or sell any coining Instruments, or make Grainings round the Edges of Money, or gild or plate the Coin under Pain of High Treason.

Pretended
Prince of
Wales at-
tainted.
The pretended Prince of *Wales* stands convicted and attainted of High Treason, and if any of the King's Subjects shall correspond with him, either in Person, or by Letters or otherwise, or with any Person employed by him, knowing the Person to be

so employed, or shall remit any Sum of Money, knowing it to be for his Use; this is Treason.

And if any Offence against this Act shall be done out of *England*, it shall be tried in any County here.

Witnesses in a Trial for Treason or Felony shall be admitted to give Evidence on Oath.

Witnesses on Oath.
1 Ann. c. 9.

He who opposes the Succession to the Crown, after the Death of the Queen, according to the several Acts of Limitation of the Crown, and shall maliciously, advisedly, and directly attempt it by any Overt Act or Deed; such Offender, his Abettor, Procurer and Comforter, knowing the said Offence to be done, shall be guilty of High Treason.

Opposing the Succession after the Death of Queen.
1 Ann. Stat. 2. c. 17.

He who maintains the Pretender's Title, or affirms that the King or Queen, by Authority of Parliament, cannot limit the Succession of the Crown, shall be guilty of High Treason.

Maintaining the Pretender's Title.
6 Ann. c. 7.

He who apprehends a Person who hath counterfeited the current Coin, &c. or for Gain hath clipp'd, washed, filed, or diminished the same, or who hath imported any clipp'd, false or counterfeited Money, and prosecutes such Offender to Conviction, shall within a Month after receive of the Sheriff of the County 40*l.* upon Demand, tending a Certificate under the Hand of the Judge who tried the Offender, certifying the Conviction of such Traitor, and that he was taken and prosecuted by the Person claiming the Reward; and if there should be any Difference amongst the Claimants where there are more than one, the Judge, &c. shall settle the same; and the Sheriff failing in Payment of the Reward, shall forfeit to the Party grieved double that Sum, with treble Costs to be recovered by Action of Debt in the Courts at *Westminster*.

Clipping and coining Money.
6 & 7 W. 3. c. 17.

*Apprehending a Clipper, &c. shall have 40*l.**

None, (except Persons employed in his Majesty's Mint, or authorized by the Treasury) shall knowingly make or mend any Die, Puncheon, Counter-puncheon, Matrix, Stamp, Pattern or Mould, &c. in or upon which there shall be impressed the Figure or Resemblance of both, or either Side of the current Coin of this Realm, nor make or mend, or begin or assist to make or mend any edging Tool, Instrument, (not of common Use in any Trade) but contrived for marking Money round the Edges with Letters, Gravings, or other Marks of Figures resembling those on the Edges of Money coined in the King's Mint, nor any Press for Coinage, or any cutting Engine, for cutting round Blanks by the Force of Screws, out of flatted Bars of Gold, Silver, or other Metal; nor knowingly buy or sell, hide or conceal, or (without lawful Authority or just Excuse) have in his Custody any Puncheons, or other the Instruments before-mentioned, on Pain that they, their Counsellors, Procurers, Aiders and Abettors, shall be guilty of High Treason.

Making or mending any coining Tools.
8 & 9 Will. 3. c. 26. made perpetual by 7 Ann. c. 25.

Concealing or having them in their Custody.

He who (without Authority) shall convey out of the King's Mints any of the aforesaid Instruments; and all Persons receiving, hiding or concealing them, are guilty of High Treason.

Conveying Tools out of the Mint.

He who makes Letters or Grainings, or other Marks or Figures like those on the Edgings of Money coined at the Mints, and Colouring, Gilding or Casing over any Coin resembling the current Coin of this Kingdom, or any round Blanks of base Metal, or of coarse Gold or Silver of a fit Size and Figure to be coined into counterfeit mill'd Money, resembling the said Gold or Silver Coin, or shall gild over such silver Blanks, &c. shall be guilty of High Treason.

Making Letters or Grainings.

Persons offending against the last mentioned Act, may be prosecuted at any Time within six Months after the Offence committed.

Prosecution within six Months.

1 Ann. c. 9.

See more fully of High Treason in 1 Hale's Hist. Plac. Cor. Chap. 10. and the following;
And 1 Hawk. P. C. Chap. 17.

C H A P. CXLI.

Misprision.

(a) **M**isprision signifieth in our Law, Neglect, Negligence or Oversight, in not revealing a Treason or Felony, when we know it to be committed, or about to be committed; so making a light Account of such capital Offences: See *infra*; and see *High Treason*, the Statute 13 Car. 2. cap. 1.

(d) There be certain Offences, which by the Common Law are Misprision of Treason, or at least punishable in the same Degree, and more. As,

22 E. 3. 19. To draw a Sword to strike a Justice sitting in the Place of Judgment, is Misprision of
Stamf. 38. b. Treason.

P. R. 117. To strike a Juror in the Presence of the Justices, sitting in Place of Judgment.

Ibid.
Br. Contempts 9. Fitz. Judg. 174. Fi.

Stamf. 38. c. To strike another in *Westminster-Hall*, sitting in any of the King's Courts there.
Dyer 188.
Fitz. Cor. 285.

F. (a) So to draw any Weapon, therewithal to strike any Person in the Presence of the
Br. Pain 16. Justices, or to make an Affray in their Presence.
Stamf. 38.

Ibid. So to rescue any such Offender.

See Stamf. 38. So to strike any Person in the King's Court (Palace or other House) the King being
d. then in his Court. And Judgment was given accordingly in such Case upon a Knight,
Ann. 33 H. 8. for striking another at *Greenwich*, the King being there. *Br. Ibid.* Yet
now see the Statute of 33 H. 8. 12. That such an Offender in the King's Palace (al-
though he shall draw Blood by Striking there) he shall forfeit neither the Profits of his
Lands, nor his Goods, but shall lose his right Hand, be imprisoned during his Life, and
shall pay Fine and Ransom at the King's Pleasure: And so now such an Offence done
in the King's Palace, shall not have so grievous a Punishment, as if it be done in *West-*
minster-Hall.

Stamf. 38. c. (d) But in the three first Cases, the Offender shall have Judgment as in Misprision
of Treason, and besides shall have his right Hand cut off. *Br. Peine* 16. *Fitz. Forf.* 21.
Dyer 188.

Ibid. If one of the King's Justices do arrest one who made an Affray before him sitting in
Place of Justice, and a Stranger shall rescue the Prisoner, whereby he escapeth; this is
Misprision of Treason in them both.

Stamf. 37. d. Note, That every Treason or Felony does include Misprision, so that where any Person
Crompt. 44. hath committed Treason or Felony, the King may cause the Offender to be indicted and
arraigned but of Misprision.

Misprision de- Misprision is properly, when one knoweth that another hath committed or is about
fined. for to commit any Treason or Felony, but was not, or is not consenting thereto, and
Stamf. 37. will not discover the Offender to the King or his Council, or to some Magistrate, but
Stat. 5 E. 6. conceals the Offence.
c. 11.

Stamf. 37. (a) Compounding of Felonies is also Misprision of Felony at the least, if it be not
Felony.

The Judgment. For Misprision of Treason, the Offender shall forfeit to the King his Goods and Chat-
Br. Trea. 19. tels for ever, and the Profits of his Lands during his Life, and also shall be imprisoned
& Stamf. 38. during his Life.

The Forfeiture. For Misprision of Felony, the Offender shall be only fined (and ransomed) by the Ju-
See Br. Trea. stices, before whom he shall be attainted, and shall be committed to Prison until he hath
25. and Finch, paid his Fine.
lib. 2.

Judgment in For High Treason, the Offender shall be hanged, cut down alive, and quartered, and he
High Treason. shall forfeit all his Lands and Goods to the King: Yea, at this Day, his Lands intailed shall
3 H. 7. t. 10. be forfeited, and his Wife shall lose her Dower, and his Blood shall be corrupted, (saving in
Vide Co. L. certain Cases.) *Vide Stamf.* 182 & 187. *Co.* 1. 103. 3. 10. & 7. 33, 34. & *Dyer* 289.
133. & 372. & 332. *Pl.* 237. b. 249. b. 554. b. & 559. (a) *Est enim tam grave crimen istud quod*
vix permittitur heredibus quod vivant: Et si aliquando forte ad successionem admittuntur
tales, hoc magis erit de gratia quam de jure. *Braet.* lib. 3. fol. 118.

Woman. But the Judgment and Sentence of Condemnation upon a Woman in Case of Treason
is, that she shall be drawn upon a Hurdle unto the Place of Execution, and there
burned. *Stamf.* 182. c.

P. Præm. 1, 5. (d) In case of *Præmunire*, the Offender shall forfeit all his Lands which he hath in
6. 19. Fee for ever, and all his Goods and Chattels to the King, but his Lands, whereof he
Co. 7. præf. hath an Estate-tail, he shall forfeit only during his Life; and shall be imprisoned during
& 11. 63. his Life. (a) But some do hold, that if the Offender be attainted upon the Statute
Co. 8. 130. of 27 *Ed.* 3. *cap.* 1. there the Offender shall forfeit nothing, if he appeareth at the Day
Br. Præm. of the *Præmunire* returned. See the Statute & *B. Præm.* 6. & *Crompt. Autor. des Courts*
6. 19. 97. Yet others do hold, that as upon the Statute of 16 *R.* 2. *cap.* 5. the Offenders shall
forfeit their Lands and Goods if they be attainted (*Br. Præm.* 6. & 20.) so upon the Sta-
tute of 27 *E.* 3. if the Offender do appear and plead, and be found Guilty, he shall have
the

the Judgment of *Præmunire*, *ſc.* to be put out of the King's Protection, and ſhall forfeit his Lands, Goods and Chattels to the King, and his Body ſhall be imprisoned during his Life, (or until he hath made fine and Ransom at the King's Will.) See the Statute and *Co.* 11. 34. and the old *Natur. Bre. fol.* 159. *Co. L.* 130, & 391.

The Judgment in Præmunire.

(d) Now for the Offenders in High Treason, Miſprifion of Treason, and *Præmunire*, although the Juſtices of Peace (by their Commiſſion, nor by Statute) cannot meddle with them in the very Point of their Offences, ſaving in ſome Particulars, and that by way of Inquiry only, which you may ſee *Lamb.* 496. Yet for that all Treasons, and ſuch other Offences are againſt the Peace of the King, and of the Realm, therefore upon Complaint made to the Juſtice of Peace, or other Knowledge had by him of any ſuch Offenders, it ſhall be his Part to cauſe them to be apprehended, and to join with ſome other Juſtice of Peace in taking their Examination, and the Information upon Oath of ſuch as bring them, or of others that can prove any Thing material againſt them, and to put the ſame in Writing (under the Hands of the Informers) and then to commit the Offenders to the Gaol; and alſo to bind over by Recognizance all ſuch as do declare any Thing material, to appear and give Evidence againſt ſuch Offenders, before the Privy Council, or in the King's Bench, or at the Affizes and Gaol-delivery, or elſewhere, when they ſhall be called upon reaſonable Warning, and after to certify their Doings therein to ſome of the Lords of his Majeſty's Council.

9 H. 3. 1.
Br. Trea. 5.
Fitz. Juſt. de Peace 7.

Note, that all Treasons, Miſprifion of Treason, and Concealment of Treason, done or committed out of the Realm, ſhall be inquired of, and tried within the Realm, *ſc.* in the King's Bench, or elſe before ſpecial Commiſſioners. See Stat. 35 H. 8. *cap.* 2. & 5 E. 6. *cap.* 11. *P. Treaf.* 10. & *Dyer* 287, 298, 132, 360. *Co.* 7. 23. & 11, 63.

26 H. 8. a. 13.

See alſo for Miſprifion of Treason, 1 Hawk. Chap. 20. and 1 Hale Hiſt. P. C. Chap. 28.

C H A P. CXLII.

Petty Treason.

PETTY Treason is, when wilful Murder is committed (in the Eſtate Oeconomical) upon any Subject, by one that is in *Subjection*, and oweth *Faith, Duty and private Obedience to the Party murdered*, as in theſe Caſes following.

Defined.
25 E. 3. c. 2.
P. Treaf. 8.

If a *Servant* maliciously killeth his or her *Maſter or Miſtreſs*, this was Petty Treason by the Common Law.

By a Servant.
Ibid. & 10.
21 Aff. 30.
25 E. 3. c. 2.

Stamf. 10. 1. *Br.* 8. 12. & *Co.* 11. 34. &

A *Servant* of the Age of thirteen Years killed her *Miſtreſs*; it was adjudged Petty Treason.

Ibid. *Fitz.*
Cor. 118.
B. Treaf. 12.

A *Servant* departed out of Service, and a Year after killeth his *Maſter* upon Malice conceived when he was in the ſaid Service; it is Petty Treason.

Stamf. 10.
B. Treaf. 15 t.
33 Aff. 1. 7.
Co. 1. 99. b.

A *Servant* doth procure another to kill his *Maſter*, who killeth him in the *Servant's* Prefence; this is Petty Treason in the *Servant*, and Murder in the other.

See Plo. 100. a.
& *Br. Cor.* 119.
& *Quære.*
Dyer 128.

But if the *Stranger* doth kill the *Maſter* in the *Servant's* Abſence, then the *Servant* is only acceſſory to the Murder, but it is no Petty Treason in him.

A *Servant* conſpireth with a *Stranger* to rob his *Maſter*, and at a *Time* appointed in the Night, he letteth in the *Stranger* into the *House*, and leads him to his *Maſter's* Chamber, and the *Stranger* killeth his *Maſter*, the *Servant* ſtanding by but ſaying nothing, this is Petty Treason in the *Servant*, and Murder in the *Stranger*. (a) Yet by ſome, this is but Murder in the *Servant*. *Ibid.* & 40 *Aff. Br. Cor.* 119. For where the *Principal* is but a *Felon*, the *Acceſſary* cannot be a *Traitor*. See *Plo.* 100. a. that the *Servant* is a *Principal* in this Caſe, and after, *Tit. Acceſſary*.

Dyer 128.
Vide 1 H. H.
P. C. 378,
379, 381, 382.

(d) A *Servant* commands one to beat his *Maſter*, and he killeth him, this is Petty Treason in the *Servant*, if he *be preſent*.

Crompt. 20.

A *Servant* upon Malice prepenſed, ſhooteth at a *Stranger*, and miſſeth him, and killeth his *Maſter* being by; this is Petty Treason in the *Servant*, (though he intended no Hurt to his *Maſter*) becauſe he intended Murder thereby.

Crompt. 20.

- The Wife.*
B. Treaf. 301. The Wife maliciously killeth her Husband, this is Petty Treason. 25 Ed. 3. cap. 2.
The Husband maliciously killeth his Wife; this is but Murder.
The Reason of this Difference is, for that the one is in *Subjection* and oweth Obedience, and not the other.
- Dyer 332. The Wife and a Servant do conspire to kill the Husband, and the Servant killeth him in the Wife's Absence; this is Petty Treason in them both.
- Dyer ibid.
1 H. H. P. C. 378, 379. The Wife and a Stranger do conspire to kill her Husband, and he killeth her Husband in the *Wife's Absence*; this is no Petty Treason in the Wife, but Murder in the Stranger, and she shall be hanged as accessary to the Murder.
- Crom. 20, 21. Also where the Wife or Servant procuring, conspiring, or practising such Murder, at the Time of such Murder is in the same House, though they be not present thereat, but are in another Room, yet it is Petty Treason in them, as by two Cases reported by Master *Crompton* in 4 & 5 Mar.
- Plo. 474.
Co. 9. 81.
See more in the Title of Murder.
Crom. 20. The Wife poisoneth a Thing, to the Intent to poison her Husband therewith, the Husband eateth it, and becometh very sick thereof, but recovereth; after a Stranger eateth thereof, and dieth thereof; this is only Murder in the Wife.
The Wife poisoneth an Apple, to the Intent to poison a Stranger therewith, and layeth it to that Purpose in a secret Place, and the Husband by Chance eateth it, and dieth thereof within a Year and a Day; this is Petty Treason in the Wife, for that she intended Murder thereby.
- Crom. 20. The Wife poisoneth an Apple or other Thing, and delivereth it to *B.* (knowing nothing of the Poison) to give to *C.* and *B.* giveth it to the Husband, (without the Assent of the Wife) who eateth thereof in the Wife's Absence, and he dieth thereof; this is Petty Treason in the Wife.
(a) And yet if *A.* lay impeisoned Fruit for a Stranger, being his Enemy, and his Father or Mother come and eat it, Sir *Fr. Bacon* maketh a *Quære*, whether this be Petty Treason, because it is not altogether *Crimen paris gradus*. But saith he, *in criminalibus sufficit generalis malitia intentionis cum facto paris gradus*. Regula 15. pag. 65, 66.
- The Child.*
21 E. 3. 17.
Co. 7. 13. b.
B. Treaf. 6.
Vide Ba. 53.
Crom. 21. (d) The Child maliciously killeth his Father or Mother, this is Petty Treason (although the Father or Mother at the same Time gave neither Meat, Drink, nor Wages to such Child :) But it is Treason in the Child, in Respect of the Duty of Nature violated.
A Bastard killeth his Mother; this seemeth Petty Treason, for the Mother is certainly known.
(a) By the Law of God, he that only smiteth, or curseth his Father or his Mother, shall die the Death. Ex. 21. 15 & 17.
- Dalison's Rep.
1 M. 1. The Son or Daughter-in-Law, killeth the Father or Mother-in-Law, with whom they dwell, and have Meat and Drink; it is Petty Treason, although such Child take no Wages; but the Indictment shall be by the Name of Servant.
- A Clerk.
25 E. 3. c. 2.
P. Treaf. 7.
19 H. 6. 47. A Clerk, or any *Ecclesiastical Person*, maliciously kills his Ordinary, or Superior, to whom he oweth Obedience, this is Petty Treason.
(a) Note, that unto the Bishop of every Diocese, the Clerks within their Diocese do owe Faith and Obedience, which is called Canonical Obedience.
(d) Note further, that whatsoever Act will prove Murder between Strangers, the same will make Petty Treason from the Servant to his Master, from the Wife to the Husband, from the Child to the Father or Mother, and from the Clerk to his Prelate or Ordinary, *Mutatis mutandis*.
- 1 H. H. P. C. 378. (a) Otherwise it is between these Persons, where it is not wilful Murder: As if the Servant should kill his Master upon a sudden falling out, without any Malice precedent or by Mis-adventure, or *se defendendo*, these are not Petty Treason, neither shall the Indictment be *Proditorie*, &c. And so of the Wife or Child.
- Break Prison.
1 H. 6. 5.
Stamf. 12. a. (d) Breaking of Prison, whereby Prisoners that were therein for Treason do escape, this is also Petty Treason.
- Pirates.
40 Aff. p. 25.
Br. Coro. 119.
& Treafon 16.
Stamf. 11. b. (a) A *Norman* being Captain of an *English* Ship, wherein also were certain *Englishmen*, and they robbed upon the Sea; this was adjudged Felony in the *Norman*, and Treason in the *Englishmen*, and they were drawn and hanged.
But at this Day all Felonies, Robberies, Murders, and Pyracies, done upon the High Sea, are to be tried before the Lord Admiral in the Court of the Admiralty, and according to the Civil Law. Or they may be attainted before Commissioners, by Force of the Stat.

of 23 H. 8. 15. and then they shall forfeit their Lands, and their Blood shall be corrupted. *Co. L.* 39.

(d) Also it hath been adjudged Petty Treason in some Books, and Felony in some others, for an Indictor, in Case of Treason or Felony, to discover the King's Counsel and their Fellows (*ſc.* to discover to others, what Person they have indicted; or if they have indicted any, then to shew to others what they have done therein.) But now that Offence is taken only to be finable to the King. *Indictor. Stamf. 11. 36. Fitz. Cor. 207, 272. Br. Cor. 113.*

The Punishment of Petty Treason is this; the Man so offending shall be drawn and hanged; the Woman shall be burned alive, in Case as well for Petty Treason, as of High Treason, 1 R. 3. 4. But in Cases of Felonies, the Judgment both of Man and Woman is to be hanged. *Punishment. 1 R. 3. 4. Br. Treas. 11, 30.*

(a) Also no Person or Persons, be they Lay or within Holy Orders, &c. which shall be attainted, or found guilty of any Manner of Petty Treason, nor any Accessory thereto before the Fact, shall be admitted to have the Benefit of his or their Clergy. See the Stat. 12 H. 7. cap. 7. 23 H. 8. cap. 1. 28 H. 8. cap. 1. 32 H. 8. cap. 3. 1 E. 6. cap. 12. & 4 & 5 Pb. & Ma. cap. 4.

(d) The Forfeiture for Petty Treason is, the King shall have his Goods, and for his Lands the King shall have *annum, diem & vastum*, and the Escheat thereof shall be to every Lord, of his own proper Fee. (a) But for Petty Treason or Felony, if the Offender hath but an Estate-tail in his Land, he shall forfeit them but during his Life. *Stamf.* 186, 187. And for Petty Treason, if the Husband be attainted, the Wife shall be barred of her Dower. *Co. L.* 37.

(d) The Justices of Peace may inquire of Petty Treason, as of Felony; And out of their Sessions, every Justice of Peace may deal with the Offenders therein, as in Case of Felony, by Examination of the Offenders, by taking Information against them, and binding over the Informers to the General Gaol-delivery, and committing the Offenders to the Gaol. *Pl. 186.*

C H A P. CXLIII.

Of Felonies by the Common Law.

(a) **F**elony; by some this Word is derived, *Quasi felleo animo factum. L. & Co.* 4. 124. *Ideo dicta est feloniam, quia fieri debet felleo animo* (with a Mind as bitter as Gall.) *Minsh. verbo* Felon, saith it cometh of the French Word Felon, *id est, atrox, crudelis: Vela velando, cum celari & occultari semper velit. Felonia est omne crimen capitale infra legem Majestatem.*

Thus generally it seems to be taken in many Statutes, as particularly in the Statute of 3 Eliz. cap. 9. where it is said, that all Persons shall be ready and apparelled at the Commandment of the Sheriff, and Cry of the Country, to pursue and arrest Felons: And they that will not so do, and thereof be attainted, shall make a grievous Fine to the King; and if Default be in the Lord of a Franchise, the King shall seize his Franchise. And if any Sheriff, Coroner, or any other Bailiff, for Prayer, Fear, or Affinity, that his Kindred or Relation by Birth, or Marriage, shall conceal, consent, or procure to conceal Felonies; will not do their Offices, and be thereof attainted, shall have one Year's Imprisonment, and pay a grievous Fine, and if he hath not whereof to pay, shall have three Years Imprisonment.

(d) Felonies by the Common Law are of divers Sorts; as Homicide, Burglary, Theft, Burning of Houses, Rescous, and Escape.

Homicide most properly is, *Hominis occiso ab homine facta*; for if a Man be killed by a Beast (as a Horse or a Dog) or by any other Thing or Mis-chance, although that be *Hominis cadum*, (of which two Words *Homicide* is derived) yet in such Cases it is not aptly nor usually said, that *Homicide* is committed, but only a Man is said to be slain. *Homicide. Bracton 120*

Others do thus define or describe it, *Homicide* is the felonious Killing of one Man by another within the Realm, and living under the King's Protection. *Lam. 237.*

But to kill a Man *beyond the Seas*, or to strike and give one a mortal Wound beyond the Seas or upon the Sea, whereupon he dieth upon the Land, within this Realm, these *Homicides* are not punishable as Felony by the Common Law; for that they cannot be inquired of, nor tried here; for in criminal Cases, the Rule is, *Ubi quis delinquit ibi punietur.*

tur. So *Co.* 2. 93. 6. 47. But in Treason it is otherwise. See hereof, *Paulo antea.* (a) And yet all Appeals to be made of Things done out of the Realm, shall be tried before the Constable and Marshal of *England*, by the Statute 1 *H.* 4. *cap.* 14. So that if any of the King's Subjects shall be killed by another of the King's Subjects in any Foreign Realm, the Wife or Heir of him which is so slain, may have an Appeal thereof in *England*, before the Constable and Marshal, &c. *Stamf.* 65. b. *Vide Co. L.* 74.

Also to kill a Man upon the Sea, although it be not triable by the Common Law, yet it is Felony, and is inquirable and triable in the Admiralty Court; for those of the Admiralty have Jurisdiction, where both the Stroke and Dying is upon the Sea; otherwise not. And therefore in 25 *El.* it was adjudged in one *Lacy's* Case, that where the said *Lacy* had stricken *Peacock*, and given him a mortal Wound upon the Sea, whereof *Peacock* died at *Scarborough* in *Yorkshire*, the said *Lacy* was discharged thereof, for that those of the County of *York* could not inquire of the Death without Inquiry of the Stroke; and the Stroke they could not inquire, for that it was not given within any Part of the County. See *Co.* 2. 93. & 5. 106, 107. & *Stat.* 15 *R.* 2. *cap.* 3. & 2 *H.* 5. *cap.* 6. But yet by the Statutes made *Anno* 27 *H.* 8. *cap.* 4. & 28 *H.* 8. *cap.* 15. all Offences of Piracy, Robbery, Murder, or other Felony done or committed upon the Sea, (or in any other Haven, River, or Creek, where the Admiral pretends to have Jurisdiction) shall be inquired of, heard, tried, and determined in such Shires and Places within the Realm, and before such Persons as shall be limited and appointed by the King's Commission, and after the common Course of the Laws of the Land, used for Felonies committed within the Realm; and such as shall be so convict of any such Offence, shall have and suffer such Pains of Death, and Forfeiture of Lands and Goods, as if they were convict of Murder or Felony done upon the Land.

2 *Geo.* 2. c. 21. And now by 2 *G.* 2. *cap.* 21. if any Person be feloniously stricken or poisoned upon the Sea, or at any Place out of *England*, and dies in *England*, or stricken or poisoned in *England*, and dies on the Sea, or out of *England*; in either Case an Indictment found by Jurors of the County in which such Death, Stroke or Poisoning happened respectively, shall be as effectual at Law against Principals and Accessaries, and all Courts shall proceed in the same Manner, and Offenders have the same Trial, &c. (Challenges for the Hundred excepted) as if the Stroke, Poisoning and Death had happened in the County where the Indictment is found.

Lam. 232. (d) But whether he that is slain, be an Alien, or a Denizen, an *Englishman* or Stranger, it maketh no Difference, if he live within this Realm under the King's Protection.

Co. 7. 13, 17. *Crom.* 24. *Doct. & Stud.* 133. *Co. L.* 128. b. *Co.* 7. 14. To kill a Man that is attainted of Felony or Treason, is Felony; for none may kill or put to Death any of these, but the Officer of Justice, and by lawful Warrant.

Also to kill a Man attainted upon a *Præmunire*, is Felony.

(a) Also to kill a Man that hath abjured the Realm, is Felony.

(d) Note, that the King's Protection belongeth by the Law of Nature to all these, and the King may protect and pardon them all.

Kinds of Homicide.

Homicide is Threefold: { *Voluntate*; & } Murder, *scil.* of a malicious Purpose. *est duplex.* } Man-slaughter, or Chance-medly of a sudden. *Casu*, or Misadventure; this also is considerable after two Sorts, *scil.* whether } Lawful, or it happen in doing a Thing } Unlawful. *Necessitate*; this is sometimes } Commanded, *sc.* in Execution of Justice. } Tolerated, } For Advancement of Justice. } Prohibited. } *Se defendendo.* See *post.* Tit. *Homicide.*

(a) *Brañton* divides *Homicide* into two Sorts, { *Lingua, vel Façto.*

Lingua, tribus modis. { *Præcepto.* } *Consilio.* } *Tuitione.*

Faço, quatuor modis. { 1 *Voluntate.* } 2 *Iustitia.* } 3 *Necessitate.* } 4 *Casu.*

C H A P. CXLIV.

Felo de se.

BUT first to write something of *Felo de se*, (a) who destroyeth himself by Hanging, *The Fact!* Poisoning, Drowning, or otherwise.

For the Heinousness thereof, it is to be observed, That it is an Offence against God, against the King, and against Nature. Also it is within the Degree or Quality of Murder, *sc.* pretended and resolved (in his Mind) to be done, before it be done: Yea, it is holden to be a greater Offence than to kill another Man. *Plo.* 261. & *in hoc casu Christianæ sepulturæ interdicitur.*

And yet the Civil Law maketh a Difference of such Offenders, and of their Punishment, according to the Quality of their Minds, whereby they were moved to kill themselves; for if they kill themselves through Grief or Impatience of some Infirmity, no Punishment followeth such their Fact (by the Civil Law) but they are left to the Tribunal of the Almighty Judge: But if they kill themselves upon any other Cause, their Goods are confiscated, and their dead Bodies (for the Terror of others) are drawn out of the House, &c. with Ropes, by a Horse, unto a Place appointed for Punishment or Shame, where the dead Body is hanged upon a Gibbet; and none may take down the Body but by the Authority of the Magistrate, &c. *Vide Fulbeck* 90. and *Dr. Cowell* 249.

But by the Common Law, (d) if a Man kill himself (either with a meditate *Ha- Forfeiture!* tred against his own Life, or out of Distraction, or other Humour) he is called *Felo Dyer 262.* *de se*; and he shall forfeit to the King all his Goods and Chattels real and personal, and *Plo.* 261. his Debts due to him by Specialty (but no Debts due to him without Specialty, or upon Simple Contract. *Dyer* 262. 16 *E.* 4. 7.)

(a) And their Goods are usually granted and allowed by the King to the Bishop *Almoner*, and in such sort as *Deodands* are, *Ba.* 3. *V.*

(d) But he shall not forfeit his Lands, neither shall his Blood be corrupt. See *Fitz.* *Fitz. Cor.* 301. *Coron.* 362 & 426. *Plo.* 261.

(a) Yet if a Man be guilty of another Man's Death, or manifest Theft, &c. and be taken, and for fear thereof killeth himself; here he shall forfeit his Lands, *ac hæredem non habebit.* *Bract.* lib. 3. cap. 13.

(d) If a Man do give himself a deadly Wound, and dieth thereof within a Year and a Day after, all his Goods, &c. which he had at the Time of the Blow given, or any Time after, shall be forfeited to the King. *Plo.* 262.

But the Goods of *Felo de se*, be not forfeited till his Death be presented and found of Record, neither can these Goods be claimed by Prescription, (by Lords of Liberties, &c.) but by the King's Grant. *Co.* 5. 110. *21 H.* 7. 33.

(a) And altho' he cannot be attainted of his own Death, for that he is dead before there is any Time to attain him, yet the Finding of his Death by the Coroner (or other Person thereto authorized) is by Law equivalent to an Attainder in Deed, as to his Goods. *Plo.* 258. *b.*

(d) If *A.* strike *B.* to the Ground, and then draweth his Knife to kill *B.* and *B.* lying upon the Ground draweth his Knife to defend himself, and *A.* is so hasty to kill *B.* that he falleth upon *B.*'s Knife; and so *A.* is slain; here *A.* is *Felo de se*, * (a) and yet he shall not forfeit his Goods in this Case. See 44 *Aff.* p. 17. *Br. Cor.* 12 & 14 that *A.* was adjudged not to be *Felo de se.* *44 E.* 3. 44. *Fitz. Cor.* 94. 286, 295. * See 1 *Hale's* Hist. P. C. 413. *contra*

If *A.* of Malice prepered dischargeth a Pistol at *B.* and misseth him, and throws down his Pistol and flieth, and *B.* pursueth him to kill him, whereupon *A.* turning fall-eth down, his Dagger drawn, and *B.* through haste falleth upon the Dagger, here *B.* is *Felo de se*, and *A.* shall go quit. 44 *E.* 3. *Sir Fr. Bacon* 4, 5.

If a Caliver be discharged with a murderous Intent at *J. S.* and the Piece breaks, and strikes into the Eye of him that dischargeth it, and killeth him, he is *Felo de se*; and yet his Intention was not to hurt himself: For *Felonia de se*, and Murder, are *Crimina parvis gradus.* See *ibid.* p. 65.

And in such Case he shall forfeit his Lands, *quia convincitur.* *Bract.* lib. 13. cap. 31.

(d) If

Who may be
Felo de se.
Stamf. 19.
Fitz. Cor.
324.

(d) If one that wanteth Discretion, killeth himself, (as an Infant, or a Man *Non compos mentis*) he shall not forfeit his Goods, &c.

If a Lunatick Person killeth himself, he shall forfeit his Goods, but this must be understood when he killeth himself out of his Lunacy: Otherwise it is, if he killeth himself during his Lunacy, for then he shall neither forfeit his Goods, nor be counted *Felo de se*.

Co. 4. 129.

(a) If one being *Non sanæ memoriæ*, or a Lunatick, giveth himself a mortal Wound, and after he becometh of sound Memory, and then dieth of the same Wound, in this Case, although he dieth by Reason of his own proper Stroke, yet for that the original Cause was committed when he was *de non sana memoria*, he shall not be accounted *Felo de se*, neither shall he forfeit any Thing, for that the Death hath Relation to the original Act, the which was the Stroke or Wound given when he was *de non sana memoria*. Co. 1. 99. b. & 4. 42. a. Fitz. Coron. 244. Pl. 260.

Who shall in-
quire of it.
Co. 5. 110.

(d) The Inquiry of such a Felony belongeth to the Coroner: And yet if *Felo de se* be cast into the Sea, or secretly buried, that the Coroner cannot have the Sight of his Body, and so cannot inquire thereof; then the Justices of Peace, or any other having Authority to inquire of Felonies, may inquire thereof (for that it is Felony): And a Presentment thereof found before them, intitlesh the King to his Goods.

See also 1 Hawk. P. C. Chap. 27.

C H A P. CXLV.

Murder.

Stamf. 18.
Plow. 261.

OF old Time every Killing of one Man by another, was called Murder, (of the Effect) because Death ensued of it. Afterwards Murder was restrained to a secret Killing only; and therefore *Brañton* and *Britton* in their Definition of Murder, call it *Occulta occisio nullo præsentate præter interfectorem & suos coadjutores*, &c. But since Murder hath been, and is taken in a middle Degree, neither so largely as it first was, nor so narrowly as Master *Brañton* and *Britton* speak of it. For Murder is now construed to be when one Man upon Malice prepenfed, (*sc.* forethought) or precedent and with his Will, doth kill another feloniously, *viz.* with a premeditate and malicious Mind, whether it be openly or privily done, this is Felony of Death, without any Benefit of Clergy. 23 H. 8. c. 1. & 1 Ed. 6. c. 12. See *Exod.* 21. 14. he shall be taken from the Altar and put to Death.

Malice.

This Malice prepenfed or precedent, may be either apparent (as where there was a Precedent Falling out, or where there is a Lying in Wait, or a Time and a Place appointed, &c.) or it may be less apparent or manifest, and yet shall be implied, to be of Malice precedent, by the Manner and Circumstances thereof.

Co. 9. 67.

As where one killeth another without any Provocation, the Law implieth, and adjudgeth it to have proceeded of Malice prepenfed: Therefore if one suddenly, and without any shew of Quarrel or Offence offered, shall draw his Weapon and therewith kill another.

Co. 23, 27.

Or if one shall be Reading some Book, or otherwise busied, so as he saw not the Party that shall stab or strike him (and he dieth thereof); or shall be going over a Stile, &c. and another shall kill him; such Offenders shall suffer Death, as in Case of wilful Murder.

Statute against
Stabbing.

1 Jac. 1. c. 8.

And accordingly hath the Statute 1 Jac. well provided, That if one shall stab, strike or thrust another, that *hath not then a Weapon drawn*, or hath not then first striken the other; and if the Party so stabbed, striken or thrust, &c. shall die thereof within six Months after, altho' it cannot be proved that the same was done of Malice forethought; yet the Offender being thereof lawfully convicted, shall suffer Death as a wilful Murderer without Benefit of Clergy.

Officers.

Co. 4. 40.
& 9. 66, 68.
Co. 9. 69.

To kill the Sheriff or any of his Officers, in their Execution of the King's Process, or in doing their Office, is Murder in him that killeth the Officer.

But if he be not an Officer known, he must shew his Warrant, before he arrest the Party, or upon the Arrest (if the other shall demand to see it) or else it seemeth the Arrest is tortious; and where the Arrest is tortious (be it by an Officer known or by another)

another) there the Killing of him that maketh such an unlawful Arrest, is no Murder, but Manlaughter only.

Again, where an Officer hath the King's Writ or other lawful Warrant, though it be erroneous, yet in the executing thereof, if he be slain, this is Murder. Co. 9. 65.

For the Officer is not to dispute the Validity of his Warrant, or the Authority of the Court (or of the Justice of Peace) that sent the Warrant; but his Office is to execute it. Magistrate. Co. 4. 40. & 9. 68.

To kill any Magistrate or Minister of Justice, in the Execution of their Office, or in Keeping the Peace (according to the Duty of their Office) is Murder, and the Law implieth it to be of Malice prepensed. And therefore if the Sheriff, Justice of Peace, High Constable, Petty Constable, Watchmen, or any other Minister of the King, or any that come in their Aid, be killed in doing their Office, this is Murder. 22 Eliz. Cromp. 23.

If the Sheriff or Justice of Peace come to suppress Rioters, and one of their Company is slain by one of the Rioters; this is Murder in all the Rioters that be there present.

A Constable, with others to aid him, comes to part an Affray, if the Constable, or any of his Company shall be slain in doing this his Office, it is Murder to him that killed him, although the Affray were on the sudden, and though it were in the Night: For when the Constable commands them in the King's Name to keep the Peace, altho' they cannot know him to be a Constable, yet at their Peril they ought to obey him. Co. 4. 42. Co. 9. 68.

And in these Cases, the Killing of such an Officer, or any of their Company, is in Law intended to be by Malice prepensed, *ſc.* that the Murderer had a malicious Resolution in him, to oppose himself against the Law, the Officers thereof, and the Justice of the Realm. Co. 9. 67, 68.

Also a Thief that offereth to rob a true Man, killing the true Man in resisting him, it is Murder of Malice prepensed. Plow. 474. Co. 9. 67.

A Man carried his Father (being sick, and against his Will) in a frosty and cold Time, from one Town to another, and the Father died thereof; this was adjudged Murder in the Son. 2 E. 3. 18.

An Harlot delivered of a Child, hid it in an Orchard (it being alive) and covered it with Leaves, and a Kite struck at it, and the Child died thereof, and the Mother was arraigned and executed for Murder. 2 Eliz. Cromp. 24.

A Man hath a Beast accustomed to do Hurt, and the Owner knowing thereof, doth not tie him or otherwise keep him fast shut up, but suffereth him to go at Liberty, and after the Beast killeth a Man; this is Felony in the Owner of the Beast: For by such Sufferance he seemeth to have a Will to kill. Beast. Fit. Cor. 311. Stamf. 17. Exod. 21. 29. 1 H. H. P. C. 43^o.

And in these three last Cases, *voluntas reputabitur pro facto*, Death ensuing thereupon: For it may plainly appear, that they had a Will and Meaning of that Harm which followed, which Will in them, doth amount to Malice, and so makes their Offences to be Murder, and in such Cases where Death ensueth, *Nihil interest, utrum quis occidat, an causam mortis præbeat*.

(a) If a Man hath an Horse, that will strike such as come near him, and his Master knowing this, rideth amongst a Multitude of People, &c. and the Horse killeth a Man; this is Felony in the Master. *Let. M. Cook.*

The same Law seems of an Officer, who being appointed and authorized to whip, or with an hot Iron to burn or brand, or otherwise to punish an Offender, shall do it with such Rigour, or in such extreme Manner, as that the Offender by Reason and Means thereof dieth.

If a Man persuades another to kill himself, and be present when he doth, he is a Murderer. *Ba. 65.*

The Book called *Speculum Justiciar.* speaking of *Homicida voluntate*, saith, it may be either by Striking, Imprisonment, Famine, or other Pain. Four Ways commits d.

1. By Striking or Stabbing, &c. as you may see by that already said.
2. By Imprisonment; as if a Man by Imprisonment shall detain the Body of another (under the Colour of Law or Right) so as he dieth thereby. See *hic verbo Gaoler.*
3. By Famine; as if a Man shall cast, or leave an Infant, or other Person which cannot go, in a Desert or such other Place, where no Person usually resorts, by Reason whereof such Infant, or other impotent Person dieth for want of Succour, &c.
4. By Pain; as if a Man by Torture (or *Dures*) causeth another to accuse himself, where in Truth he did not the Thing, but to be rid of the Pain (rather desiring Death) he confesseth himself guilty of the Felony, when he is not guilty.

P. Cor. 163. (d) If a Man dieth in the Hand of a Physician or Chirurgion authoris'd to practise, this is no Felony in the Physician or Chirurgion. (a) And yet if a Physician bearing Malice to one who is under his Cure, shall give him a Medicine contrary to his Disease, whereof the Patient dieth; this is Felony in the Physician. *Lectur. M. Cooke.*

If a Chirurgion authoris'd, do through Negligence in his Cure, cause the Party to die, the Chirurgion shall not be brought in Question of his Life; and yet if he do only hurt the Wound, whereby the Cure is delayed, and Death ensues not, he is subject to an Action upon the Case for his Misfeasance. *Sir Fr. Ba. 37.*

43 E. 3. 33. (d) If one which is no Physician or Chirurgion (or which is not allowed to use or practise such Faculty) will take a Cure upon him, and his Patient dieth under his Hand; Lamb. 236. this hath been holden to be Felony: But *quære* of this last Case, for it cannot be discerned whether the Patient's Death cometh by any wilful Default, in the Party taking such Cure upon him, or by the Patient's Infirmity; again, there appeareth in them no Will to do Harm, but rather to do Good; and then the Statute of 34 H. 8. 8. leaveth so great a Liberty of such Practise to unskilful Persons, that it will be hard now to make it Felony. But if a Smith, or other Person (having Skill only in dressing or curing the Diseases of Horses or other Cattle) shall take upon him the Cutting or letting Blood, or such like Cure of a Man, who dieth thereof, this seemeth to be Felony; for the Rule is, *Quod quisque norit, in hoc se exercent.*

Cromp. 237] Two playing at Tables, fall out in their Game, and the one killeth the other with a Dagger suddenly; this was holden Murder, in one *Emery's* Case before *Bromley*, at the Assizes in *Cheeshire*, about 27 *El.* as Master *Crompton* reporteth.

Provocation. The Husband, upon Words between him and his Wife, suddenly struck his Wife with a Pestle, whereof she died, and it was adjudged Murder at the Assizes at *Strafford*, before *Walmesley*. 43. *El.*

Cromp. 25.

Quære the Reason why it should be Murder in these two last Cases, considering there appeareth no precedent Malice, and that it was done upon the sudden, and upon Provocation.

(a) The Reason seemeth to be, for that in these two Cases there was no sufficient Provocation to take off the Imputation of Malice; for it was resolved in my Lord *Morley's* Case (as I heard Mr. Justice *Wild* say in the Common Pleas) that Words were no sufficient Provocation to excuse the Malice intended.

Challenges. *Bird* challenges *Taverner* to fight, and appoints a Time or Place, for that *T.* did not pay some Money he owed him, *T.* paid the Money duly, and then to preserve his Reputation, meets at the Place appointed, and *B.* kills *T.* and this was adjudged Murder; for the Law respects not who gave the first Occasion, if the other accept and undertake the Quarrel; and such Fights grew from settled Determinations and Purposes to kill; and all Deaths happening of Fights upon Challenges are Murder. *P. 14 Jac. Roll's Rep. Part 2. p. 260.*

Lamb. 247. (d) *A.* hath wounded *B.* in Fight, and after they meet suddenly, and fight again, and *B.* killeth *A.* this is Murder, and Malice shall be intended in *B.* upon the former Hurt; but now if *A.* had killed *B.* this seems but Manslaughter in *A.* for his former Malice shall be thought to be appeas'd by the Hurt he first did to *B.*

See 1 H. H. P. C. 451. Two were in Suit, and they meet suddenly, and quarrel about the Suit, and the Defendant killeth the Plaintiff; this seemeth Murder. *Tamen quære.*

452. (a) If *A.* of Malice prepen'd, discharges a Pistol at *B.* and misseth him, and throws down his Pistol and flies, and *B.* pursueth him to kill him, whereupon *A.* turneth, and killeth *B.* with a Dagger: If the Law should consider the last impulsive Cause, it should say, that it was in his own Defence: But the Law is otherwise, for it is but a Pursuance and Execution of the first murtherous Intent: And the first Motive will be principally regarded, and not the last Impulsion. Otherwise, if there had been a full Interruption. *Sir Fr. Bacon 4.*

Poisoning. (d) Also wilful Killing of another by Poison, was, and is Murder by the Common Law. See *Stam. 21. & Br. Indictment 41.*

And the Offenders therein, their Aiders, Abettors, Procurers and Counsellors shall suffer Death, and forfeit in every Behalf, as in other Cases of wilful Murder of Malice prepen'd. 1 *Ed. 6. cap. 12. Speculum Justic.* describeth these Offenders thus, *Qui donec aliter a manger, ou auterment chose envenom.*

Plo. 474. The Husband gave a poisoned Apple to his Wife, to the Intent to kill her, and she 1 H. H. P. C. not knowing it to be poisoned, gave it to her Child, who died thereof; this is Murder 432. in the Husband, and yet he loved that Child dearly: And so it had been if a Stranger of his

his own Accord had after eaten and died thereof; for the putting of Poison into the Apple, *&c.* upon an evil and felonious Intent maketh it Murder, whoſoever be killed thereby. Co. 9. 81.

A. bringeth Drink that was poisoned (knowing of it) to *B.* and adviſeth *B.* to drink it, telling him it would do him much Good; by reaſon of which Perſwaſion *B.* drunk of it (in the Abſence of *A.*) and died thereof, this was adjudged Murder in *A.* Co. 4. 44.

If one giveth corrupt Victual to another, to the Intent to poiſon him, and he dieth thereof within a Year and a Day, this is Murder. Cromp. 30.

(a) One layeth Corruption at another Man's Door, to the Intent to poiſon him with the Savour thereof, and the other Party taketh Infection by the Savour thereof and dieth; this is Felony. *Leſt. M. Cooke.* H. H. P. C. 431.

So if one giveth to another Spurge Comfits, or other ſuch Things in Sport, and not in Malice, and he that ſo taketh them dieth thereof; this is Felony. * *Ibid.* * *Manſlaughter according to* H. H. P. C. 431.

(d) But if a Man ſhall prepare Ratbane, *&c.* to kill Rats, *&c.* and ſhall lay this in certain Places to that Purpoſe, without any evil Intent, *ſc.* without any Intent to kill any reaſonable Creature, and another Man finds and eats this, and dieth thereof, this is no Felony. H. H. P. C. 431. Co. 9. 81. Plo. 474.

The Maſter upon Malice precedent goeth to kill another, and taketh his Servant with him, (but he did not know his Maſter's Intent) and the Maſter and his Servant do meet the other, and the Maſter doth aſſault him, and the Servant taking his Maſter's Part, doth alſo aſſault him and kill him; this is Murder in the Maſter, and but Manſlaughter in the Servant. Plo. 100.

Note, That when a Man hath Malice to one, and intending and endeavouring to kill him, he killeth another Man; this is Murder whomſoever he killeth. *Vide Plo. 101. Dyer 128. Fitz. 262. Stamf. 16.* For his Intent was to murder. Rules in Murder. Plo. 474.

Nay, if two fight upon Malice prepenſed, and in their Sight a Stranger (that would part them) cometh between them, and is killed; this is Murder in them both, if it cannot be proved which of them did kill him. Lamb. 238.

A Man upon Malice ſhooteth at one, or lieth in Wait to kill one, and killeth another unwittingly, in both theſe Caſes it is Murder. Plo. 474.

Note alſo, That in all Caſes where a Man cometh or goeth about to do any Thing unlawful, as to kill, beat or diſſeiſe another, or to do any other Treſpaſs; and in doing this he killeth any Man, this is Murder. See *Cromp. 24. b.*

One ſtealing Pears in another Man's Orchard, and the Owner came and rebuked him; and the other killed him; this was adjudged Murder. 4 *Maricæ.* Cromp. 24. Lamb. 237.

Alſo where a Man commandeth another to beat *A.* and he beateth him ſo as *A.* dieth thereof; this is Murder in him that gave the Command to beat him, for that he commanded him to do an unlawful Act, by reaſon whereof the Killing of a Man enſued. Plo. 475. F. Cor. 314.

(a) For (as that late Reverend and Learned Judge Sir *John Dodderidge*, page 138. ſheweth) there is an efficient Cauſe caſual; as if a Man intend to do any unlawful Act, and in doing thereof another Hurt enſueth, not intended, but by Chance, yet ſhall he be ſaid the Author of that Act not intended (and ſo happening by Chance) that did intend the firſt Act.

(d) Note alſo, That if divers Perſons come in one Company to do any unlawful Thing, as to kill, rob, or beat a Man, or to commit any Riot or Affray, or to do any other Treſpaſs, and one of them in doing thereof killeth a Man, this ſhall be adjudged Murder in them all that are preſent of that Party abetting him, and conſenting to the Act, or ready to aid him, although they did but look on, *&c.* See *Stamf. 40. Fitz. Indiſtment 22.* Principal. Br. Cor. 172. F. Cor. 350. Co. 11. 5.

Nay, if they be not preſent, yet if they be in the ſame Houſe, or upon the ſame Ground, it is Murder in them all. See the Lord *Dacre's* Caſe, *Cromp. 25.*

(a) Mr. *Braſton*, fol. 121. ſaith further, *Si plures rixati fuerint inter ſe in aliquo conſlictu, & aliquis ſit interfectus, nec appareat ex quo, nec ex cujus vulnere, omnes dici poſſint homicidæ, &c. quære*, if their Meeting were upon a lawful Occaſion, and if they ſuddenly fall out, and no former Malice may appear.

(d) Note alſo, That all who are preſent, and aiding, abetting or comforting another to do Murder, are principal Murderers, although they ſhall give never a Stroke. See more, 4 *H. 7. 18. 13 H. 7. 10. Fitz. Coron. 309. Co. 9. 67. 112. & 11. 5.* Plo. 100. See here.

As if *A.* and *B.* fall out, and appoint the Field, and they meet accordingly, each of them bringing Company with them, *A.* killeth *B.* this is Murder in all thoſe that came with *A.* (a) as his Second, or abetting, comforting, or ready to aſſiſt or aid him, for that

that the Presence of these other that came with *A.* is a Terror to *B.* and an Encouragement to *A.* *Vide ibid. & Plo. 98.*

And yet if *B.* cometh in the Company of *C.* who of his Malice prepenfed doth go to kill *D.* and then *B.* seeth them fighting together, he taketh Part with *C.* suddenly (not having any former Malice to *D.*) and striketh at *D.* with the other, and *D.* is thus slain amongst them; this is but Manslaughter in *B.* for that he had no Malice precedent. *Plo. 100.* See the Case of the Master and his Servants here before. But note, That the Cause of the Coming of *B.* being unknown to *D.* his Presence might, and in Likelihood did strike Terror in *D.* and so the Presence of the Servants did or might strike Terror in the Party murdered, and gave Incouragement to the Master.

(*d*) Note also, That in case of Murder it is not material who giveth the first Blow; for if he that is slain give the first Blow, yet if there were Malice prepenfed in the other, it is Murder in him that killeth him.

Death.

Also in case of Poisoning, the Party poisoned must die thereof within a Year and a Day, after the Poison received.

Cor. 303.
Co. 4. 42.

Also if a Man do beat or hurt another, whereof he dieth, to make it Murder, or other Homicide, the Party hurt must die within a Year and a Day next after the Hurt done or Stroke given. But to have an Appeal, it shall have relation to the Death and not to the Stroke, so as the Appeal must be brought within the Year after the Death, and not after the Stroke.

In esse.

F. Co. 146,
263.
Stamf. 21. c.
See Exod. 21,
22, 23. *It*
was Death by
the Law of
God.
Lamb. 229.
Br. Cor. 68,
91.

Note also; in Murder, or other Homicide, the Party killed must be in *esse, sc. in rerum natura*, and born into the World: For if a Man hurteth a Woman with Child, whereby he killeth the Infant in its Mother's Womb, by our Law (at this Day) this is no Felony, neither shall he forfeit any Thing for such Offence: And whether (upon a Blow or Hurt given to a Woman with Child) the Child die within her Body, or shortly after her Delivery, it maketh no Difference. (*a*) Yet' in ancient Time it was holden to be Felony; and *M. Bracton* took it to be Homicide, if the Blow were given *postquam puerperium animatum fuerit.* (*d*) But if the Mother of the Child die within a Year and a Day after such Hurt done to her, and upon that Hurt, this is Felony.

(*a*) So if the Adulterer, &c. counselleth the Woman to murder the Child when it shall be born, and she doth accordingly, the Adulterer is accessory to this Felony, by this his Counsel given before the Birth.

Also if a Man killeth a Man unknown, yet it is Felony. *Abr. d' Ass. 76.*

Compulsion also is a good Excuse in our Law in some Cases, as if any Man's Arms be drawn by Compulsion, and the Weapon in his Hand by Means thereof doth kill another; this is not Felony in him whose Arms were so drawn, &c. *Plo. 19. a.*

Involuntary Ignorance excuseth also with us: So as if an Infant not having Intelligence, or of a Man *non sane Memoriae*, shall kill another, this is no Felony in them. See hereof *hic postea.*

Intent to do a Felony or Murder is not punishable, by the Common Law of this Realm, until the Act be done: But in Treason, and some other particular Cases, by Statute the Intent may be punished. *Doct. & Stud. 132. hic.*

1 E. 6. c. 12.
23 H. 8. 1. &
20 H. 8. 12.
Numb. 35. 31.

(*d*) In Cases of Murder the Offenders shall not have the Benefit of Clergy.

Note also, That by the Law of God no Recompence was to be taken for the Life of a Murderer.

Pardon.

13 Ric. 2. c. 1.
P. Pardon 1,
3.
Plo. 502.

And by divers old Statutes, no Charter of Pardon ought to be granted to any Person in case of Murder or other Homicide, save only where the King may do it by his Oath, that is to say, where a Man killeth another in his own Defence, or by Misfortune.

And by our Law at this Day, a Pardon of all Felonies will not discharge Murder, except the Pardon be with a *Non obstante, &c.* or that Murder be expressly mentioned in the Pardon.

Neither will a Pardon of all Felonies discharge a Man that is attainted of Felony, except also the Attainder and the Execution be pardoned. See *9 E. 4. 29. Co. 6. 13. b.*

(*a*) And this Pardon is twofold; one *ex gratia Regis*, which the King, in some special Regard of the Person or other Circumstance, sheweth and affordeth upon his Prerogative: The other by Course of Law, which the Law in Equity affordeth for lesser Offences, as of Homicide by Misadventure or *Se defendendo.*

(*d*) Note, That he which hath a Pardon for Felony, if he hath not found Sureties for his good Abearing, or if afterwards, during his Life, he shall break the Peace: Such Pardon shall be holden for none, but that he may be hanged notwithstanding his Pardon;

for

for by the Pardon, the Offence *legitur, non tollitur*. See 10 E. 3. cap. 3. P. Pardon 5. 3 H. 1. f. 7. & 3 H. 7. 7. where one was executed upon this Statute; for making an Affray after his Pardon. *Br. Coron.*

None have Authority to pardon any Treason, Murder or other Felony, or any Accessary to the same, save only the King: It being one of his Royal Prerogatives. 27 H. 8. 25.
P. Prerog. 17.

(a) Two Men were beating another in the Street; and a Stranger passing by said, it was a Shame for two to beat one; whereupon one of them ran to the Stranger in a furious Manner, and with a Knife, which he held in his right Hand, gave him a mortal Wound, of which he died; and both the other being indicted at the Sessions in the *Old Baily*, 9 Geo. 1. as Principals in the said Murder, the Judges were of Opinion, that one of them could be neither Principal or Accessary to the Murder, because it did not appear that he intended any Injury to the Person that was killed: 'Tis true, both of them were doing an unlawful Act, but the Death of the Party did not ensue upon that Act; so one was acquitted, and the other found guilty of Murder.

See also 1 Hawk. P. C. Chap. 31. And 1 Hale's Hist. P. C. Chap. 36, 37, 38.

C H A P. CXLVI.

Manslaughter.

Manslaughter, in right Signification thereof, implieth all Manner of Homicide, and extends in the General, as well to Murder as to the rest. Nevertheless, for that in common Speech it is restrained to Manslaughter by Chancemedly alone, in that Sense I will here write of it. *Definition.*
See 1 H. H.
P. C. 466.

Manslaughter, otherwise called Chancemedly, is when two do fight together upon the sudden, and by meer Chance, without any Malice precedent, and one of them doth kill the other; this also is Felony of Death. 1 Hawk.
P. C. 76.
Flo. 101.
Br. Coron. 22.

And yet in case of Manslaughter the Offender shall have the Benefit of Clergy for the first Time; and by the Law of God there was a City of Refuge appointed for such to fly unto, *Exod. 21. 33. Deut. 19. 3, 4. Numb. 35. 11, 22.* (a) For in such Cases of Chance (as we term it) *sc.* where the Offender hath not laid wait, nor hated in Time past, the same Scripture saith, That God offered the Party so slain into the Hands of such Manslayer. *Exod. 21. 13.*

(d) Two fall out upon the sudden and fight, and the one breaketh his Weapon, and a Stranger standing by (yet being none of their Company) lendeth him a Weapon, and therewith he killeth the other: This is Manslaughter, as well in him that killed the other, as in the Stranger who lent him his Weapon. Cromp. 26.

A. and B. fall out upon a sudden and fight, and A. is so fierce, that he runneth upon the other's Weapon, and is slain; yet this seemeth Manslaughter in B. for he should have fled to some Wall or Straight, &c. *quare.*

And if B. had fled to a Wall, &c. and A. pursueth him, and B. perceiving that A. would assault him, holdeth his Weapon between them, and A. runneth upon the Weapon and is slain; this is Homicide in his own Defence, and for which B. shall forfeit only his Goods: But otherwise it had been if B. had fallen, and lying upon the Ground had drawn his Knife or Dagger, and A. falleth thereon, and so is slain, for then B. could not fly, nor make any other Defence for his Safety, and therefore here B. shall not forfeit his Goods, nor be culpable of his Death, but be discharged, for A. in a Manner killed himself. See hereof *postea.* P. R. 122. b.
Stamf. 16. a

Two fight together upon the sudden, and part, and presently after meet and fight again, and one killeth the other; or the one presently fetcheth a Weapon, and killeth the other. This seemeth but Manslaughter, for that it is done all in one continuing Fury, which was at the first without Malice, and could not in so short Time be appeased or asswaged. Cromp. 23. b.
24. a. 26. a b
1 H. H. P. C.
453.

So if two have born Malice the one to the other, and be reconciled, and after Meeting again, they fall out upon new Occasion, and by Agreement immediately they go into the Field to fight, and the one killeth the other; this seemeth but Manslaughter, (*causa qua supra*) unless the Distance of Time had been such, that by reasonable Conjecture their Heat might be asswaged. Lamb. 240.
1 H. H. P. C.
452.

(a) And yet by good Opinions it is lately holden, that in both these last Cafes, and the like, though it be in a continuing Fury, yet if it be wilfully done it is wilful Murder, for which the Offender shall suffer Death.

See more of Manslaughter before in Murder, and after in Misadventure, and 1 Hale's Hist. P. C. Chap. 36 & 38.

C H A P. CXLVII.

What Persons are chargeable with Homicide, and what not.

IF one that is *Non compos Mentis*, or an Ideot, kill a Man, this is no Felony, for they have not Knowledge of Good and Evil, nor can have a felonious Intent, nor a Will or Mind to do Harm; and no Felony or Murder can be committed without a felonious Intent and Purpose; for it is called *Felonia, quia fieri debet felleo animo*.

(a) And again, *Actus non facit reum, nisi mens sit rea*; and a Madman is *Amens, id est, sine mente*, without his Mind or Discretion, and is enough punished by his Madness. Co. L. 247.

(d) So it is if a Lunatick killeth another during his Lunacy, it is no Felony; for all Acts done by him in Lunacy are as the Acts of an Ideot.

(a) If another Man shall upon Malice procure a Madman to kill another, though a Madman shall be excused, yet the Inciter or Procurer shall be punished as a Principal. Ba. 57.

(d) Now there be three Sorts of Persons accounted *Non compos Mentis*, to this Purpose, and the like.

1. A Fool natural, who is so (*a natiuitate*) from his Birth; and in such a one there is no Hope of Recovery.

2. He who was once of good and found Memory, and after (by Sickness, Hurt, or other Accident, or Visitation of God) loseth his Memory.

3. A Lunatick, *Qui gaudet lucidis intervallis*, and sometimes is of good Understanding and Memory, and sometimes is *Non compos Mentis*.

Infant. An Infant of eight Years of Age, or above, may commit Homicide, and shall be hanged for it, *viz.* if it may appear (by hiding of the Person slain, by excusing it, or by any other Act) that he had Knowledge of Good and Evil, and of the Peril and Danger of that Offence. See 3 H. 7. 1. & 12. Stamf. 27. Fitz. Coron. 118, 119. & Br. Coron. 133, 136.

(a) And yet Sir Edw. Coke on *Littleton*, f. 147. saith, That it is with an Infant, until he be of the Age of fourteen Years (which in Law is accounted the Age of Discretion) as it is with a Man *Non compos Mentis*; and that in Criminal Cafes (as Felony, &c.) his Act and Wrong shall not be imputed to him, for that *Actus non facit reum, nisi mens sit rea*, &c. Sir Fr. Bacon 38. accordeth.

(d) But if an Infant (of such tender Years, as that he hath not Discretion or Intelligence,) kill a Man, that is not Felony in him.

If one that is dumb killeth a Man, it is Felony; yet *quære*, how he shall be arraigned.

A Man born deaf and dumb killeth another, this is no Felony; for he cannot know whether he did Evil or no, neither can he have a felonious Intent, &c. See hereof, Tit.

Surety for the Peace, antea. (a) Otherwise, if he were not so born, but cometh so afterwards. See Br. Coron. 101. & 217. That a Man which can neither hear nor speak may commit Felony, and shall be imprisoned, &c.

(d) Note, in these former Cafes of Homicide, committed by Persons being *Non compos Mentis*, or wanting Discretion, such Things happen by an involuntary Ignorance, and therefore the Law accounteth such Act of theirs to be no Felony.

But if a Man that is drunk killeth another, that is Felony; for it is a voluntary Ignorance in him, in as much as it cometh to him by his own Act and Folly. (a) Sir Edw. Cooke, L. 247. calleth a Drunkard *voluntarius Daemon*, and saith, That such a one hath no Privilege thereby, but what Hurt or Ill foever he doth, his Drunkenness doth aggravate it.

C H A P. CXLVIII.

Misadventure.

(a) **BY** the Statute of *Marl. cap. 25.* killing a Man by Misfortune or Adventure only, shall not be adjudged Murder.

Misadventure, in a general Signification, is where a Man is killed partly by Negligence, and partly by Chance, and against the Mind of the Killer; and when the Killer's Ignorance or Negligence is joined with the Chance. *Misadventure, what it is.*

(d) Homicide by Misadventure or Misfortune, is when any Person doing a lawful Thing, without any evil Intent, happeneth to kill a Man: By the Law of God there was a City of Refuge appointed for such Persons to flee unto. *Numb. 35. 15. & 22 Josh. 20. 3.* And by our Law, this is no Felony of Death, for he shall have his Pardon of Course, for his Life and his Lands; yet he shall forfeit his Goods, in Regard that a Subject is killed by his means. *See Stamf. 16. a. b. Fitz. Cor. 69. 302. & 354. Br. Forf. 9. & Co. 5. 91. b.*

As if a School-master in a reasonable manner beating his Scholar, for Correction only, or a Man correcting his Child or Servant, in reasonable manner; and the Scholar, Child or Servant happen to die thereof; this is Homicide by Misadventure. *Cro. 136. Braet. 121.* *See Exod. 21. 20, 21. Stamf. 12.*

So if a Man shooting at Butts, or other lawful Mark, and by the shaking of his Hand, or otherwise against his Will, he killeth one that standeth or passeth by. *21 H. 7. 29. Rede. 6. Ed. 4. 7. Br. Cor. 59. & 148.*

So if a Carpenter, Mason or other Person doth throw or let fall a Stone, Tile or Piece of Timber from an House or Wood, or other Thing from a Cart, &c. (and giveth Warning thereof) and another is killed thereby against his Will. *21 H. 7. Coron. 59. Braet. 121.*

So if a Labourer that is felling or lopping a Tree, and the same, or Part thereof, falleth and killeth a Man. *6 Ed. 4. 7. F. Cor. 398.*

So if the Head of his Hatchet or other Tool falleth from him, and happeneth to kill one standing by. *Deut. 19. 5, 6. & 10. accordeth, sc. That he is not worthy of Death, but innocent. Plo. 19.*

So if a Man be (in due and convenient Time) doing any other lawful Thing, that may be of Danger to such as pass by, and shall give Warning thereof, so that they may hear and flee the Peril, and yet another passing that Way shall be killed therewith.

And so if Men shall run at Tilt, Just, or fight at Barriers together by the King's Commandment, and one of them doth kill another: In these former Cases and the like, it is Misadventure, and no Felony. *Hob. 134. 11 H. 7. 23. See Br. Cor. 229. contra. Co. 5. 61.*

(a) And yet in such Cases of Misadventure, as also where one killeth another *Se Defendendo*, by the Common Law these Offences were Felony, and the Offender should have died for the same; but now by the Statute, such Offenders are to have Pardon for their Life and Lands, yet their Goods shall remain forfeit as before, at the Common Law. See these Statutes. *6 Ed. 1. cap. 9. & 2 Ed. 3. cap. 2. 21 Ed. 3. fol. 17. Br. Cor. 40. & Forf. 9. 13. 15.*

(d) Also in these Cases of Misadventure, and in the former Cases of Homicide committed by *Infants*, and other Persons, being *Non compos mentis*, as also where one killeth another in Defence of his Person; they shall be discharged in this Manner, *sc.* If they desire to purchase their Pardon, they must upon their Trial plead *Not Guilty* (and shall give in Evidence the special Matter) and then this special Matter being found by Verdict, they shall be bailed, and then they must sue forth a *Certiorari*, to have this Record certified to the Lord Chancellor of *England*, who thereupon shall make them a Pardon of Course under the Great Seal, without speaking or suing to the King for it. *See Stamf. 15. Se Defendendo. Fitz. 246. & 248. b. Br. Cor. 1. See Stat. 9 E. 1. 9. 4 H. 7. f. 22. Reg. f. 309.*

But if a Man be doing of an unlawful Act, though without any evil Intent, and he happeneth by Chance to kill a Man; this is Felony, *vis.* Manslaughter at the least, if not Murder, in Regard the Thing he was doing was unlawful. *Unlawful Act. Stamf. 162. Finch 75.*

As shooting of Arrows, or casting of Stones into the Highway, or other Place, whither Men do usually resort. *Stamf. 12. c.*

So of fighting at Barriers, or running at Tilt or Justs, without the King's Command, whereby a Man is slain; and although it were by the King's Command, yet it was holden Felony by the Justices, *tempore H. 8.* *11 H. 7. 23. Br. Cor. 229. Hob. p. 134. contra.*

Play- *See 1 H. H. P. C. 473.*

11 H. 7. 23.
Crom. 26. &
29. a.
Cor. 118. 136.
See 1 H. H.
P. C. 472,
473.
P. R. 123.

Playing at Back-Sword, Foot-ball, Wrestling, and the like, whereby one of them receiveth Hurt, and dieth thereof within a Year and a Day. In these Cases, some are of Opinion, that 'tis Felony; some others are of Opinion, that this is no Felony, but that they shall have their Pardon of Course, as for Misadventure, for that such their Play was by Consent: And again, there was no former Intent to do Hurt, or any former Malice, but done only for Sport, and Trial of Manhood.

Fitz. Cor.
304 & 354.
See Num. 35.
13.
Br. Cor. 128,
136.
1 H. H. P. C.
475.
Stamf. 12. c.
16. c.

A Man casting a Stone at a Bird or Beast, and another Man passing by is slain therewith, *quere*, whether this be Manslaughter, or but Misadventure. The Opinion of *Pineux* Chief Justice in 11 H. 7. fol. 23. is, That if a Man cast a Stone over an House, and killeth a Man, this is no Felony, but Misadventure. But Mr. *Brook* abridging this Case, saith, It seemeth to be no Law, but where the casting of a Stone is lawful; as where a Mason is untiling an House, &c. but to cast it for Pleasure, and not in lawful Labour, seemeth to be Felony: And so was the Opinion of Mr. *Bracton*, and Mr. *Stamford*, (a) especially if the casting of the Stone be in such Place where Men do use to pass by. Yet Mr. *Bracton*, lib. 3. cap. 17. *De homicidio per infortunium & casualiter*, giveth these Rules, *Crimen non contrahitur nisi voluntas nocendi intercedat, & voluntas & propositum distinguunt maleficium, secundum quod dici poterit de infante & furioso, cum alterum innocentia consilii tueatur, & alterum facti imbecillitas excuset.* Again, *In maleficiis spectatur voluntas, non exitus, & nihil interfit, occidat quis, an causam mortis præbeat.*

See 1 Hale Hist. P. C. Chap. 5 & 39.

C H A P. CXLIX.

Casual Death.

ALSO a Man may be slain by other Casualty, than by Hands or Means of another Man, as by the Fall of an House, Pit or Tree, &c. upon him; or be killed by a Bull, Bear or other Beast, or by an Horse or Cart, &c. or be killed by some Fall, which he himself taketh.

And in these and the like Cases, observe these Rules.

1. First, if a Man be slain in any such Manner, yet if it be by the Means or Procurement, or wilful Default of another Man; this shall be Felony in the Party procuring or causing it.

Deodand.
Co. 1. 50.
Dyer 77.
Plo. 260.

2. The Thing which is the Cause of such casual Death, shall be forfeit to the King, praised and taken for a *Deodand*, and the Price of the Thing shall be distributed in Alms to the Poor, by the King's Almoner, for *Deodand, est quasi Deo dandum, id est, in Elemosynas erogandum.* But the Almoner hath no Interest in such Goods, but hath only the Disposition of the King's Alms, *Durante beneplacito*; so that the King may grant them to any other.

3. The Forfeiture shall have Relation from the Stroke given; so as the Party or Owner selling such Thing as was Cause of such Death after the Stroke given, taketh not away the King's Right, but that he shall have it as forfeited, notwithstanding such Sale.

Co. 5. 110.

4. *Deodands* are not forfeited, until the Matter be found of Record, and therefore they cannot be claimed by Prescription.

Co. 5. 110.
F. Cor. 298.
Stamf. 21.
P. Cor. 10.
4 Ed. 1.

5. The Jury which find the Death of the Man, must also find and appraise the *Deodand*, and the Sheriff shall be charged with the Price of such *Deodand*, and shall levy the same of the Town where it falleth, although it were not committed to the Town to keep: And therefore it behoveth the Town to see it forth-coming.

F. Cor. 89.
Stamf. 21.

6. If he that is so slain be under fourteen Years of Age, nothing shall be forfeit to the King as a *Deodand* for him.

F. Indictment
27.
Stamf. 21.

And if a Man that is unknown be found dead in the Field, his Apparel and Money about him shall be given to the Poor, &c. And if he were known, then his Goods shall be delivered to his Executors or Administrators, or to the Ordinary; but shall not be taken as a *Deodand*, in either Case (for they are not the Nature of a *Deodand*) they being no Cause of his Death.

Deodand, quid.
See 1 H. H.
P. C. 420.

Next what shall be forfeited and taken for a *Deodand*: The old Rule is, *Omnia quæ movent ad mortem, sunt Deodanda*; and yet besides, *Deodands* may be of some Things that

that a Man shall move or fall from, though the Thing it self moves not: As to fall from a Ship, Cart, Mow of Corn or Hay, &c. So as *Deodands* are any Goods which do cause, or are Occasion of the Death of a Man by Misadventure. *Co. ibid.* See more *Fitz. Cor.* 314, 326, 341, 342, 344, 388, 389, 398, 401, 409.

(a) If a Man killeth another with my Sword, or other Weapon of mine, my Weapon shall be forfeit, as a *Deodand*; for it shall be adjudged my Fault, that I did not keep my Weapon from him. Br. Forf. 112
Doct. & Stud.
f. 156. b.

If I shall lend another Man my Sword or other Weapon, knowing him to be minded to fight, or make an Affray therewith, and he with my Weapon in such Fight or Affray, killeth one, *quære*, if this be not Felony in me: For you shall find that an Abbot that lent a Bow and Arrows to another, to the Intent to kill the King's Deer, was therefore fined and ransomed. *Crompt. Authbor. des Courts, fol. 191.*

(d) The Inquiry of such casual Death, belongeth also to the Coroner: But if he cannot have the Sight of the Body, and so cannot inquire thereof, *quære*, how the King shall be intitled to the Goods.

The Office of Coroner in such Cafes, see *Braeton, lib. 3. Crompton 226.* and *2 Hawk. P. C. Chap. 9.*

See also *1 Hale P. C. Chap. 32. of Deodands.*

C H A P. CL.

Homicide upon Necessity.

Sometime the Justice of Law commandeth a Man to be put to Death, as when the Judge hath pronounced Sentence of Death against an Offender attainted by due Course of Law, there, in due Execution of Justice, an Officer, or other Person lawfully deputed, may execute such Judgment or Sentence according to his Warrant; this is called Justice, or rather Judgment, which is the lawful Execution of Justice. *Justice com-
manded.*

But if the Officer or other Person, shall proceed therein upon his own Authority, without Warrant, or *Non observato ordine juris*; as where an Offender hath Judgment given upon him to be hanged, if the Sheriff or other Officer, &c. shall behead him, or by other Means put him to Death: This is Felony in such Officer, &c. Stamf. 13.
See Doct. &
Stud. fol. 113.
Co. 7. 14.

Also if a Stranger being not thereto lawfully deputed, shall upon his own Authority put to Death an Offender that is condemned to die: This is Felony. Stamf. ib.

Nay, if the Judge himself, who gave the Judgment of Death upon an Offender, shall after put the same Offender to Death, it is not justifiable in him.

(a) If the Justices of Peace shall arraign a Man of Treason before them at their Sessions, who is found guilty, &c. and thereupon is hanged: This is Felony, as well in the Justices, as in the Sheriff, or Officer which shall hang him: For that the Justices of Peace had no Authority therein, but it was *Coram non Judice*. *Lecture, M. Cook.* See also *Co. 10. fol. 76.*

If the Justices of Peace shall arraign a Man of Felony, upon an Indictment of Trespas, whereupon he is hanged; this is Felony in the Justices, but not in the Sheriff or Officer. *Lecture M. Cook.* The Difference between these two Cafes, appeareth in my Lord *Coke's Reports, lib. 10. fol. 76. jc.* For that in this last Case, the Justices of Peace had Jurisdiction of the Cause; and therefore, although they proceeded *inverso ordine*, or erroneously, yet the Officer is excusable.

(d) Sometimes also the Justice of the Law tolerateth and suffereth a Man to be slain, *sc.* for the necessary Execution and Advancement of Justice, which otherwise should be left undone: And in such Case, the Law of the Land imputeth it not as any Fault to him that shall so kill a Man, but freely dischargeth him thereof, without the King's Pardon. *Tolerated.*

As a Sheriff, Bailiff, or any other Person who hath a lawful Warrant to arrest a Man indicted of Felony, may well justify the Killing of him; if he will not suffer himself to be arrested, and yield himself, and that they cannot otherwise take him. F. Cor. 261.
Stamf. 13.
22 Aff. 55.

And so every Person whatsoever, without any Warrant, may apprehend a Felon upon Hue and Cry, or otherwise. And if he will not yield to be arrested, but shall resist or fly, the Pursuer may kill him without Blame. *Hue and Cry.*
F. Cor. 261.
Stamf. 13.
Co. 5. 109. b.

(a) Herewith also agreeth the *Doct̄or and Student*, lib. 2. cap. 41. saying, If any Person that is an Officer would arrest a Man that is outlawed, abjured, or attainted of Murder or any other Felony, and such Offender shall disobey the Warrant, and by Reason of that Disobedience he is slain, the other shall not be impeached for his Death; for it is lawful for every Man to arrest and take such Persons, and to bring them forth, that they may be ordered according to the Law.

F. Cor. 288
& 328.

(d) An Offender in Felony is led towards the Gaol, and breaketh away from those that conduct him, and maketh Resistance or flieth; his Conductors may justify to kill him, if they cannot otherwise take him again.

22 Aff. 55.

A Prisoner in the Gaol attempteth to escape, and having broken his Irons, striketh the Gaoler (coming in the Night to see his Prisoners) and the Gaoler slayeth such a Prisoner: This is no Felony.

Cro. 23, 30
& 158.

Rioters, and such as shall make any Forcible Entry or Detainer, against the Statutes, if they shall resist the Justices of Peace or other the King's Officer, or shall not yield themselves, but shall stand on their Defence, when the Justices of Peace, or other Officer, shall come to arrest or remove them, if any of them happen to be slain: This is no Felony in the Justice of Peace or Officer, or in any of their Company that killeth such Rioters, &c.

Lamb. 310.

Stamf. Prærog. fol. 46.
Crom. 24, 30
Doct̄. & St.
133. b.

The Sheriff, Bailiff or other Officer cometh (by Virtue of the King's Process) to arrest another for Debt or Trespass, who maketh Resistance, and thereupon is slain by such Officer or any of his Company; this hath been taken to be no Felony, *tamen quære*: (a) For although the Sheriff (being the King's Officer) ought to see the King's Command executed, yet that must be understood to be executed by all lawful Means and Ways.

Stamf. 13.
e, f, g.

(d) But in all these former Cases, there must be an inevitable Necessity; *sc̄.* That the Offender could not be taken, &c. without killing of him.

Hob. 134.

Necessity.

(a) If two Masters of Defence, playing their Prizes, kill one another; it is not Felony.

Necessity of three Sorts, *sc̄.*

1. Of Conservation of Life, &c.

2. Of Obedience, as where the Wife stealeth with her Husband.

3. Of the Act of God, or a Stranger.

Yet in these Cases, Necessity privilegeth in Cases of Homicide only when it is inevitable.

Bract̄on.

And in Cases of Theft only *Quoad jura Privata, sed non valet contra Rempublicam.*

Ba. 52.

For Defence of
Person, House
or Goods.

(d) Also in an Appeal of Felony, if the Appellant and Appellee do join to try it by Battle, and therein the one doth kill the other; as the Law doth allow such Trial, so doth it allow the Event to be justifiable, as depending upon the Judgment of God, who giveth Victory according to Truth.

Also when one Man killeth another in the necessary Defence of himself, or his, thereby to deliver himself, his Possessions or his Goods, or some other Persons, which he is bound to defend from Peril, and which cannot otherwise escape: This is Homicide tolerated upon Necessity.

24 H. 8. 5.

P. Forf. 1.

Fitz. Cor.

303, 305.

Hob. p. 96.

Co. 5. 91 &

11, 82.

Exod. 22. 2.

Stamf. de

Prærog. 46.

26 Aff. 32.

F. Cor. 261,

305. & 330.

Br. Cor. 100,

102.

To kill an Offender, which shall attempt feloniously to murder or rob me in my Dwelling-house, or in or near any Highway, Cartway, Horse-way or Foot-way, or that shall attempt Burglary, or feloniously to break my Dwelling-house in the Night: This is justifiable by my self, or by any of my Servants or Company.

And this being so found by Verdict, they shall be all discharged without Loss of Life, Land or Goods, or Pardon.

To kill a Thief or Murderer, in the Defence of my Person, my House and Goods, was no Felony, but justifiable by the Common Law, before the Statute of 24 H. 8. cap. 5. *Stamf.* 14. See *Co. 5. 91. & 11. 82.* (a) And yet at the Common Law there was this Difference, *sc̄.* That he which killed a Thief which would have robbed him upon the Highway, should forfeit Goods; but he which killed one who would have robbed or murdered him in his House, should forfeit nothing. *Co. 11. 82.* See *Exod. cap. 22, 23.*

26 Aff. 23.

Br. Coron.

100.

(d) And if one or more come to burn my House, I, or any of my Servants may justify to shoot out of my House at them, or may issue forth, and kill them; for such Intent of theirs is felonious.

(a) If a Woman kill him that assaileth her to ravish her: This is justifiable in the Woman, without any Pardon. *Sir Fr. Ba. 34.*

And in these Cases, *Se defendendo* is a Plea for him, or her that is charged with the Death of another, saying, That they were driven to that they did, in their own Defence, the other so assaulting them, &c.

If divers be in Danger of Drowning, by the Casting away of a Boat or Barge, and one of them gets to a Plank or on the Boat's Side, to keep himself above the Water, and another to save his Life, thrust him from it, whereby he is drowned: This is neither *Se Defendendo*, nor by Misadventure, yet justifiable. *Idem* 30.

And for this inevitable Necessity *Bracton* giveth this Rule, *Si autem inevitabilis, quia occidit hominem sine odii meditatione, in metu & dolore animi se & sua liberando, cum aliter evadere non posset, non tenetur ad pœnam homicidii, f. 120.*

If a Man imprisoned for *Felony* escape, and the Gaoler pursues him, but he resisteth and refuseth to yield himself, and thereby the Gaoler kills him; this is justifiable and not Manslaughter. But otherwise it is in Case the Imprisonment were for *Debt*. *Per Roll's Rep. Part 2. p. 187.*

(d) But if a Man shall forcibly get, and keep Possession of a House, and the other shall come in the Night and fire this House, they within cannot justify to shoot and kill him, or any of his Company, for that they in the House were there unlawfully. See *Crompt. 26. b.* *Prohibited.*

If one cometh (in the Day-time) to my House, to beat me, and doth make an Assault upon me in my House, and fighteth with me, and I kill him in Defence of my Person; yet in this Case I shall forfeit my Goods, and must have the King's Pardon, except it be found, that the Assailant came with a felonious Intent to kill or rob me. F. Cor. 305; Co. 5. 91.

And if one cometh (in the Day-time or in the Night) to enter into my House, pretending Title thereto, and to put me out of my Possession, and I kill him: This seemeth to be Manslaughter in me.

Note; If one kill a true Man, in Defence of his Person, there ought to be so great a Necessity, that it must be esteemed to be inevitable, or otherwise it will not excuse; and therefore he that shall be so assaulted by a true Man, must first fly as far as he can and till he be letted by some Wall, Hedge, Ditch, Press of People, or other Impediment; so as he can fly no further without Danger of his Life, or of being wounded or maimed; and yet in such Case, if he kill the other, he shall be committed till the Time of his Trial, and must then get his Pardon for his Life and his Lands, (which Pardon notwithstanding he shall have of Course) but he shall lose and forfeit his Goods and Chattels; for the great Regard which the Law hath of a Man's Life. *Co. 5. 91. b.* See hereof *Paulo antea, Tit. Felony by Misadventure.* Stamf. 15. a; Speculum Justic. Fitz. Cor. 116.

A. maketh an Affray upon *B.* and striketh *B.* and *B.* flieth so far as he can for saving Life, before any Stroke given by *B.* and *A.* continueth his Assault; whereupon *B.* doth also strike *A.* and killeth him. This is Homicide in his own Defence; otherwise it seemeth to some, if *B.* had struck the first Blow, or had struck before he had fled; and yet by other good Opinions, the first Stroke or who began the Affray, is not material; but the whole Matter will consist upon the inevitable Necessity (*sc.* whether the said *B.* who killeth *A.* could not have escaped with his Life, &c. without killing *A.* for otherwise it will not excuse *B.* for *Cuncta prius tentanda*: And as it is a charitable, so it is a safe Principle (in these Cases) not to use an Extremity, till thou hast tried all Means. Se Defendendo. 4 H. 7. 2. 6 E. 1. c. 9. P. Pardon 1. Stamf. 15.

Also it is holden in the former Case, if *B.* (before he had fled) had stricken *A.* and given him divers Wounds, that yet if he fly to a Streight before he give *A.* the mortal Wound, and then he giveth his Death's Wound; this is Homicide in his own Defence. F. Cor. 234 & 236. Stamf. 15. 1 H. H. P. C. 479.

But in the former Case, if *B.* upon Malice prepenfed had first stricken *A.* and then *B.* flieth to a Streight or Wall, and *B.* pursueth him, and striketh him, and *B.* killeth *A.* thereupon: This is Murder in *B.* for the Malice prepenfed was the Ground and Beginning hereof. F. Cor. 387. Crompt. 22, 23.

Yet if there had been former Malice between *A.* and *B.* and they meet suddenly, and *A.* assaulteth *B.* and *B.* before any stroke by him given, flieth so far as he can; and *A.* pursueth him, and then *B.* killeth *A.* This seemeth to be Homicide in his own Defence, notwithstanding the former Malice.

Copstone's Case: There was Malice between *Copstone* and one *S.* and they had fought divers Times, and afterwards met suddenly in *London-street*, and *C.* told *S.* that he would fight with him, and *S.* answered, that he had nothing to say unto him; and *S.* went to the Wall, and after *C.* assaulted *S.* and then *S.* struck and killed *C.* and it was found that *C.* began the Affray, and *S.* was thereupon discharged, without forfeiting any Thing. But that was by Virtue of the Statute of 24 *H. 8. cap. 5.* 15 El. Crompt. 27. 1 H. H. P. C. 487.

A Man in Fight falleth to the Ground, there his Flying, &c. is not necessary, &c. See hereof before.

Stamf. 14.

Also if a Thief assaults me to rob or kill me, I am not bound to fly to a Wall, &c. as I must in case a true Man assaults me.

Co. 9. 68.

If an Officer of Justice or Minister of the Law, in the Execution of his Office be assaulted, he is not bound to fly to a Wall, &c. as other Subjects are.

Servant.

Br. Coron. 63.

Also the Servant may justify the Killing of another, in Defence of his Master's Person or House, if the Hurt cannot be otherwise avoided.

21 H. 7. 35.

Also the Servant may justify the Killing of him, who robbed and killed his Master, so that it be done presently.

In the Defence of the Possession of my Goods, I may justify to beat him that shall wrongfully take them from me; but I cannot justify to kill him, except he be a Thief.

23 Ed. 1.

P. Forests 4.

Stamf. 13, 14.

See 1 H. H.

P. C. 485,

486, &c.

Hob. 159.

So then, to kill a *true Man in Defence of my Person*, in Case where there is an inevitable Necessity, (*sc.* that I first shall fly so far as I can for saving my Life, &c.) This is no Felony, &c. But otherwise it is to kill a *true Man in Defence of the Possession of my House, Lands or Goods*, that is Manslaughter (at least) as it seemeth.

(a) In Case of killing a Man *Se Defendendo*, there must be *extrema necessitas*; for if a Man flying see a Place, beyond which he cannot go, and before he come there, kill his Pursuer; this is not justifiable, for he must go to the utmost Place before he strike.

Sir Francis Bacon taketh this Difference in these former Cases of *Se Defendendo*, *sc.* When the Law doth intend some Fault or Wrong in the Party that hath brought himself in the Necessity: This he calleth *Necessitas culpabilis*, and saith this to be the chief Reason why *Se ipsum defendendo* is not Matter of Justification, but he must sue out his Pardon, and shall forfeit his Goods, because the Law intends it hath a Beginning upon an unlawful Cause; for Quarrels are not presumed to grow without some Wrongs in Words or Deeds, and so Malice on either Part; and it is hardly triable in whose Default the Quarrel began: But where I kill a Thief that attempts to rob me (and the like), here there can be no Malice or Wrong presumed on my Part. *Ba.* 33.

Forester, &c.

Warrener.

Crompt. 30.

(d) If any Forrester, Park-keeper or Warrener, or any in their Company, shall kill an Offender in their Forest, Park or Warren, which (after Hue and Cry levied to keep the Peace, and to obey the Law) will not yield themselves, but will fly, or defend themselves by Violence; this is no Felony: Yet *Quære*, if there were any former Malice in such Keeper. (a) But if any such Keeper, by Reason of any former Malice, will lay to any Man's Charge, that he came to do hurt, whereas he did not, neither was found wandring nor offending, and so kill him; this is Felony in such Keeper.

And so in the former Cases, where a Man is slain for the Execution of Justice, *sc.* when the Offender shall disobey the Arrest, resisteth or flieth, and so is slain; as also where a Man shall be slain by an Officer or other Person, in keeping or preserving the Peace; yet if such Manslaughter or Killing of such an Offender, be committed wittingly, willingly, and of Purpose, under Colour of Execution of Justice or Keeping of the Peace; this is Felony. See the Statute of 1 Jac. 1. *cap.* 8.

See 1 Hawk. P. C. *Chap.* 28, 29. of justifiable and excusable Homicide. And 1 Hale's Hist. P. C. *Chap.* 40.

C H A P. CLI.

Burglary.

Definition.

22 E. 3.

18 El. 6.

* By Statute

39 Eliz. if

'tis broke open

in the Day-

time, and the

Value of 5 s.

taken away,

'tis Felony without Benefit of Clergy.

Burglary (a) is derived from two French Words, *Burg* (a Village or a Farm-house), and *Larron* (a Thief); and so in the natural Signification, is the Robbing of a House: But in our Law it (d) is when one or more in the * Night-time, do break a Dwelling-house or a Church, or the Walls or Gates of a City or walled Town, with an Intent to do Felony, although he or they do not execute the same, or do take or carry away nothing; yet it is Felony, and the Offenders shall be hanged, and shall not have the Benefit of their Clergy.

(a) And if the Intent or Fact of this Offender be to steal; this is like Robbery, if to murder, it differeth not much from Murder, and so of other Felonies. *West.*

(d) First for the *Time*: Burglary cannot be committed *in the Day-time*, but only in the *Night*; for all Indictments of Burglary be, *Quod noctanter fregit*: And the *Night* (to this Purpose) beginneth at the Sun-setting, and continueth to the Sun-rising: And therefore to break a House, &c. after the Sun-setting, and before it be dark; or after Day-light in Summer, and before the Sun riseth, is Burglary.

Next, for the *Manner*: It is holden by some good Opinions, That if a Man break the House to do Felony, and yet entreth not, it is no Burglary; and that the Indictment must be, *Fregit & intravit*. And yet by the Opinion of *Shard. 27 Aff. 38.* and of Sir *Anth. Brown*, Sir *Edward Montague*, and Sir *Rob. Brook*, late Chief Justices of the Common Pleas, and others, (as Mr. *Crompton* reporteth) if a Man do but attempt to break or enter into a Dwelling-house by Night, to the Intent to rob, or kill any Person there, though he make no actual Entry, yet it is a full and complete Burglary.

As to put back the Leaf of a Window with his Dagger.

To draw the Latch of the Door.

To turn but the Key, being on the inner Side of the Door.

So to break the Glass-window, and to draw out any Goods there with an Hook, &c. *26 El. at Staff. Affizes.*

So to break a Hole in the Wall, and to shoot in thereby at any within the House. *And. Part 1.*

So (the Door being opened by some of the House) if any of the Attempters shall discharge a Dagg against any in the House, holding his Hand over the Threshold, though he set no Foot over. *P. 114. 26 Eliz.*

(a) But if Thieves come to a House, and some within open the Door, and one of the Thieves shoot at the Man, and miss him, and the Bullet breaks the Wall of the House: This is not Burglary. *And. Part 1. P. 114.*

Or, if they have a Hole in the Wall, and perceive a Man to come by with a Purse, or any Thing else in his Hand, and snatch it away: This is Burglary. So one came to a Gentleman's Window, and saw a Cabinet with Money in it, and pulling it to him, took out the Money, he was executed for it. *Ibid.*

(d) So if upon an Attempt of Burglary, they within the House shall cast out their Money for Fear, and the Attempters take it away.

And yet there is no actual Entry made in any of these Cases.

But if a Thief setteth but his Foot over the Threshold, or into any Part of the House, to commit Felony, or shall for that Purpose but put his Hand in at the Window, or at any Hole in the Wall; this shall convict him of Burglary.

Also one being let down the Chimney in the Night, to commit Felony, it was adjudged Burglary by Sir *R. Manwood*, Chief Baron, and yet he broke not the House. *Crompt. 32. See 1 H. H. P. C. 552.*

So it is to come into the House by the Help of a Key.

So if suddenly one come into the House by *Night*, the Doors being open, and the Owner flieth to his Chamber, and the Offender is taken shoving at the Chamber-door. *who seems to doubt.*

So it is, if Thieves pretending they have been robbed, &c. shall come to the Constable, and pray him to make search for the Felons, and going with the Constable into a Man's House to search, they rob the good Man of the House. This is Burglary.

So if a Servant conspiring with another to rob his Master, shall open his Master's Door or Window in the Night, and the other entereth thereat; this is Burglary in the Stranger, by the Opinion of Sir *Roger Manwood*; and the Servant is but a Thief, and no Burglar. *21 Eliz. Terms 34. 1 H. H. P. C. 553.*

And yet the House was not broken in any of these Cases.

(a) If a Thief find a Door open, and cometh in by Night, and robs the House, and be taken with the Manner, and breaks a Door to escape; this is Burglary: Yet the Breaking the Door was without any felonious Intent, but it is one intire Act. *Sir Fr. Bacon 65.*

If a Man in the Night entereth into the House by a Hole, or at a Wall broken before, and taketh away any Thing, or to the Intent to do any Felony, it is Burglary.

(d) But if one cometh into my House in the Day, and there hideth himself till Night, and then robbeth me; or if I shall lodge one in my House, and in the Night he robbeth me (*sc.* goeth out of my House, and taketh away some of my Goods with him), yet this is no Burglary, for that he broke not my House. For the first Case it was so holden at *Derby Aff. 32 El. Crompt. 34.* (a) *Quære* of his Opening the Door to go out and escape, if that shall not make it Burglary. *Vide 12 Ann. c. 7. infra.*

11 H. 4. 13.

(d) Also if divers come to commit Burglary, and but one of them entreth, and commit it, the rest standing about the House or not far off, to watch that no Help shall come: This is Burglary in all that Company.

The Place.

Now concerning the Place, it may be either publick or private; publick, as the Church or Walls, or Gates of a City, or a walled Town; private, as a Dwelling-house: And here commonly it is no Burglary, unless some Person be at that Time within the House.

Co. 4. 40.

And yet if a Man hath a Dwelling-house, and he and all his Family (upon some Occasion) are Part of the Night out of the House, and in the mean Time one cometh and breaketh the House to commit Felony; this is Burglary.

And. Part 1.
p. 302.

(a) And *An. 36 Eliz. Term. Pasch.* at an Assembly of all the Justices at *Serjeants Inn* it was resolved, That the Breaking of an House in the Night, with an Intent to commit Felony, is Burglary, although that no Person be within the House; for the Law is, That every Man ought to be in Security or Safety in the Night; as well for their Goods, as for their Persons; and that the ancient Precedents are, *Quod domum noctanter felonice & burg. fregit*, without saying *Domum mansjonalem*, or that any Person was in the House; and that the Reason why of late Times these Words have been put into the Indictment (*sc.* that some Person was in the House) was, for that in such Cases the Benefit of Clergy was taken away; but now by the Statute 18 *Eliz. 6.* Clergy is taken away in all Cases of Burglary; and therefore the Judges then all agreed from thenceforth to put the same in Execution accordingly. I have seen it thus reported out of a Book of *Popbam*, late Lord Chief Justice of the King's Bench.

See 1 Hawk.
P. C. 103.
and 1 H. H.
P. C. 550.

(d) So if a Man hath two Dwelling-houses, and sometimes dwelleth in the one, and sometimes at the other, and hath a Family of Servants in both, and in the Night when his Servants are out of the House, the House is broken by Thieves; this is Burglary. Adjudged 38 *Eliz.*

(a) I have also seen a Report of Judge *Popbam*, that *Termino Trin. 36 Eliz.* it was resolved by the Judges, that if a Man had two Houses, and dwelt sometimes in the one, and sometimes in the other; if that House wherein he neither then was, nor had any Servants, were broken, &c. That this was Burglary, although no Person then dwelt or were therein.

Cromp. 33.

(d) If one breaketh a Chamber in *Lincoln's Inn*, (or in any other House of Court or *Chancery*, or in any College in *Cambridge* or *Oxford*, &c.) in the Night, to the Intent to commit Felony there, this is Burglary, although there were no Person in the same Chamber: For the Colleges and Houses of Court and *Chancery* be intire Houses, whereof such Chamber is Parcel; so that if any Person shall be in any other Chamber within the same House or College at the same Time, it is Burglary.

C omp. 32.

On *P.* was arraigned of Burglary, 22 *Eliz.* for that he assaulted one of his Companions of the *Inner Temple, London*, in his Chamber, there to have killed him in the Evening, &c. but had his Pardon.

(a) A Servant who lieth continually within his Master's House, openeth the Doors in the Night to rob him; this is Burglary. *Lect. Mr. Cook, tempore H. 8.* See *hic antea.*

A Man cometh as a Guest to eat and drink in the Day-time, and there stayeth till Night, and in the Night-time breaketh his Chamber, or any Part of the House to rob his Host; this is Burglary. *Ibid.*

A Guest cometh to a common Inn, &c. and the Host appointeth him his Chamber, and in the Night the Host breaketh into his Guest's Chamber to rob him; this is Burglary. *Ibid.*

2 Ed. 6.
Br. Cor. 180.
Lamb. 256.

(d) Also the Breaking (in the Night) of a Stable, Barn, or other Out-house adjoining to, or Parcel of, or near to the Dwelling-house, to the Intent to steal, is Burglary, tho' he take nothing.

At Summer Assises at *Cambridge, An. Dom. 1616.* two Men were arraigned and condemned for Burglary before Sir *James Altham*, Knt. for Robbing a Back-house of *Robert Castle*, Esq; in the Night; which Back-house was some eight or nine Yards distant from his Dwelling-house, and only a Pale reaching between them: So that although this Offence be not committed in the very Body of the Dwelling-house, but in some other House near unto it, and being Parcel of or belonging to the Dwelling-house, it is Burglary.

Co. 11. 37.

But a Booth or Tent in a Fair or Market, are not esteemed in Law for a Dwelling-house, nor the Breaking thereof in the Night-time to be Burglary; although the Rob-

bing

bing of them be made as penal as Burglary, if the Owner, his Wife, Children, or Servants were within the same.

Lastly, (To make it Burglary) the Purpose and Intent for which the Offender cometh, must of Necessity be to kill or rob some Person, (or to commit some other Felony) otherwise it is neither Burglary nor Felony.

And therefore to break a House in the Night, to the Intent to kill any Person therein, is Burglary, although he never touched him.

So it is, if the Purpose were to rob, although the Offender taketh away nothing.

But if a Man break and enter an House by Night, of Purpose only to beat a Man, this is but Trespass.

And if the Intent were to commit a Rape, which some think to be no Felony by the Common Law, but only a Trespass, then there is some Doubt, saith Mr. Lambard, and Mr. Crompton saith, that if a Man breaketh another Man's House in the Night, and ravisheth a Woman there, this is no Burglary; for (saith he) Ravishment is no Felony by the Common Law, as Burglary is, although it be Felony at this Day by the Statute: *Tamen quere*; for it may seem by Mr. Braeton, Glanvile and Stamford, that by the ancient Common Law it was Felony. The Words of Mr. Braeton, lib. 2. are thus, *Olim quidem corruptores virginitatis & castitatis suspendebantur, &c. modernis tamen temporibus aliter observatur, quia pro corruptione virginis amittuntur membra, &c.* And a little after, *Adelstanus; Raptus mulierum ne fiat, defendit tam lex humana quam divina: Et sic fuit antiquitus observatum, quod si quis obviaverit solam, cum pace dimittat eam, &c. Si autem contra voluntatem suam, &c. jaecat eam ad terram, foris faciat gratiam suam, &c. Quod si concubuerit cum ea de vita & membris suis incurrat damnum, &c.* And with this Mr. Glanvile also agreeth, fol. 112. & Co. L. sect. 190. Note, that the Words, *De vita & membris suis incurrat damnum*, do imply the Offence to have been Felony of Death. Br. Cor. 204. Vide Co. L. 391.

Also amongst the Laws of S. Edmond, sometimes King of this Realm; you shall find this Law, *Qui cum Nanna vel sanctimoniali fornicetur, emendetur sicut homicida: A multo fortiori*, then, saith Mr. Stamford, shall he be punished if he had ravished her. So as Rape at the first (saith Stamford) was grievously punished, until the Time of King Edward the First, who seemed to mitigate the Pain thereof by the Statute of West. 1. cap. 13. which gave two Years Imprisonment and fine; but spying the Mischiefs insuing upon the said Law, at his next Parliament holden at Westminster, called West. 2. cap. 34. he made the Offence of Rape to be Felony again.

Note also by Britton, fol. 17. it is no Burglary in an Infant under fourteen Years of Age, nor in poor Persons, that upon Hunger shall enter a House for Victuals under the Value of twelve Pence, nor in natural Fools, or other Persons that be *Non compos Mentis*; but *quere* of Poor entring for Victuals at this Day.

(a) If for Preservation of his Life a Man takes Victuals to satisfy his present Hunger, this is not Felony nor Larceny*; for *necessitas inducit privilegium quoad jura privata*. Stamford. Sir Fr. Ba. 29. & hic postea.

He who feloniously takes Goods out of a Dwelling-house, any Person being within and *put in Fear*; or he who shall rob any Dwelling-house in the Day-time, any Person being therein, or be accessary to the same; or he who shall break any Dwelling-house, Shop, or Warehouse thereunto belonging in the Day-time, and feloniously take away any Goods to the Value of 5s. though *no Person be therein*; or he who shall counsel, hire, or command another to commit Burglary, shall not have his Clergy.

He who commits Burglary, or any other Crime, for which the Benefit of Clergy is taken away by the Statute 3 & 4 Will. aforesaid, and (being out of Prison) shall discover two or more Offenders, and convict them, he shall have his Pardon, which shall be a good Bar to any Appeal.

He who apprehends and prosecutes an House-breaker to Conviction, shall within one Month afterwards upon producing a Certificate of the Judge before whom he was convicted, receive 40l. of the Sheriff of the County, * without any Deduction, for every Offender so convicted.

He who enters into a Dwelling-house, either by Day or Night, *without breaking it*, with an Intent to commit Felony; or being in the House commits any Felony and in the Night-time breaks it to get out, is guilty of Burglary without Benefit of Clergy.

The Intent.
22 Aff. 95.
Stamf. 126.
Co. 11. 31.
13 H. 4. 7.
Fitz. Cor. 267.
Fitz. Cor. 185
& 264.
Stamf. 10.
Co. 11. 33.

Rape, see after here, c. 107.
Lamb. 260.
Crompt. 52.

Rape.
Stamf. 21; 22,
23.

Felony:

Westm. 2. 34.
P. Rape 1.
Br. Cor. 204.

Crompt. 33.
See Pl. 19.

* But see
1 Hale H.
P. C. 54.

Robbing a Dwelling-house in the Day-time.
3 & 4 W. & M. c. 9.

Discovering two or more Burglars.
11 W. 3. c. 23.

Prosecuting and convicting a Burglar shall have 40 l.
5 Ann. c. 32.
* 7 Geo. 1. c. 23.

Entring a Dwelling-house by Day, and not breaking it.
12 Ann. c. 7.

Stealing

Stealing to the Value of 40 s. out of a Dwelling-house, Out-house, tho' not broke open. Stealing Goods to the Value of 40 s. or more, being in the Dwelling-house, or Out-house, though it was not actually broke open; and though any Person or no Body was therein; and likewise the Aider and Assister shall be guilty of Burglary, without Benefit of Clergy.

See also Chap. 160. infra, 1 Hawk. P. C. Chap. 38. and 1 H. H. P. C. Chap. 48.

C H A P. CLII.

Theft.

THEFT is the fraudulent Taking away of another Man's moveable Personal Goods, with an Intent to steal them, against (or without) the Will of him whose Goods they be: And this is of two Sorts, Robbery and Larceny.

C H A P. CLIII.

Robbery.

Definition. **R**Obbery (in *Latin* called *Rapina*) is properly the felonious Taking any Thing from the Person of another, against his Will, and putting him in Fear thereby: And here although the Thing taken be but the Value of an Halfpenny yet it is Felony, for which the Offender shall suffer Death, without Benefit of Clergy.

As if one by the Highway assaulteth me, and taketh away my Purse, Money, or Goods.

What. But if a Thief assault me to rob me, and biddeth me deliver my Purse, but taketh nothing from me (in regard that I being too hard for him, shall apprehend him, or shall levy Hue and Cry, whereby he is taken) this is no Robbery nor Felony. (a) For although Intent may make a Man guilty of Treason (as you may see here before, Title *Treason*) yet in case of Felony there must be an Execution of that which was formerly intended, and resolved to be done, viz. to kill the Party, or to steal or take away the Thing, &c. and therefore in *M. Plow. fol. 259. b.* *Walsh* Serjeant saith, *Que intent de faire tort, sans del aēt fait nest punishable in n're Ley, nec le Resolusion, &c. meuz le sans de l'aēt est le sole point que nostre Ley respect.*

Stamf. 72. (d) And yet the Assault (yea, to lie in wait) only to rob me, hath been in former Times holden to be Felony, as appeareth by the Books, 27 *Aff. p. 38.* & 13 *H. 4. 7. 24 E. 3. 42. Fitz. Coron. 132 & 267. Br. Coron. 106, 215.*

Taking. And so the Intent to commit Burglary (or Murder) hath been holden to be Felony; for the Will was reputed for the Deed. *Vide 27 Aff. 38. Fitz. Coron. 383. & Stamf. fol. 17. a.* But the Law is otherwise at this Day.

7 Geo. 2. c. 21. §. 1. (a) And now by 7 *Geo. 2.* If any Person shall, with any offensive Weapon assault, or shall by Menaces, or in a violent Manner, demand any Money, Goods or Chattels, from any Person, with an Intent to rob such Person, such Offender shall be guilty of Felony, and transported for seven Years.

20 Eliz. Crompt. 34. (d) In this former Description of Robbery, the Word (*Taking*) is largely to be extended against the Offender. So that although the Thief taketh nothing from my Person, yet if he assaulteth me, and upon his Assault he threatneth to kill me, if I deliver him not my Purse; and thereupon I cast my Purse down, and he taketh it away; this is Robbery.

Crompt. 34. So if one draws his Sword upon me, and biddeth me deliver my Purse, and I refuse, and after he prays me to give him a Penny, and I do so, yet it seems this is Robbery; for by the Assault I was put in Fear, and out of that I gave him the Money to be rid of him.

Stamf. 37. c. So if a Thief do only assault me to rob me, and I deliver him my Purse with my own Hand; yet this is Robbery, in regard this Fact of mine proceeded from Fear, or by his Menacing, &c.

So in flying from the Thief, I cast my Purse into a Bush to save it, and the Thief seeth me, and taketh it away, this is Robbery; for in this Case had he not put me in Fear, I should not have cast my Money from me. Stamf. 37. c. Cromp. 35.

So if one assaults me to rob me, and I flying away from him, my Hat falleth off, and the Thief taketh it up, and carrieth it away; this is Robbery. Cromp. 35.

So if a Thief biddeth me deliver my Purse (without drawing any Weapon, or other Force used) and I deliver him my Purse, and he finding but two Shillings therein, delivereth it me all again; yet this is Robbery. 29 Eliz. Cromp. 34.

So if Thieves do take a Man, and by Threats compel him to swear to bring them Money to such a Place (at another Time) or else that they will kill him, and he bringeth the Money accordingly; this is Robbery. (a) *Term. Pasch.* 36 *Eliz.* it was adjudged accordingly. 44 E. 3. 14. 4 H. 4. 3. Stamf. 27.

(d) One came to a Fisherman, going in the Highway to Market with Fish to sell, and desired to buy some Fish of him, and he refused; whereupon the other took away some of the Fishes against his Will, and gave him more Money for them than they were worth; but the Fisherman was thereby put in Fear: Whereupon the other was indicted, and arraigned at *York* about 26 *Eliz.* but Judgment was respited, for that the Court doubted whether it were Felony or no. Crom. 35.

Also, in the former Description of Robbery, the Words *from the Person* are not so nicely to be construed, that (to make up Robbery) the Goods must needs be annexed to the Body of the Person; for in some Cases it may be Robbery, notwithstanding the Thief doth neither take the Goods from the *Person* of the Owner, nor yet assault him. Person.

As if in my Presence a Felon taketh away my Goods openly against my will; this is Robbery, though he neither taketh them from my Person, nor assaulteth me: For the Loss is the same, and the Fear alike, as though it had been from my *Person*. Stamf. 27. Lamb. 265.

And if one or more do take a Horse out of my Pasture, or drive my Cattle out of my Ground, I standing by, and looking on at the same Time; this is Robbery, though the Felon doth neither make an Assault or put me in the Fear. P. R. 131.

But to make it Robbery the Person must be *put in Fear*; for if a Felon doth take Money from me in the Highway, and shall not put me in Fear; this is no Robbery. Fear. Lamb. 266. Cromp. 35. P. R. 131.

And you shall find a Case in my Lord *Dyer*, how a Felon did take Money, to the Value of forty Shillings, or above, from the Person of another in the Highway, and yet for that he did not put his Person in Fear by Assault and Violence, this was holden no Robbery, and the Offender was allowed his Clergy for the same Felony. Dyer 224.

Also if the Robbery be not committed in or near the Highway, it seems the Offender may have his Clergy. See 1 *Ed. 6. cap. 12. Rastal 60. b. & 61. d. ** * See also 2 Hawk. P.C. c. 33. § 25.

Note also, if two Thieves shall attempt to rob me, and I fly from them, and one of the Thieves follow me, and the other espying another true Man (but out of the Sight of his Fellow) rides towards him, and robs him; this was adjudged Robbery in both the Thieves; and yet the one was neither in Sight, or knowing of this Robbery: But because they both came to rob, and at the same Time, this Fact committed by one shall be imputed to the other also. It was *Pudsey's Case*, 28 *El.* Crom. 84.

If one steal my Purse, or take or pick my Purse out of my Pocket secretly, or privily and fraudulently, it is Felony without Benefit of Clergy, if it be above the Value of twelve Pence. *Quære*, if it be under twelve Pence, because it is taken from the Person of a Man, and the Form of the Indictments are *Infultum fecit*. See *Fitz. Coron.* 430. Also the Words (8 *Eliz.* 4.) are, That no Person taking any Money or Goods (generally) from the Person of another, &c. shall have his Clergy; and yet by the Opinion of Mr. *Lambard* and Mr. *Crompton*, this is no Felony, unless the Thing taken be of more Value than twelve Pence, but Petty Larceny, for which the Offender is not to have Judgment of Death, and therefore needeth not his Clergy. Cut purse. 8 Eliz. 4. P. Cler. 1. Lamb. 266. Cromp. 34. 1 Hawk. P.C. 98. accord.

So if one shall take any Money or other Goods from my Person, *secretly* without my Knowledge, or by Slight only, I neither being made afraid, nor knowing it (if it be above twelve Pence in value) it is Felony of Death. P. Clerg. 1. Lamb. 266.

A Man cutteth my Girdle privily, my Purse hanging thereat, and the Purse and Girdle fall to the Ground, but he did not take them up (for that he was espied) this is no Felony; for that the Thief never had an actual Possession thereof, severed from my Person: But if he had holden the Purse in his Hand, and then cut the Girdle (although it had fallen to the Ground, and that he took it up no more) then had it been Felony, 26 Eliz. Cromp. 35. Dyer 224.

Felony, (if there had been above twelve Pence in the Purse) for he had it once in his Possession: But these secret and privy Takings from my Person, are no Robbery; for he neither assaulted me, nor put me in any Fear.

(a) And in antient Time, the Offender only lost his right Thumb. See *Fitz. Cor.* 434.

C H A P. CLIV.

Larceny.

Larceny (being fetched from the Latin Word, *Latrocinium*) is properly a fraudulent and felonious Taking away another Man's personal Goods, removed from his Body or Person, in the Absence of the Owner, and without his Knowledge. (a) *Bracton*, lib. 3. cap. 17. & 32. saith, *Furtum omnino non committitur, sine affectu & animo furandi.*

And Mr. *Finch* (Tit. *Felonies*) saith, That Larceny is the secret Taking the Goods of another, above the Value of twelve Pence, without Pretence of Title.

For the tortious Taking of Goods, with Pretence of Title, is only Trespass.

Grand Larceny.

(d) Grand Larceny is when the Goods stoln be above the Value of twelve Pence; and this is Felony, wherein Judgment of Death shall be given upon the Offender, except he be saved by his Book.

F. Cor. 451.

And yet if the Goods stoln be to the Value of ten Shillings, if the Jury upon his Trial shall find the Goods did not exceed the Value of twelve Pence, then that Offence shall be taken but for Petty Larceny.

Petty Larceny.
West. 1. c. 15.
Br. Cor. 84
& 85.
Stamf. 24.

Petty Larceny is when the Goods stoln do not exceed the Value of twelve Pence. And for this the Offender shall be imprisoned for some certain Time, and after shall be whipped, or otherwise punished by the Discretion of the Justices, before whom he is arraigned, but it is no Felony of Death at this Day.

(a) By good Opinions, the Stealing of Goods to the Value only of twelve Pence hath been held to be Felony of Death. See *Fitz. Coron.* 178. & *Br. Coron.* 84, 85. & *Forf.* 1. *Doct.* & *Stud.* 17. *

* *But the Law*
is settled, that it must exceed 12 d. to make grand Larceny.

1 *Hale Hist. P. C.* 530.

(d) Yet may not the Justice of Peace, before whom such an Offender shall be brought, out of the Sessions, punish by his Discretion the said Offender for Petty Larceny, and so let him go, but must commit him to Prison, or bail him, to the Intent he may come to his Trial, as in Cases of other Felonies; and if upon his Trial, the Jury shall find the Goods stolen to exceed twelve Pence in Value, the Offender shall have Judgment to die for the Fault.

But if the Indictment be laid twenty Pence, and the Offender arraigned thereof; yet upon his Trial, if the Jury shall find the Goods to be but of the Value of ten Pence; here the Offender shall have Judgment but as for Petty Larceny. 41 *E.* 3. *Abr. d' Assi.* 70.

27 *H.* 8. 22.
F. Cor. 218.
Bro. Cor. 54,
88. & 219.
1 *Hawk. P. C.*
95.

Also, although Petty Larceny be not punishable by Death, yet it is a felonious Taking; for the Indictment of Petty Larceny must be *Felonice cepit*: And he shall forfeit all his Goods and Chattels for such a Felony; and there is no Difference either in the Nature of the Offence, or in the Mind of the Offender, but only in the Value of the Thing stoln, which also maketh the Difference of Punishment.

(a) And yet by some late Opinions, Petty Larceny is but in the Nature of a Trespass, and then where the Principal is convicted but of Petty Larceny, there can be no Accessories, and the Procurers or Receivers, knowing of the Goods to be stolen, are not to be dealt withal as for Felony: But to be sent to the House of Correction, or to receive some other Punishment, by the Discretion of the Justices at the Quarter-Sessions. *Quære inde.*

F. Cor. 415.
Stamf. 24.
Crompt. 36. c.

(d) If one shall steal Goods to the Value of four Pence at one Time, and six Pence at another Time, and of three Pence at another Time, which together do exceed the Value of twelve Pence; and that these several Goods be all stolen from one and the same Person, then may they be put together in one Indictment; and the Offender being thereupon arraigned and found guilty, shall have Judgment of Death therefore. *

* *But this Severity is seldom practised, according to*

1 *Hawk. P. C.* 95.

F. Cor. 404.
Stamf. 24. l.

Again, if two or more together, do steal Goods above the Value of twelve Pence: This is Felony of Death in them all; for the Felony in them is several, though the Stealing be jointly done.

(a) By the Law of God, for Theft the Offender was to yield at least the double Value to the Party robbed; and if he were not able to make full Restitution, then he was to be sold for the Theft. *Exod. 22.*

Leges etiam Civiles furtum manifestum judicant per redditionem quadrupli; & furtum non manifestum per dupli compensationem expiari. Cow. 199.

Where a Shopkeeper delivers Goods in his Shop to a Customer, pretending to buy them, and he runs away with them; 'tis Felony, for the Running away shews his Intention to get the Goods *animo furandi*. Raim. 275.

C H A P. CLV.

Theft. Now first for the Manner.

IN Larceny two Things must concur, *sc.* to take, and to carry away, or to remove the Thing taken, with a Purpose to steal the same; for the Indictment must be, *Cepit & asportavit*, or *cepit & abduxit*; and yet in these Words, the Letter is not so much to be insisted upon as the Meaning, and that for the better Suppressing of Offenders in this Kind. *The Manner.*

For although by the Law in *Glanvil's* Time, *A furto omnimodo excusatur, qui initium habuerit suæ detentionis per dominum illius rei*; yet at this Day it may be Felony, though the Offender take not the Thing, but hath it by Delivery from the Owner's own Hand, and so cometh lawfully to the Possession; as, *Delivery.*

If a Taverner do set a Piece of Plate before his Guest to drink out of, and the Guest carrieth it away; this is Felony: For the Taverner gave him no Possession thereof, but only the Use to drink out of it for the Time. 13 E. 4. 9. Stamford. 25.

If I deliver Goods to a Carrier, or other Person, and bargain with him to carry them to a certain Place appointed; if he carrieth them to the Place, and then conveyeth them away fraudulently, this is Felony: For the Privity of Bailment was determined when they came at the Place appointed. *Carrier.* *Ibid.*

So if the Carrier shall take out Parcel of the Goods; this is Felony. *Ibid.*

Also if the Carrier shall carry them to another Place, and there breaketh them up, and converteth Part, or all, to his own Use; this is Felony. *Ibid.*

But if the Carrier shall sell, or give away, or otherwise imbezil the Whole as he received them; this is holden to be no Felony, because it was delivered him. Stamford. 25. a. Cromp. 36. a.

And yet in this last Case there is besides the Delivery, a Bargain and Agreement to carry the Goods, and the Delivery was only to that Intent; so that the Property of those Goods did always remain in the first Owner. *Ideo quære.*

But if *A.* lendeth his Horse to *B.* being a Stranger, who rideth away with the Horse; this is no Felony in *B.* by Reason of the Delivery. And so did Sir *John Dodderidge* Knight, give Direction at *Cambridge* Assises, 1617, upon an Indictment of Felony preferred in such Case. *Quære*, if the Horse had been delivered to a Servant, who rideth away therewith. *Vide postea, sub hoc tit.* 1 H. H. P. C. 504. accord.

If a Clothier shall deliver any Wool or Yarn to his Carder, Spinster, or Weaver, &c. to dress, and they shall convey away, imbezil, or sell any Part thereof; this is no Felony, by Reason of the Delivery, but they shall be punished by the Discretion of two Justices of Peace, by Whipping or Stocking, &c. *Vide antea, Tit. Cloth.* 7 Jac. 1. c. 7.

So if I deliver my Goods to another to keep, and he fraudulently consumeth them, or otherwise converteth them to his own Profit; this is no Felony, because of the Delivery. 13 E. 4. 9.

And so (it seemeth) if I deliver Money or Goods to *A.* to deliver to *B.* and *A.* flieth away with them, consumeth them, or converteth them to his own Use; this is no Felony, by Reason of the Delivery.

If a Man delivers Money to his Servant to keep, or Plate to his Butler, or Vessel to his Cook, or Horse to his Horse-keeper, or Sheep to his Shepherd, and such Servant doth go away with them, this is Felony by the Common Law in that Servant (for these Goods were always in the Master's Possession, and kept and used by the Servant to the Master's Behoof). But yet there was much Difference of Opinions herein; for the clearing whereof, in some Part, the Statute 21 H. 8. cap. 7. (which was made perpetual, by the Statute of 5 El. cap. 10.) provided, That all and singular Servants of the Age of eighteen Years, (other than an Apprentice, which must be understood of such as be bound by Indenture, and by the Name of an Apprentice) to whom any Money, Goods or Chattels, *Servants.* 21 H. 4. 14. 13 E. 4. 10. 7 H. 7. 12. 21 H. 7. 15. *Apprentices and Servants under eighteen, shall be in Case as they were before the making of this Statute.* &c.

21 H. 8. 7.
P. Felon. 10.
Crom. 50.

&c. by his or their Master or Mistress shall be delivered to keep of the Value of forty Shillings, or above; if such Servant shall go away with, or shall imbezil, or shall convert to his own Use, any such Money, Goods or Chattels of the said Value, to the Intent to steal the same, or to defraud his Master or Mistress thereof, it shall be Felony. But this must be prosecuted within one Year after the Offence.

And now upon the Construction of this Statute of 21 H. 8. divers new Questions and Cases have since arose: As,

Dyer 5.

If a Man delivers an Obligation to his Servant, to go and receive the Money thereupon due; and the Servant receiveth the Money, and then goeth away therewith, or doth convert it to his own Use: This is holden to be no Felony within the Meaning of this Statute, for the Master did not deliver the Money to his Servant.

Dyer 5.

So if a Man delivers to his Servant Wares or Cattle to sell at the Fair or Market, and he selleth them there, and receiveth the Money, and then goeth away with the Money, or converteth it to his own Use: This is no Felony within this Statute; for he had not the Money by his Master's Delivery, neither went he away with the Goods of his Master delivered him.

28 El.
Crom. 35.

But if the Servant received of his Master twenty Pounds in Gold to keep, which he changed into Silver, and then ran away with that; this is Felony, for that Gold and Silver are both of the same Nature, *sc. Money*.

21 H. 7. 15.

And if a Man delivers to his Servant a Horse to ride to Market, or Money to carry to a Fair, or to buy Cattle, or other Things, or to pay to another Man, and the Servant goeth away therewith: This was no Felony by the Common Law, by Reason of the Delivery thereof to him by his Master: But *quære*, if it be not Felony by this Statute, for that he went away with the Thing delivered him.

(a) If the Goods delivered to the Servant to keep, be under the Value of forty Shillings, and the Servant goeth away therewith, this is holden to be no Felony at this Day. But if the Servant shall imbezil, or go away with any Goods of his Master's, which were not delivered to him; this is Felony, although they be under the Value of forty Shillings, &c.

If a Man appoint his Servant to take and carry Corn to Market, and to take his Horse to carry the same upon, and the Servant goeth away with the Corn or Horse; this is Felony in the Servant, if the Goods he so goeth away with, be all to the Value of forty Shillings, &c.

But if a Servant wastefully consumeth the Goods, and returned again to his Master; this is no Felony. And these were the Directions of Sir *Nicholas Hide* to a Jury of Life and Death, upon the Arraignment of a Servant in such a Case at *Cambridge Lent Assizes, Anno 2 Caroli Regis*.

Dyer 5.

(d) And if one of my Servants doth deliver to another of my Servants Goods of mine (to the Value of forty Shillings) and he doth go away therewith, or converteth them to his own Use; this is Felony within this Statute, for this shall be said my Delivery.

5 H. 7. 16.
Br. Property
23.
Crom. 50.

If a Man delivers to his Servant a Piece of Cloth to keep, and the Servant maketh himself a Garment thereof, and after goeth away therewith; this is Felony within this Statute: For that the Property is not altered by making a Garment thereof, because the Cloth may be known still. Other-wise, it is of Barley turned into Malt, or of Money melted and turned into a Wedge or Piece of Metal, or the like; for that in these Cases the Barley or Money cannot be known again, but are altered in their Nature and Kind. But *quære*, and see the Words of the Statute.

(a) If a Man delivers Goods to one to keep, and after retains the same Person into his Service, who after goeth away with those Goods; this is no Felony by 21 H. 8. because he was no Servant at the Time the Goods were delivered to him. *Vide Sir Fra. Ba. 39, 40.*

Crom. 50.

If I deliver Goods to the Servant of *A.* to keep, and after I die, and make *A.* mine Executor; and before any new Command of *A.* to his Servant for the Custody of the same Goods, his Servant goeth away with them; this is out of 21 H. 8. *Ibid.*

13 E. 4. 9.

(d) If my Receiver of my Rents receive ten Pounds of my Tenants, and run away therewith, it is no Felony; for the Statute is, *where the Master delivereth to keep, &c.*

If a Man delivers to his Servant the Key of the Chamber-door, and the Servant taketh away his Master's Goods in the Chamber (above the Value of twelve Pence): This is Felony at the Common Law, for the Goods were not delivered.

(a) A Man laid and hid a Purse of Money in his Corn-mow within his Barn, and after his Servant finding the same, took Part of the Money out of the Purse, &c. And the Servant was therefore indicted and arraigned of Felony, at *Cambridge Summer Assizes, Anno Dom. 1621.* before Sir *John Dodderidge*.

If an Apprentice or Servant, under the Age of eighteen Years, shall imbezil their Master's Goods, which were not delivered to them, nor committed to their Charge, if the Goods so imbeziled be above the Value of twelve Pence, it is Felony. But if the Goods be under that Value, it seems such Apprentice or Servant, may be sent to the House of Correction.

(d) Another Felony there is by the Statute 33 H. 6. cap. 1. in the Servant that shall take away or spoil the Goods of his deceased Master: But this Felony groweth upon their Default of Appearance in the King's Bench, after Proclamation; and therefore neither the Trial nor hearing thereof belongeth to the Justices of Peace, because they cannot well take Knowledge of such Default in the King's Bench.

The second Thing which must concur (in Larceny) to make it Felony, is the *Carrying away* the Thing so taken; and yet it is not of Necessity that it be clean carried out of the House or Place where it was; but sufficeth, that it be so far removed, that the evil and felonious Intent of the Taker may plainly appear. As,

If a Guest will feloniously take the Sheets, or other Goods of the Inn-keepers, out of the Chamber where he lodges, and then (going to the Stable for his Horse) is taken with them, or they be found in some other Room of the House where he had laid them; it is Felony in both Cases, although the Possession of those Goods continued in the Owner.

So is it, if one taketh a Horse in another Man's Close, with an Intent to steal him, and be apprehended before he hath gotten the Horse out of the same Close; this is Felony.

(a) Taking Money or Reward directly or indirectly to help another to stolen Goods, unless he doth apprehend, or cause to be apprehended, such Felon who stole the same, and bring him to Trial, and give Evidence against him, is guilty of Felony, and shall suffer the Penalty according to the Nature of the Felony committed in stealing such Goods, and in the same Manner as if he had stolen the same.

Upon this Clause the famous *Jonathan Wilde* was executed, Anno 10 Geo. 1.

If one takes a Sheep in my Pasture or Fold, or a Calf in my Pen, &c. and killeth the same, and be found or taken doing it, and then begins to flie; this is Felony, though he hath not carried the same away out of the Place where he first took it.

For Sheep stealing, see Chap. 160. infra.

C H A P. CLVI.

Next, Of what Things Larceny may be committed, and of what not.

Larceny may be committed by taking any of the moveable Goods of any Person, as Money, Plate, Apparel, Householdstuff, or Corn, Hay, Trees or Fruit, (that are severed from the Ground) or the like; the Stealing of them is Felony.

It is also Felony to steal any Horses, Mares, Colts, Oxen, Kine, Sheep, Lambs, Swine, Pigs, Hens or Geese, Ducks, Turkeys, Peacocks, and other domestical Birds or Beasts of tame Nature. (d) For the Nature of these Things being tame, (and not Savage) if they shall run or flie away, though out of Sight of the Owner, yet in what Place soever they be found, they cease not to be his, so as whosoever detaineth them from the Owner is punishable by Way of Action.

(d) It is Felony also to take some Things that be of wild Nature: As to take young Pigeons which cannot flie, out of another Man's Dove-house or other House; or to take young Hawks, or young Herons, out of their Nests (or Airies) and breeding in a Park or other several Ground; so to take *Fishes* that be kept in a Trunk or several Pond.

(a) For that the Property of such Things shall be always adjudged in the Owner of the Dove-house, Ground, Trunk or Pond, in as much as such Things cannot (of themselves) get out thereof, but that the Owner of such Dove-house, Ground or Pond, may take them at all Times at his Pleasure.

(d) *Quare* of old Doves taken in the Dove-coat, or of any other wild Beast or Fowl (being of Value) and taken within a Man's House.

See 1 Hawk. P. C. Ch. 33. § 26.

See Hawk. ib. § 27. 22 H. 8. 9. b. 18 E. 4. 8. a. (a) At Cambridge Summer Assizes Anno 1627; there were two indicted and arraigned of Felony before Sir Francis Harvey, for taking Fish out of a Net lying in the River, being the several Fishing of Sir Ed. P.

(d) Also it is Felony to take any Swans that be lawfully marked, though they be at large. (a) For a Man hath Property in such. See Co. L. 16. b. 17. a. *Quære*, if they be flying Swans, and not pinioned.

Co. 7. 17. b. Also for Swans unmarked, if they be domestical or tame, *sc.* kept in a Moat, or in a Pond near to a Dwelling-house, and so be *Domui* or *Manui assueta*, to steal such is Felony.

Co. 7. 16. b. So it seemeth of Swans unmarked, so long as they keep within a Man's Manor, or within his private Rivers; or if they happen to escape from thence, and be pursued and taken, and brought in again.

But if Swans that be unmarked shall be abroad, and shall attain to their natural Liberty, then the Property of them is lost, and so long Felony cannot be committed by taking of them.

Co. lib. 7. f. 16. a. b. & 18. a. b. And yet such unmarked and wild Swans, the King's Officers may seize (being abroad) for and to the Use of the King, by his Prerogative, they being *Volatilia Regalia*: Also the King may grant them, and by Consequence another Man may prescribe to have them, within a certain Precinct or Place; for it may be intended to have a lawful Beginning by the King's Grant.

Also young Swans or Cygnets, belong to both the Owners in common Equality, *sc.* to the Owner of the old Cock, and to the Owner of the old Hen, and the Cygnets or young Swans shall be divided between them. Co. 7. 17. And to steal such Cygnets is Felony; for they shall be of the same Nature with the old Cock or Hen.

Deer. 10 E. 4. 15. Stamford. 52. (d) Also it is Felony to take a tame Deer which is marked and domestical, especially if the Taker knows it to be tame and domestical, or that it weareth a Bell.

(a) If a Hart, Buck, or other Beast which hath been wild by Nature, and made tame, and hath at his Neck a little Collar of Leather, or any other notorious Sign, and doth go abroad, and returneth again to the House (of his Master or Owner) at his Pleasure, if he be taken by a Stranger and killed by Night, or in other secret Manner, this is Felony by the Common Law. *Crompt. Author. des Courts* 167.

Fitz. 87. a. Fi. 45. (d) But by the Common Law, Larceny cannot be committed by taking savage or wild Beasts, Fowls or Fish, found in their Wilderness and abroad, or at large; as Deer, Conies, Hawks, Doves, Pheasants, Partridges, Herons, Swans unmarked, or Fish that are at Liberty, &c. for no Persons can claim Property in them.

(a) By the Statute *de Foresta*, cap. 10. *Nullus de cetero amittat vitam vel membrum pro Venatione nostra*, (*sc. pur tuer Deere le Roy*;) which Branch is but an Affirmance of the Common Law. *Crompt. Author. des Courts* 166.

P. Felon. 24. Lamb. 271. (d) Howbeit by Statute it is now made Felony to hunt Deer or Conies (after some Sort) in a Forest, Park or Warren; or to take a tame Beast or other Thing in a Park, by Manner of Robbery. See the Statute 3 Ed. 1. 20. & 1 H. 7. cap. 7. *Vide postea Felony by Stat.*

Hawk. P. Felon. 20. Also by Statute it is Felony to steal, take away, or conceal a Hawk. *Ibid.*

Co. 17. b. Fi. 4. But for the better Understanding what the Law is in Things that be *feræ naturæ*, observe these Differences.

Property. In some Things that be *feræ naturæ*, a Man hath Right and Property, and in some *Feræ Naturæ* of them a Right of Privilege.

There be three Manners of Rights of Property: *sc.*

1. Absolute. This Property a Man cannot have in any Thing which is *feræ naturæ*, but only in such Things as are *domitæ naturæ*.

2. Qualified. } These Properties a Man may have in Things *feræ naturæ*; and to

3. Possessory. } such Properties a Man may attain by two Means:

Property, how gotten. 1. By Industry: And this may be either by taking them only, or by the making them tame, (*sc. mansucta, id est, manui assueta, or domestica, id est, domui assueta*). But in these last a Man also hath but a qualified Property, *sc.* so long as they remain in his Possession, and so long Felony may be committed by taking them away; but if they attain to their natural Liberty, and have not *animum revertendi*, then the Property of them is lost.

18 E. 4. fol. 8. Stamford. 25. c. Fitz. 86. l. & 89. k. 2. *Ratione impotentia & loci*: As where a Man hath young Goshawks or Herons, or the like, which are *feræ naturæ*, and doth breed (or air) in his Ground, he hath a possessory Property in them; so as if one takes them when they cannot fly, the Owner

of the Soil may have an Action of Trespass, *Quare boscum suum fregit, & tres pullos Espervorum suorum, or Ardearum suarum, pretii tanti, nuper in eodem bosco nidificantium cepit & asportavit.* And to take these away, is Felony as aforesaid.

(a) Also note, That my Hawk which is flying at a Fowl, and my Deer that is chased out of my Park, so long as my Servant or Keeper maketh fresh Suit after them, they still remain in my Possession, and the Property is still in me: But if they stray it is lawful for any Man to take them. *Fi. 45.*

(d) But when a Man hath Beasts or Fowl (that be savage, and in their wildness) *ratione privilegii, sc.* by reason of a Park or Warren, &c. (as Deer, Hares, Conies, Pheasants or Partridges, or the like, which be Things of Warren) he hath no Property in them: And therefore in an Action, *Quare Parcum, or Warrenam, &c. fregit & intravit & 3 damas, lepores, cuniculos, phasianos, perdices, &c. ibidem invent' cepit & asportavit,* he shall not say *suos*, for that he hath no Property in them, but they belong unto him *ratione privilegii*, (for his Game and Pleasure) so long as they remain in the Place privileged. And if the Owner of the Park die, his Heir shall have them, and not his Executors or Administrators, for that without them the Park (which is an Inheritance) is not compleat: Neither can Felony be committed by taking them.

Co. 8. 138 b.
See Doct. &
Stud. f. 10.

Neither can Larceny be committed by taking of Dogs of any Kind, Apes, Parrots, Squirrels, Singing Birds, or such like Thing, kept only for Pleasure, and not for any Profit, though they be in the House and made tame.

Dogs.
Lamb. 270.

No not by taking a Blood-hound or Mastiff, although there is good Use of them, and that a Man may be said to have a Property in them, so as an Action of Trespass lieth for Taking them; yet in regard they are Things of so base a Nature, no Felony can be committed by taking them.

Co. 7. 18.
12 H. 8. 3
Br. Tresf. 407

(a) But yet to take a Dog of any Kind, or other Thing of Pleasure, from the Person of another, or out of the Possession of another, and in his Presence, if it be done with Force or Violence, it amounteth to the Breach of the Peace. And if it be done with Force, and by the Number of three Persons or more, it will amount to a Riot.

(d) Also it is Felony to steal the Flesh of any tame or wild Fowl, or of any Deer or other Beast that is dead, out of the Possession of another Man.

Stamf. 25.

So it is to pull the Wool from the Sheeps Back, or to kill them, and to take the Skin, and leave the Body behind.

Sheep and
Wool.
Cromp. 36.

But note, that in all these Cases of Felony aforesaid, the Thing so taken or stolen must exceed the Value of 12 d.

Also the Taking of any real Chattel or Thing is no Felony: As,

If one cuts down my Tree, or my Corn, and carrieth it away, or pulleth and stealeth my Apples hanging on the Tree, and carrieth them away; these are no Felonies, for these Things be Part of my Freehold, till they be severed.

Things real.
Stamf. 25.
10 E. 4. 17.1
Co. 4. 19.

But if I gather mine Apples, or cut down a Tree or Corn of mine own, then it is Felony if another Man shall carry them away feloniously.

And by the Opinion of *Mar.* if a Stranger cuts down my Tree or Corn without Title, and another Time after he fetches it away, that will prove Felony, because it was a Chattel severed when he took it.

Stamf. 25.
Lamb. 272.
Cromp. 36.
12 Aff. p. 32
Br. Coron. 76
Cromp. 37.

Also to take Lead from off a House or Church will not amount to Felony, for it is Parcel of the House or Freehold.

(a) But this is now altered by Statute 4 *Geo. 2. cap. 32.* by which it is enacted, That all Persons who shall steal or rip, cut or break, with Intent to steal, any lead, iron Bar, iron Gate, iron Palisadoe, or iron Rail, fixed to any Dwelling-house or other Building, or fixed in any Garden, Court-Yard, Fence or Out-let belonging to any Dwelling-house or other Building, shall be guilty of Felony; and such Offenders may be transported for seven Years: And all Persons who shall be assisting in stealing, or in such ripping, cutting or breaking, any lead, iron Bar, &c. or shall buy or receive any such lead, iron Bar, &c. knowing the same to be stolen, shall be liable to the same Punishment as if he had stolen the same.

4 Geo. 2
c. 32.

(d) Also to take away the Evidence of a Man's Land, or any Indenture of Lease, or any Obligation, Deed, Specialty, or other Writings, be they in or without a Box, it is no Felony, because they cannot be valued; and again, because they concern Inheritance, Chattels real, or Things in Action. (a) Yet if they be in a Box unsealed, it seemeth that the Taking of the Box feloniously is Larceny; but if the Box be sealed, and have Writings within it, the Box shall be of the same Nature as the Writings that be therein.

Writings.
Stamf. 25
Lamb. 271
10 Ed. 4. 1
Br. Cor. 10
Co. 8. 37

10 Ed. 4. fol. 16.

(d) So

Stamf. 25.

(d) So to take away an Infant in Ward is no Felony.*The Owner unknown.*Stamf. 27.
F. Cor. 187,
265.

Br. Cor. 176.

Also the Taking and Carrying away of such Things whereof the Owner is unknown, in some Cases is no Felony: As the Taking away of Treasure that was hidden or lost, (be it Money, Bullion or Plate) or of Wreck of the Sea, or Goods that be waived, or Strays (before they be lawfully seized, &c.) *(a)* But the Takers away of such Treasure, Wreck, and Waif, shall be punished by Fine and Imprisonment. 22 *Aff. p.* 10.

Br. Coron. 96. Fit. Coron. 187. & 265. Vide Braet. lib. 3. fol. 119 & 120.

Dyer 99.

Lamb. 272 &
476, 478.

7 E. 4. 14, 15.

Br. Indict-
ment 33.

(d) And yet where the Goods be *bona cujusdam hominis ignoti*, or *bona cujusdam mortui & ignoti*, or *bona Parochianorum*, or the Goods of a Church or Chapel, as (Bells, Books, Chalice, Surplices, Bell-ropes, &c.) or the Goods of any Corporation in Time of Vacation; in these Cases there be Owners of them to some Purpose, and therefore it is Felony to steal such Goods.

Digging up a dead Body.

1 Hawk.

P. C. 94.

contra.

One *Nottingham* digged a dead Body out of his Grave, and took away his Winding-sheet; this was holden to be no Felony, but punishable as a Misdemeanor, and the Offender was adjudged to be whipped, &c. for it. This was at *Cambridge* Summer Assises, Anno 1617.

His own Goods.

7 H. 6. 43.

5 H. 7. 18.

Stamf. 26.

1 Hawk.

P. C. c. 33,

§. 30, accord.

Note also, That a Man may commit Felony by Taking his own Goods: As,

If *A.* do lend or deliver Goods to *B.* to keep, and after *A.* doth take them away feloniously, or privily and fraudulently, (to the Intent to charge *B.* or to recover Damages for the same against *B.* by an Action of *Detinue*) this is Felony in *A.* and yet the Property of the Goods was in him. *(a)* Yet *M. Brook, Coron. 142.* maketh a *Quære* thereof.

Mar. lect. 12.

Cromp. 37.

(d) If I lend my Plate, or deliver my Goods to another to keep, and he melteth my Plate, or changeth the Fashion of my Goods; now if I should take that Metal or those Goods feloniously, it were Felony in me, because the Property is altered by altering of the Fashion. See a little before.

If the Party robbed taketh his Goods again from the Thief, and suffereth him to escape. *Vide postea, Tit. Accessories.*

Cromp. 37.

P. R. 129.

A Man findeth my Purse in the Highway, and being asked for it, denieth it, this seems to be no Felony, for he came not thereby at the first feloniously. *(a)* But by the *Levitical* Law he was to restore the Thing found, with an Addition of the fifth Part more thereto. *Levit. 6. 3, 5. Numb. 5. 7.*

A Man hath two Chains, the one of Gold, the other of Copper, and he selleth the gold Chain, and delivereth it, and presently after he secretly conveys away his gold Chain, and puts the copper Chain in the Place thereof: This is Felony. *Lecture M. Cook.*

So if one taketh away my Horse, and leaveth another of his (which is like unto mine) instead thereof; this is Felony. *Ibidem.*

Cromp. 37.

P. Just. 54.

(d) A Man cometh to my Wife, or to my Servant, with a false Message, Token or Letter made in my Name, and thereby getteth my Goods: Yet this is no Felony, but it shall be punished by the Statute of 33 *H. 1. cap. 1.* See *antea, Tit. Counterfeiters.*

C H A P. CLVII.

*What Persons are chargeable in Larceny.**Wife.*27 *Aff.* 40.

Stamf. 26. 142.

Fi. 12.

Plo. 19.

1 H. H. P. C.

434, 516.

A Feme Covert doth steal Goods by the Compulsion or Constraint of her Husband; this is no Felony in her. *F. Coron. 160. (a) & Fitz. Coron. 199. Br. Coron. 103.* For where the Words of the Law are broken by Compulsion, there the Law is not offended, neither shall any Person be damnified for doing a Thing, whereto he is forced or compelled, but such Compulsion shall be a good Excuse in our Law.

Mar. lect. 12.

(d) But if by the Compulsion of her Husband she committeth Murder, this is Felony in them both.

27 *Aff.* 40.

See Stamf. 26,

27, 142.

P. R. 130.

Br. Cor. 103.

Ibid.

If a Feme Covert doth steal Goods by the Command or Procurement of her Husband, (without any Constraint) this hath been holden to be Felony in her. *M. Braeton* also saith it is Felony; for *Licet uxor obedire debeat viro, in atrocioribus tamen non est ei obediendum.* But *M. Stamf.* and others are of another Opinion.

(a) If the Husband and the Wife join in committing Treason, the Necessity of Obedience doth not excuse the Wife's Offence, as it doth in Felony, because it is against the Commonwealth; for *Privilegium non valet contra Rempublicam*. F. Co. 130.
Lamb. 257.
Ba. 32.

(d) But if the Husband and the Wife together steal Goods, this shall be taken to be the only Act of the Husband, and not to be Felony in the Wife. *Vide Stamf. 26.*

(a) & *Lamb. Fitz. Coron. 160. & Ba. 31 & 37.* that the Wife can neither be Principal or Accessary, in regard of the Subjection and Obedience she oweth to her Husband.

And yet Mr. *Braeton* seems to be of another Opinion herein, saying, *Quid erit si uxor cum viro conjuncta fuerit, vel confessa fuerit, quod viro suo consilium præstiterit & auxilium? Nunquid tenebuntur ambo? Imo, ut videtur. (And a little after he saith) Alter eorum potest esse malus per se, & alter bonus; ita uterque eorum possit simul & conjunctim esse malus.*

And again, *Sicut sunt participes in crimine, ita debent esse participes in pœna. Ibidem.*

And Mr. *Braeton* seemeth to make this Difference, That although the Wife may conceal her Husband's Offence in case of Felony, (as also she may relieve and keep Company with him, knowing him to be a Felon) *Consentire tamen non debet Feloniæ viri sui, neque esse coadjutrix sed Feloniam & nequitiam viri impedire quantum possit.* And accordingly at *Cambridge*, at Lent Assises, *Anno 1619.* the Wife was in such Case indicted and arraigned with the Husband for robbing a Windmill.

Again at *Cambridge*, Lent Assises, 1620, one *William Houghton*, and *Katharine* his Wife, were together indicted and arraigned for Stealing certain Apparel: And the Husband and Wife were indicted for the like at Lent Assises, *Anno Dom. 1624.*

Also the Wife is chargeable for Trespas done by her and her Husband together; and therefore it shall be safe for the Justice of Peace, in such Cases, to commit the Wife to Gaol as well as the Husband.

And yet for this Case of a Trespas committed by the Husband and Wife, Sir *Fr. Bacon* giveth this Rule, *Excusat aut extenuat delictum in Capitalibus quod non operatur idem in Civilibus: sc.* In capital Causes, *in favorem vitæ*, the Law will not punish in so high Degree, except the Malice of the Will and Intention appear, *p. 36, 37.*

(d) But a Woman Covert alone by herself (the Husband not knowing thereof) may commit Larceny, and may be either Principal or Accessary: As if she steal another Man's Goods, or receive the Thief that stealeth them; or shall receive stolen Goods into her House, knowing them so to be; or shall lock them up in her Chest or Chamber, her Husband not knowing thereof: And in such Cases, if her Husband so soon as he knoweth thereof, do forthwith forsake his House and her Company, and make his Abode elsewhere, he shall not be charged for her Offence; whereas otherwise the Law will impute the Fault to him and not to her. Stamf. 26.
Fitz. Cor. 383.
See Stamf. 26.
P. R. 130.

(a) M. *Braeton* saith farther, *In certis casibus de furto tenebitur uxor, si furtum inveniatur sub clavibus suis, quas quidem claves habere debet uxor sub custodia & cura sua; Claves, viz. dispensæ suæ, arcæ suæ, scrinii sui: & si aliquando furtum sub clavibus istis inveniatur, uxor cum viro culpabilis erit, sc. vir si consenserit, vel rem ei Warrantizabit.* Braet. lib. 3.
c. 32.

(d) Goods are delivered to the Husband to keep, and his Wife stealeth them, it is no Felony. Otherwise it is, if the Husband had delivered them to a Stranger, and then the Wife had taken them feloniously out of the Possession of the Stranger, this had been Felony in the Wife. Mar. Lect. 12.

Also the Wife shall not be accounted a Felon for Taking or Stealing the Goods of her Husband: And if the Wife do take her Husband's Goods secretly, and deliver them to a Stranger, knowing thereof, yet this is no Felony in the Stranger. F. Cor. 455.
Br. Cor 142.
Stamf. 27.
Abr. d' Ass.
fol. 71.

But if a Man do take away another Man's Wife with her Husband's Goods against the Wife's Will, this is Felony by the Statute *Westm. 2. cap. 34.* as it seemeth. And so if any Man takes another Man's Wife with her Husband's Goods against the Husband's Will, this also is Felony. Br. Cor. 77.
Crompt. 35.
P. R. 130.

(a) If a married Woman shall deliver to her Adulterer her Husband's Goods, this is Felony in the Adulterer. *Lecture Mr. Cook.* Vide 1 H. II
P. C. 514.

(d) And if the Husband commit Larceny, and the Wife knowing thereof, do receive or relieve him, &c. she is not thereby Accessary to the Felony. *Vide postea, Tit. Accessary.*

21 Jac. 1. c. 6. (a) Note, That a Woman convicted of or for the felonious Taking of any Money, Goods or Chattels above the Value of 12 *d.* and under 10 *s.* or as Accessary to any such Offences, being no Burglary nor Robbery in or near the Highway, nor the felonious Taking of any Goods from the Person of another privily, shall for the first Offence be branded in the Hand, and further punished by Imprisonment or Whipping, at the Discretion of the Judge or Justice, before whom she shall be so convicted.

Servants. (d) If a Servant, by the Compulsion of his Master, steal another Man's Goods, this is Felony in them both, notwithstanding such Compulsion. See more of Servants here before, *sub hoc* Tit.

Ideots and Infants. An Ideot, Lunatick, dumb or deaf Person, and an Infant, are chargeable in Larceny; after the same Sort as they are chargeable in Homicide, which see here before in *Man-slaughter*. And yet if an Infant shall commit Larceny, and shall be found guilty thereof before the Justices of Peace, it shall not be amiss to respite the Judgment; and so it hath often been done by the Judges. See *Stamf.* 27. & 3 *H.* 7. fol. 1. b. & 12. b. & 35 *H.* 6. 11. *Br. Covert*, 80.

(a) At Cambridge Assises in Lent 1619. before Sir Henry Montague and Sir John Dodderidge, Judges of Assise there, they sitting together upon the Prisoners, an Infant about 14 Years of Age was arraigned before them of Felony, and was found guilty, and upon Demand of his Clergy had the same allowed him, and was burnt in the Hand.

The like was done there at Lent Assises 1624. before Sir Randal Crew, Lord Chief Justice. See *Doct. & Stud.* fol. 148.

Left. M. Cook. A Bailiff, &c. distraineth secretly for Rent, and after selleth the Distress, and when the Owner demandeth his Goods which were so distrained, the Bailiff denieth them; this is Felony.

Ibid. If an Escheator or other Officer telleth a Man that he is outlawed, when he knoweth he is not outlawed, and by Colour thereof he taketh his Goods; this is Felony. But if the Party be indeed outlawed, and the Officer cometh to take his Goods, and the other Party sheweth him a *Superfedeas*, and notwithstanding the Officer taketh away his Goods; this is no Felony.

Vide Dalt. Sheriff, c. 126. If an Officer shall levy any Duty for the King without Warrant, this is Felony. So where any Officer shall levy any Duty without sufficient Warrant or Authority, and shall after convert the same to his own proper Use, it seems to be Felony.

C H A P. CLVIII.

Other Felonies by the Common Law.

Burning of a Barn (which is adjoining to a Dwelling-house) in the Night feloniously, is Felony by the Common Law.

So is it to burn a Barn (in the Day-time) having Corn in it, and though it adjoined not to the Dwelling-house.

Burning of any Dwelling-house, or other House, Parcel thereof, willingly and feloniously done, is Felony by the Common Law, whether it be done by Night or by Day.

Burning of any other House, or of a Stack of Corn, feloniously, seemeth also to be Felony by the Common Law: For the Words of the Statute of *Westm.* 1. cap. 15. (which Statute seemeth to be but a Rehearal of the Common Law, *Br. Mainpr.* 78.) ordain, That such as be taken for House-burning (generally) feloniously done, be not bailed: And of that Opinion seemeth Master *Britton*, who wrote presently after the Making of the same Statute; *Britton*, fol. 16. (a) See Statute *Winchestr.* 13 *E.* 1. cap. 1. & 28 *E.* 1. cap. 17. And it appeareth also by *Britton*, lib. 1. cap. 17. that such Offenders were by the Common Law to have been burned. *Fitz.* 269. b.

The Book called the *Mirror of Justice*, amongst other Capital Offences hath this, *Le crime de Arson*: And he describeth the Offenders in this Sort, *Ardours sont qui ardent Citie, Ville, Meason, Home, Beast, ou auters Chattels de leur Felony in temps de Peace, pur pain ou vengeance.*

Vide Hawk. P. C. c. 39. §. 3. If a Man will burn his own House willingly, this is no Felony. But if by such Burning he burneth his Neighbour's House, this seemeth to be Felony.

A Man intending to burn another Man's House, casteth Fire thereupon, and after that is kindled and burnt in part, it is quenched; this is Felony, although the whole House were not burnt down. 1 H. H. P. C. 568, 369.

So it seemeth, if a Man shooteth unlawfully in an Hand-gun, and the Fire thereof setteth another Man's House on fire and burneth it down, this is Felony. *Quære.* Vide 1 Hale Hist. P. C. 569. contra Discovery.

(d) If an Indictor (or Juror) in case of Treason or Felony, shall discover the King's Council and his Fellows, it hath been adjudged Felony. *Vide antea, Tit. Petty Treason.* Vide antea, Tit. Petty Treason.

Rescuing, or taking away from an Officer, any Offender, who is attainted, imprisoned, or but arrested for Felony, such *Rescous* is Felony, as well in him that made the *Rescous*, as in him that is rescued. See more *infra.* Rescous. 1 H. 7. 6. Br. Cor. 127. 130. Stamf. 31 b.

Also when a Man hath arrested another for Felony, and after letteth him go at Liberty, this is a wilful Escape, and shall be adjudged Felony in him that did so let him escape. And in Case of Treason such Escape is Treason. See *paulo postea.* Escape. 9 H. 4. 12.

Breaking of Prison (before the Stat. *De frangentibus prisonam*, made 1 E. 2.) was Felony by the Common Law, for what Cause soever he was in Prison, yea, though he had been imprisoned but for a Trespass. But now that Statute hath changed the Common Law therein: So that now, if a Man be imprisoned or arrested, or taken for Trespass, and do make an Escape, or be rescued by a Stranger, this is but fineable at this Day. Breaking of Prison. Stamf. 30, 31. See the Stat. 1 E. 2. & P. Prif. 5.

(a) If any Offender which is adjudged, or otherwise by Law is to abjure the Realm, shall depart, and after such Departure shall return again without the King's Licence; then if the Cause for which he did abjure were Felony, the Offender so returning shall have Judgment of Life and of Member by the Common Law. But if the Cause were not for Felony, then the Offender by the Common Law shall be taken, and only make a Fine to the King. But now see the Statute of 35 *Eliz.* 1 & 2. where it is made Felony also for Popish Recusants, or other Sectaries, which are to abjure, if after Abjuration they shall return without the King's Special Licence. See *hic postea.* Abjuration.

C H A P. CLIX.

Felonies by Statute.

IF any Man, being the King's sworn Servant, &c. shall confederate, imagine, compass or conspire with another to destroy the King, or any Lord of this Realm, or any other sworn to the King's Council, or the Steward, Treasurer or Comptrolier of the King's House, it is Felony: But what the Justice of Peace may do herein, see *antea* Tit. *Felony.* Conspiracy. 3 H. 7. c. 14. P. Felon. 13.

Breaking of Prison by one being therein for Felony, or by one being a Prisoner for Felony, is Felony. Breaking of Prison. 1 E. 2. P. Felon. 15.

(a) And yet by the Common Law, if the Prison had been broken by the Party himself, it had been Felony, whatsoever the Cause of his Imprisonment were, yea, although it were but for a Trespass. *Vide Stamf. 30. c. & M. Finch, lib. 2.*

But now by the Statute 1 *Ed.* 2. it is no Felony, except the Prisoners were there committed for Felony. *Vide Co. Inst. 2 Part 589. upon the Statute de frangentibus Prisonam. Fitz. Coron. 248. Escape non adjudicabitur vers. ipsum qui commiss. est pro transgress.*

(d) Now every one who is under Arrest for Felony is a Prisoner, and that as well without the Prison as within, or in the Stocks in the High Street, or in the Possession of any that hath arrested him, or that hath the Keeping of him being arrested for Felony. Dyer 99 Finch, lib. 2

And therefore if any Person who is under Arrest for Felony, or Suspicion thereof, (whether he be in the Gaol or out, or but in the Stocks, or but in the Possession of any that hath arrested him) if he shall make an Escape, this is a Breaking of Prison in such Prisoner, and is Felony. Escape.

(a) And yet one committed to the Constable, by the Justice, for Suspicion of Felony, making an Escape from the Constable, was after taken again, and indicted and arraigned for 1 E. 3. 17 P. R. 147

for

for that Felony, and by the Jury of Life and Death was found Not guilty of that Felony, and after was indicted for the Escape: But here, considering the Prisoner was found Not guilty of the first Felony, therefore his Escape from the Constable was holden not to be Felony; and so I have known the Jury directed by the Judge of Assize.

Gaol.

Before the Statute of 1 Ed. 2. if it had not been the King's Prison which had been broken, it had been no Felony, as it appeared by *Brit. fol. 17.* And with him also agreeth the Book called the *Mirror of Justice, lib. 2.* who saith thus, *Gaole nest auter chose que common Prison, & nul avera tiels forsq; le Roy: Private Prison est dauter, dont a chesteun list de scaper que poet, si non que il face trespass que escape.*

2 Ed. 3. 1.
Stamf. 31. d.

(d) But note, that at this Day there is no Difference whose Prison the Offender both break, whether it be the King's Prison, the Lord's of a Franchise, or any other Person's (a); for the Letter of the Statute is, *Prisonam frangentibus*, and not *Prisonam nostram*: So that whose Prison soever it be which is broken, it is within the Compass of this Statute.

Also whether it be a common Gaol, or a private Gaol or Prison, yea or but the Constable's House, or the House of any other Person who hath the Custody of him for Felony, there is no Difference; for these are Prisons for the Time, and so within both the Words and Meaning of this Statute.

Plo. fol. 13. b.
14 H. 7. 29.
Read 15 H.
7. 2.

Also by this Statute the Breaking of Prison is Felony in the Prisoner himself. And yet if the Prison shall be on Fire by Casualty, and they within shall break the Prison for saving of themselves; this is no Felony, but excusable by the Law of Nature.

Rescous by a
Stranger.1 H. 7. 6.
1 Ed. 3. 17.
Dyer 99.

(d) And if a Stranger doth break the Prison, or open the Stocks, or make a *Rescous*, whereby one imprisoned or arrested for Felony escapeth; this is Felony both in the Prisoner and in the Stranger, although the Prisoner was never indicted of the Felony.

9 H. 4. 1.
F. Co. 333.
Stamf. 33. 2.

By some Opinions, if a Stranger shall disturb the arresting of a Felon, it is no Felony, except the Felon were taken and arrested, and after rescued: Yet *Fitz. Just. P. fol. 114.* saith, that such Disturbance before Arrest is Felony.

1 H. 7. 6.

If a Prisoner be rescued at the Gallows, or as he is going to Execution, this is a Breaking of Prison, and Felony within the Statute. (a) And yet note this Difference; *sc.* that if a Felon, in going to his Execution, &c. be rescued from the Sheriff, this is Felony, if it be presented before the Justices, &c. and so found by Inquest: But otherwise it is, if it cometh in by the Return of the Sheriff, there is no Felony. 1 H. 7. fol. 6. *Fitz. Indictment* 30.

Escape.

P. R. 147.
149.
44 Ass. 18.
Br. Esc. 31.
Stamf. 31.

(d) If a Gaoler, a Constable, or any other which hath a Prisoner under Arrest for Felony, or Suspicion thereof, voluntarily suffereth him to go at Liberty; though this be no Breaking of Prison, yet 'tis Felony in the Gaoler, Constable, or him that letteth such Prisoner escape, but it is no Felony in the Prisoner; but if such a Prisoner shall escape by the Negligence of his Keeper, then the Felony resteth in the Prisoner only, and not in the Gaoler, &c.

(a) If any Man arrest another, and after voluntarily lets him go at large, if the Arrest were for Felony, it is Felony in him that so lets his Prisoner go; if the Arrest were for Treason, it is Treason, and if for Trespass, it is Trespass, & *sic de similibus.*

If the Gaoler or Keeper shall marry a Felon which is in his Gaol, this is an Escape: But *quere*, whether it be Felony in the Gaoler or no.

If a Gaoler shall let a Felon to Mainprise which is notailable, *dicitur* that this is no Felony, but finable: For although it were voluntary, yet it was *per Ignorance del Ley.* But *quere* hereof, for that the Gaoler hath no Authority to let any Prisoner to Bail; and the Prisoner being in for Felony, the Sheriff at this Day hath no Authority to bail such a Prisoner, except it be by Virtue of the King's Writ, &c.

If the Constable, or other Officer, shall voluntarily suffer a Thief, being in his Custody, to go into the Water to drown himself, this Escape is Felony in the Constable, and the Drowning is Felony in the Thief, *quia Felo de se.*

Otherwise, if the Thief shall suddenly (without the Assent of the Constable) kill, hang, or drown himself, this is but a negligent Escape in the Constable.

Voluntary
Escape.P. R. 149.
150.
9 H. 4. 1.
Stamf. 32.

(d) The voluntary letting of a Felon to escape who is not arrested for Felony, though he knoweth of the Felony, yet it is no Felony; neither can it be an Escape without an Arrest: And yet such an Offender, being an Officer, may for such his Negligence or Default be indicted and fined, as it seemeth by the Words of the Commission. *Quere* if he be not necessary to the Felony. See *Br. Escape* 43.

Dyer 44. a.

Note, that a Man is always said to be in Prison, so long as he is within the Sight of the Gaoler, or of him that hath him in Custody, though he do break away or escape.

(a) For an Escape is properly, when a Prisoner shall escape or get out of the View of his Gaoler or Keeper, and shall be taken again by fresh Suit.

Fresh Pursuit.
Stamf. 33.
Br. Esc. 4. &
35.
13 E. 4. 9.
Stamf. 33. b. c

(d) And if a Prisoner shall make an Escape (of his own Wrong, and without the Consent of the Gaoler, or other Person that hath him in Custody) tho' he escape out of their Sight, and into another County, yet if he be taken again upon *fresh Suit*, before the Gaoler, &c. be sued, or hath fined for the Escape (though it be seven Years after) yet this is no Escape, as it seemeth, for which the Officer shall be charged; for there is no Prejudice to the King by the Escape, though it be Felony in the Prisoner as aforefaid, and a Breaking of Prison in him, Co. 3. 44 & 52. accordeth in Case of a Prisoner taken in Execution, that shall make an Escape of his own Wrong.

If a Gaoler, or other Officer, &c. shall licence his Prisoner to go abroad for a Time, and to come again; this is an Escape, because the Prisoner is found out of the Bounds of his Prison, though the Prisoner return again, according as he shall be prescribed; and so is it, if the Officer shall suffer his Prisoner to go abroad for a Time by Bail, this is an Escape: Yet they are holden in both Cases to be but negligent Escapes in the Officer, and so but finable. But *quære*, for the Gaoler and other Officers ought to keep their Prisoners in *Salva & arcta custodia*. Vide post Tit. Imprisonment.

Co. 3. 44.
Stamf. 33. c.

Note, that the Sheriff of every County shall have the Keeping of, and shall be chargeable and charged with the Common Gaol and Prison of the same County, and with all the Prisoners therein; and must put in such Gaolers or Keepers for whom they will answer, as appeareth by the Statutes, 14 E. 3. cap. 10. & 19 H. 7. cap. 10. which also seemeth to have been the Common Law before, as you may see by the Preamble of the Statutes of 14 E. 3. & Co. 4. 34. And therefore the High Sheriff himself shall be answerable for an Escape of a Felon, suffered by his Gaoler, and may be indicted for the same. (See the Precedents in *Lambard, West, Crompton*). And so the High Sheriff, as he hath an Office of great Antiquity, Trust and Authority (for the Time,) so withal it is a Place of great Peril and Charge; and if the Rigour of the Law should be laid upon them, then should they have a warm Office, and be well rewarded. But in such Cases I have observed the favourable Exposition and Dealing of the Learned and Reverend Judges. First, you shall find in Sir *Edw. Coke's Reports*, lib. 9. f. 98. that the Gaolers who have the actual Possession shall be answerable for Escapes, if they have wherewith: Also *Popham* Chief Justice did cause one *Staver* (a Gaoler at *Cambridge*) to be indicted, arraigned, and hanged, for an Escape of a Felon suffered by him.

Fitz. Cor. 243
& 431.

(a) In the *Doct. & Stud. dialog.* 2. cap. 42. this Difference is taken; sc. that if the Escape were by Default (sc. a negligent Escape) of the Gaoler, that the King may charge the Gaoler if he will, or the Sheriff may be charged by Reason of the Statute 14 E. 3. cap. 9.

6 H. 7. 11.
Co. 4. 33.
West. M. 1.
Co. 4. 98.
Lam. 11. 5.
Temp. El.

But if it be a wilful Escape in the Gaoler, which is Felony in him, the Sheriff shall not be bound to answer to the Felony. (See there fol. 135. & 147.) But there the Sheriff may be fined to the Value of his Goods. *Stamf.* 35. b.

1 H. H. P. C.
597.

(d) Now an Escape is of two Sorts: *Voluntary* and *negligent*.

Voluntary Escape is, where one doth arrest or hath imprisoned another for Felony (or other Offence,) and after *voluntarily* letteth him go at Liberty where he will.

Escape is of two Sorts.
Stamf. 32.
Stamf. 33.

Negligent Escape is, when the Party arrested or imprisoned doth escape against the Will of him that arrested or imprisoned him, and is not freshly pursued and taken again before he hath lost the Sight of him which escaped; the Penalty whereof seemeth to be only a Fine at the Discretion of the Judges or Justices: Yet see *Stamf.* 35. k. a Difference of the Fine: Where the Prisoner is attainted, *le Fine serra C. l.* where but indicted C. s. and where only taken upon Suspicion, *semble dispunishable*. *Quære & vide F. Coron.* 224, 316, 454. & *hic infra*, that in Case of a Tretpass a *negligent Escape* is finable.

But for *voluntary Escape*, if the Arrest or Imprisonment were for Felony, it shall be adjudged Felony in him which did voluntarily suffer the Prisoner to escape; and if the Arrest, &c. were for Treason, it shall be adjudged Treason; and if the Arrest or Imprisonment were for a Tretpass, it shall be adjudged a Tretpass; and yet see *Fitz. Coron.* 248. *Escape, non adjudicabitur pro transgr.* (a) And in Case of Felony there is no Difference, whether the Felon be arrested by an Officer, or by another. See *Br. Cor.*

Stamf. 32.

Also in Case of a Tretpass, or other Offence of what Kind soever, (being neither Treason nor Felony) there seemeth no Difference, whether the Escape suffered by the Officer be voluntary, or negligent; but that the Officer in both Cases shall be fined for

such

such an Escape, according to the Quantity of his Fault, by the Discretion of those that shall be Judges of it.

5 Ann. c. 6.

Any Person having the Benefit of Clergy, and being committed to the House of Correction, and escaping, and being re-taken, shall be brought before one of the Judges, or two Justices of the Peace (one of the *Quorum*) of the Place where re-taken, who shall commit such Offender to some House of Correction in the Place where re-taken, without Bail, for no less Time than 12 Months, and not exceeding 4 Years, to be kept to hard Labour: And if the Keeper of the House neglect his Duty above directed, any Judge of Assize or Gaol-delivery, upon Complaint and Proof upon Oath, may remove the Keeper from his Office.

(d) One *Nichols* assaulted *Cholmly* to rob him, and killed him; after *Q. El.* granted *Nichols* his Pardon: But *Cholmly's* Wife having commenced her Appeal against *Nichols*, he was still detained in Prison at the Woman's Suit: After the Gaoler suffered *Nichols* voluntarily to go at large, and so to escape. By the Opinion of *M. Plowden*, this was Felony in the Gaoler, although *N.* the Prisoner were now no Felon to the Queen, in regard he had obtained his Pardon. *Plow.* 476. b.

F. Cor. 430.
& 431.
P. R. 150.

A Prisoner, found guilty of Petty Larceny, is adjudged to be imprisoned by the Space of a Month, for his Punishment, and after the Month he breaketh Prison, and escapeth: *Quære* what this is in the Prisoner, and what in the Gaoler. It is holden that the Gaoler shall be charged with this Escape. But if the Prisoner be discharged (by Judgment) paying his Fees, if he escape, here the Gaoler is not chargeable. The Difference is, the Prisoner in the first Case was by Judgment committed to Prison; and in the last Case he is adjudged to be acquitted of his Imprisonment, paying, &c. and yet he is a Prisoner until he hath paid his Fees.

21 H. 7. 17. a.
Br. Escape 16.
Plow. 465.
11 H. 4. 12.
Plow. 258.
263. & 401.
Br. Esc. 17.

Note, that a *voluntary Escape* is no Felony, if the Act done were not Felony at the Time of the Escape made. As if *A.* do strike *B.* and hurt him mortally, whereupon the Constables do arrest *A.* and after willingly suffer him to escape, and after *B.* dieth of that Stroke: This Escape is no Felony, either in the Constables or in the Prisoner; yet the Constables shall make a great Fine, yea, shall, or may, at the Discretion of the Judges, be fined to the Value of their Goods, as it seemeth, by 11 H. 4. 12. and *Stamf.* 25. b. because this Escape was voluntary.

Cromp. 39.

The voluntary Suffering him to escape who hath killed another *se defendendo*, or by Misadventure, or of him that hath committed Petty Larceny, seemeth not to be Felony; for that these Offences are no Felony of Death; but he that suffereth such an Escape shall be fined only. *Cromp.* 39. Yet *quære*, for they that suffered this Escape, are not to judge whether these Offences be Felony or no. See hereof *postea*, Tit. *Evidence against Felons.*

(a) A Man was taken for Suspicion of Felony, and was delivered to the Constable of *G.* and after escaped for Want of good Keeping, and the Constable was therefore taken and arraigned; and pleaded, That forasmuch as the Felon was not taken with the Manner, nor at the Suit of the Party, nor indicted of Felony, therefore it was no Escape, &c. And so was the Opinion of the Court then. See 42 *Aff. P.* 5. *Br. Escape* 39.

But the contrary was after holden in Case where the Escape was voluntary, although the Prisoner were taken only upon Suspicion. 44 *Aff. p.* 12. *Br. Escape* 31. & *Dyer* 99. that it is Felony, although the Prisoner were not indicted of Felony.

P. Escape 2.
Stamf. 35.

(d) Note also, where one is a Prisoner by Arrest only, and he doth escape, there the Escape shall be presented before the Justices of Peace, or other Justices having Authority to inquire of it, before he that suffered the Escape shall answer it, *sc.* before any Thing shall be taken or levied by the Sheriff or other Officer. *Vide Co.* 11. 64, 65. & *Stat. Westm.* 1. *cap.* 4.

13 H. 7. 7.
Cromp. 40.
P. R. 151,
152.
Cro. 34.
1 H. H. P. C.
592.
44 *Aff.* 12.
Cromp. 40.

Note also, if a Man be arrested for Suspicion of Felony by the Constable or other Person, and after they shall have Intelligence that there was no such Felony committed, here they may set the Party arrested at Liberty again, and they shall not be charged with the Escape; for there can be no Felon where there is no Felony committed.

But if a Man be slain, or that there be any other Felony committed, and one is arrested for the same Felony, or for Suspicion thereof, though he that made the Arrest shall after have certain Knowledge that the Party arrested is not guilty of that Offence, yet he or any other may not set the Party so arrested at Liberty; for now he must not be delivered by any Man's Discretion, but by Course of Law: Or otherwise it will prove a voluntary Escape, and so Felony.

(a) And yet if a Watchman shall take any Man for Suspicion of Felony, he may inquire of his good Name and Fame; and if he finds him to be of good Name and Fame, he may let him go. See the *Old Justice of Peace*, imprinted Anno 1559. fol. 13. But it were more safe for the Watchman to deliver such suspected Person to the Constable, Justice of Peace, or to the Sheriff, according to the Statute of *Winchester*. See *hic antea Tit. Watch*.

(d) If a Justice of Peace shall send for a Felon out of the Gaol, and shall deliver him without Bail, this seemeth to be a voluntary Escape, and so Felony in the Justice; otherwise where the Justice erreth *pro defectu scientiæ*, as to bail one that is notailable, this is but a negligent Escape. *Justice of Peace.* 25 E. 3. 39. 1 H. H. P. C. 597.

(a) If the Justice of Peace or Sheriff shall bail one who is notailable, this is an Escape. *Fitz. Escape 3. & Cor. 246. sc.* a negligent Escape, if it be in Ignorance, *ut supra*.

But if one that is brought before a Justice of Peace for Suspicion of Felony, shall confess the Felony before the Justice, and yet he shall suffer the Prisoner to go at large without Bail, this is a voluntary Escape, &c. *Vide Cromp. 39. a.*

C H A P. CLX.

Felonies by Statute.

(a) **A** *Annuity Orders*: Counterfeiting or Procuring them to be counterfeited or forged, or knowingly assisting therein, or fraudulently demanding any Annuity by Virtue of such forged Receipt: Felony without Benefit of Clergy. *Annuity Orders.* 9 Geo. 1. 12.

There is a like Clause in 4 Geo. 2. cap. 9. sect. 9. and in other Acts by which Annuities have been granted. 4 G. 2. c. 9.

Assurers of Ships: The Corporations thereof, &c. Counterfeiting their Corporation-Seal, or altering any Policy, Bill, Bond or Obligation under their common Seal, or paying such counterfeit Policy, or demanding the Money therein, knowing it to be counterfeited: Felony without Benefit of Clergy. *Assurers of Ships.* 6 Geo. 1. 13. §. 13.

Bail: Personating another before those who have Authority to take Bail: Felony. *Bail.* 4 W. & M. c. 4. §. 4.

Bank-Bills: Counterfeiting the Common Seal of the Bank of *England*, or any sealed Bank-Bill or Note, or Altering or Erasing such Bill or Note: Felony without Benefit of Clergy. *Bank-Bills.* 3 & 9 W. 3. c. 20. §. 36.

Bankrupt: Concealing his Effects, &c. Felony without Benefit of Clergy, and the Goods which he forfeits by such Felony, to be divided amongst his Creditors. *Bankrupts.* 5 Geo. 2. c. 30. §. 1.

Blacks, &c. appearing in any Disguise in Forests, Parks, &c. or Highways, &c. and unlawfully hunting Deer, robbing any Warren, destroying Fish, maiming Cattle, destroying Trees in any Avenue, &c. firing Houses, Stacks of Corn, &c. maliciously shooting at any Person, sending threatening Letters, &c. is Felony without Benefit of Clergy. *Blacks, &c.* 9 Geo. 1. 22. §. 1.

Destroying any Part of *Fulham* Bridge, or attempting so to do, is Felony without Clergy. 12 Geo. 1. c. 36. §. 3.

Attempting to destroy *Westminster* Bridge, is also Felony without Clergy. 9 Geo. 2. c. 29. §. 5.

(d) *Buggery* committed with Mankind or Beast is Felony without Benefit of Clergy, it being a Sin against God, Nature, and the Law. (a) And in antient Times such Offenders were to be burnt by the Common Law. *Fitz. 269. b. Fi. lib. 2.* *Buggery.* 25 H. 8. 6. 5 El. 17. 1 H. H. P. C. 623, 669, &c.

(a) *Burning of Houses and Stacks of Corn*: If any in the Night-time, maliciously or willingly burn, or cause to be burned or destroyed any Ricks or Stacks of Corn, Hay or Grain, Barns, Houses or Buildings, or Kilns, or kill or destroy any Horses or Sheep; it is Felony. *Burning Stacks of Corn, &c.* 22 & 23 Car. 2. c. 7. §. 2.

If any Person that shall be convict or attaint of that Felony to avoid Judgment of Death, shall elect to be transported to any Plantation, Judgment shall be entred, That he shall be transported, and there remain seven Years; and the Sheriff shall convey him, and imbarck him for Transportation. And if he return within seven Years, he shall die as a Felon. *Ib. §. 4.*

If a Man maketh a Bill or Writing, and layeth or casteth the same at another Man's Door, therein threatening to burn his House if he giveth not some Money, &c. this hath been taken to be Felony. See 6 H. 7. f. 13. a. And *quere* what Statute it is that the Book meaneth. *Note*; by the Statute of 8 H. 6. cap. 6. such Offence was made Treason. *Br. Cor. 213.*

son, if after the Offender did burn the House; but that Statute of 8 H. 6. standeth now repealed.

9 G. 1. c. 22. § 1. By the Statute 9 Geo. 1. cap. 22. maliciously setting Fire to any House, Barn or Outhouse, or to any Hovel, Cock, Mow or Stack of Corn, Straw, Hay or Wood, is Felony without Benefit of Clergy.

Coal Pits. Willfully and maliciously setting on Fire, or causing, &c. any Mine, Pit or Delph of Coal, is Felony without Clergy.

10 Geo. 2. c. 32. § 6. Clothes: Wilfully and maliciously Assaulting a Person in the Highway, with an Intent to spoil or deface Clothes, Felony, and to be transported for seven Years.

6 G. 1. c. 23. § 11. Coin. &c. Blanching Copper for Sale, or mixing blanch'd Copper with Silver, or knowingly Buying or Selling such, or any malleable Mixture of Metals or Minerals heavier than Silver, and wearing like Gold, or receiving, paying, or putting off any counterfeit or unlawfully diminished mill'd Money, at a lower Rate than it imports, is Felony.

Congregation of Masons. (d) Congregations and Confederacies holden by Masons, it is Felony in the Causes thereof, and fineable in the Masons that come to such Congregations. 3 H. 6. cap. 1. *
* This is repealed according to 1 H. H. P. C. 645.

11 G. 2. c. 22. § 1. (a) Corn: If any Person convicted of the Offences mentioned 11 Geo. 2. cap. 22. sect. 1. (See Tit. Corn supra, Chap. 27. p. 63.) shall commit the like a second Time, or shall wilfully and maliciously destroy any Store-house or Place where Corn shall be kept for Exportation, or enter such Place and carry away Corn, Meal, &c. or spoil the same, or enter any Ship or Vessel and damage any Grain, &c. for Exportation, such Offender shall be guilty of Felony, and transported for seven Years, and returning before the Expiration of the said Term, shall suffer Death without Benefit of Clergy.

5 H. 4. c. 5. P. Fel. 19. Cutting out of any the King's Subjects Tongues, or putting out their Eyes, of Malice prepensed, is Felony.
See Maiming, infra.

22 Car. 2. c. 5. § 3, 4. Cloth: Such as shall steal Cloth, or other Woollen Manufactures from the Tenters in the Night-time, and be indicted thereof, shall lose the Benefit of Clergy; but the Judge may order him to be transported; which if he shall refuse to be, or shall return within seven Years, he shall be executed.

Banks. (d) Cutting or Breaking down of Powdike or other Banks in Marshland maliciously, is Felony. 2 & 3 Ph. & M. cap. 19.
22 H. 8. 11. P. Fel. 36. See also 5 Car. 2. c. 17. §. 13. and infra, Fens.

6 G. 2. c. 37. § 5. Contin. (a) Unlawfully and maliciously cutting down the Bank of any River or Sea-Bank, whereby Lands shall be damaged, is Felony without Benefit of Clergy.
to 1 Sep. 1744.

Conjuration and Witches. Conjuration, or Invocation of any evil Spirit, for any Intent, &c. or to be counselling or aiding thereto, was made Felony without Benefit of Clergy, by 1 Jac. 1. cap. 12. but this Statute being repealed by 9 Geo. 2. cap. 5. which enacts, That no Prosecutions whatsoever shall be carried on against any Person for Witchcraft, Sorcery, &c. we shall here omit the Account and Description of Witches and Witchcraft, inserted in the former Editions of this Work.

But note, That by the said Statute 9 Geo. 2. cap. 5. pretenders to Witchcraft and Fortune-tellers, &c. shall be imprisoned for a Year, and once every Quarter of the Year stand on the Pillory for an Hour, and shall be obliged to give Security for their good Behaviour in such Sum and for such Time, as the Court, by which Judgment shall be given, shall judge proper.

Customs. Customs: Officer hindered in the Execution of his Office, by Persons tumultuously assembled to the Number of eight or more, such Offenders, and those who aid and assist them, shall be transported for seven Years, and if they return within that Time, 'tis Felony without Benefit of Clergy:
6 G. 1. c. 21. §. 34. See 3 Geo. 2. c. 18.

9 G. 2. c. 25. And Persons to the Number of three assembled and armed, in order to run Goods, shall be guilty of Felony, and transported for seven Years. See more fully, supra, pag. 70, 71.

9 G. 2. c. 30. §. 1. Enlisting Soldiers, for the Service of Foreign States, without the King's Licence, is Felony without Benefit of Clergy. The Person enlisted is subject to the same Penalty, but indemnified if within fourteen Days he makes Discovery to some Civil Magistrate of the Person who enticed him.

Exchequer Bills. See Forgery, *infra*.

(d) Imbeziling the King's Ordnance, Armour, Shot, Powder or other Habiliments for War, or Victuals provided for Soldiers, &c. if it be by any Person having the Charge or Custody thereof, and to the Value of twenty Shillings, though at several Times, it is Felony.

Imbeziling Stores.
31 El. 4.
P. Fel. 33

Imbeziling any Record, or Parcel thereof, Writ, Return, Panel, Process, or Warrant of Attorney in the Chancery, Exchequer, King's Bench, Common Pleas, or Treasury, (by Reason whereof any Judgment shall be reversed) it is Felony in the Parties, and in their Counsellors, Procurers or Abettors.

8 H. 6. 12.
P. Fel. 18.
Vide Co. 11.
33. b.

(a) Clergy is taken away from such as offend against 31 Eliz. 4. As also, if any shall steal or imbezil any of the King's Sails, Cordage, or Naval Stores, to the Value of twenty Shillings, and be found guilty by Verdict or Confession; or will not answer directly, or stand mute, or be outlawed; he shall suffer Death, without Benefit of Clergy.

22 Car. 2.
c. 5. §. 3.

The Judge may reprieve the Prisoner, and order him to be transported; which if he shall refuse to be, or shall return in seven Years, he shall be executed.

Ib. §. 4.

(d) So the Razing of such Record, is Felony (within the said Statute of 8 H. 6.) Yet if a Judge do imbezil or raze a Record, this is but Misprision in the Judge.

1 R. 3. 1. 10.
Co. 11. 34.
2 R. 3. See 1 R. 2.
c. 4.
Lamb. 529.

Br. Cor. 174. & Treason 31.

But the Justices of Peace have not to do with these two last Sorts of Felonies, (*sc.* with imbeziling or razing of Records) for that these Felonies are committed to other Judges to deal with, by the same Statute of 8 H. 6. P. Records 4. See before Tit. Felony.

Egyptian, *sc.* if any Person of the Age of fourteen Years or above, shall call himself an Egyptian, or shall be in the Company of such, or shall disguise himself in Apparel, Speech, or otherwise, like such, and shall be or continue in England one Month, at one or several Times; it is Felony without Benefit of Clergy.

Egyptian.
1 & 2 P. & M.
4. §. 3.
5 El. 20.
P. Fel. 26.

See Egyptians, Ch. 36. *supra*.

(a) Note, That these Manner of Persons are besides all of them for the most part Thieves, Cut-purses, Couzeners, or the like; and therefore the Justice of Peace shall do well to be careful, not only in the examining of them, but also to cause them to be well searched for counterfeit Passes, stolen Goods, and the like.

Every Person which shall acknowledge any Fine, Recovery, Deed inrolled, Statute, Recognizance, Bail or Judgment, in the Name of any other Person not privy or consenting to the same, being thereof lawfully convicted, shall be adjudged a Felon, without Benefit of Clergy, &c.

Personating others in Fines &c.
21 Jac. 1.
c. 26. §. 2.

Fens: Maliciously setting Fire to any of the Engines for draining the Fens in Ely; the first Offence is Imprisonment for three Years; the second, Felony without Benefit of Clergy.

11 G. 2. c.
34. §. 10.

Forestalling or Buying any Merchandize before they come to the Staple, &c. was made Felony by 27 Ed. 3. cap. 11. but see Mr. Cay's Abridgment, Tit. Forestallers, 3.

(d) Forging of Evidences, *sc.* of any Deed, Charter, Obligation, Bill, Release, or other Writing sealed, or of any Court-Roll, or Will, or of any Acquittance; or to cause or assent to be made any such forged Writing; or Publishing any such Writing, knowing the same to be false: The second Offence is Felony without Benefit of Clergy. But it seemeth also, that the Justices of the Peace have not to deal with this, for that they cannot well take Notice of the former Conviction. See Co. 9. 118. b. & *hic antea*, Tit. Felony.

Forging.
5 Eliz. 14.
P. Fel. 26.
Lamb 229.

(a) Forging the Hand of the Accountant General of the Court of Chancery or of the Register, &c. in order to receive any Money of the-Suitors, or forging any Certificate, &c. made by the Accountant General, &c.

12 G. 1. c.
32. §. 9.

Or any Bond of the East-India Company, or any Indorsement thereon; or any Bond of the South-Sea Company; Felony without Clergy.

Forging any Deed, Will, Bond, Writing Obligatory, Bill of Exchange, Promissory Note, Indorsement of any such Bill or Note, or any Acquittance or Receipt for Money or Goods, or uttering or publishing any such with Intent to defraud; Felony without Clergy.

2 G. 2. c. 25.
§. 1. *revised and made perpetual*
9 G. 2. c. 18.

Forging, altering or erasing a Mediterranean Pass; Felony without Clergy.

4 G. 2. c. 18.
§. 1.

7 G. 2. c. 22. *Forging* the Acceptance of any Bill of Exchange, or the Number or Principal Sum of any accountable Receipt for any Note, Bill or other Security for Money, or any Warrant or Order for Payment of Money or Delivery of Goods; Felony without Clergy.

It is made Felony without Benefit of Clergy, to forge *Bank Notes, Exchequer Bills* or *Orders*, by the several Acts of Parliament relating to those Securities.

Gaolers.

14 Ed. 3. 10.
P. Fel. 17.
Stamf. 36. c.

(d) *Gaolers* (by Durefs of Imprisonment and Pain) inforcing their Prisoner to become an Approver, (that is, an Accuser of others as Coadjutors with him in Felony;) this is Felony in such Gaoler, although the Appellee, or Party so accused be acquit, or shall happen to die before he be arrested upon the Appeal.

(a) If a Gaoler shall only procure his Prisoner to appeal, or accuse another of Felony, this is Felony, by *Scrope. An. 18 Ed. 3. Abr. d'Aff. 75. & Fitz. Coron. 272.* And yet the Statute of 14 Ed. 3. seemeth to extend only where the Gaoler shall do this by great Durefs or Pain.

Alſo by *Brit. f. 18.* if the Gaoler shall keep his Prisoner more strait than he ought of Right to do, by Reason whereof the Prisoner dieth; this is Felony by the Common Law in the Gaoler. And herein the Book called *Speculum Justiciar.* agreeth with *Briton.* And yet by the Statute of *West. 1. cap. 12.* Notorious Felons, and such as be openly of evil Name, or which be rebellious, they shall have strong and hard Imprisonment.

Hawks.

34 E. 3. 22.
37 E. 3. 19.
P. Fel. 20.

(d) *Hawks*: Whoſoever findeth any Hawk that is loſt, if he ſhall not immediately bring the ſame to the Sheriff of the ſame County to be proclaimed, &c. but doth imbezil and carry away the Hawk, it is Felony.

P. Hawks
2. Vide.

So it is in him whoſoever taketh up any Hawk, and concealeth the ſame from the Owner, or his Falkner, or that taketh away any Hawk from the Owner, or ſtealeth any Hawk and carrieth it away, not obſerving the aforeſaid Ordinance.

6 G. 2. c. 37.
§. 6. contin.
to 1 Septem.

(a) *Hop-binds*: Malicious cutting them, in Plantations of Hops, is Felony without Benefit of Clergy.

1744, and to the End of next Sessions, by 10 G. 2. c. 32. §. 3.

31 El. c. 12.
§. 5.

Horse-stealing: The Principal and Accessaries before and after are Felons, without Benefit of Clergy.

Hunting.

1 H. 7. 7.
P. Felon. 24.
Lamb. 271.
Dyer 50.

(d) *Hunting of Deer or Conies* in any Park, Forest or Warren, unlawfully in the Night-time, or with Vizards or other Disguise, and (upon an Examination by a Justice of Peace, &c.) to conceal the Offence, or any other Offender therein, is Felony in such Concealer: But if such Offender (upon his Examination) shall confess all the Truth, then he is but finable. See hereof, *antea Tit. Hunting.*

If any Person to be arrested for such Offence shall disobey the Arrest, or if any Person shall make Rescous, so that the Warrant (of the Justice of Peace) &c. for arresting them be not executed, it is Felony.

Quere, If such Hunting and Concealment, or Resistance, be Felony where the Offenders killed no Deer, &c. it seemeth not; for all the Precedents do run, *Occiderunt & asportaverunt, &c.* See *Lambard, Crompton & West.*

(a) Alſo *Quere*, If all ſuch Hunting diſguiſed, or any other unlawful Hunting in the Night-time, be not Felony; although the Offender be never examined thereof, nor conceal the ſame, as aboveſaid. See the Statute 1 H. 7. cap. 7. *in fine*, where it ſeemeth that all unlawful Hunting in the Night (generally) is Felony. See in this Chapter, *antea Blacks.*

3 Ed. 1. 20.
P. Fel. 24.

(d) If any Person shall take a tame Beast, or other Thing in a Park, by Manner of Robbery, it is Felony; and the Statute seemeth to be but an Affirmance of the Common Law in this Point.

Imprisonment.
43 El. 13.

(a) *Imprisoning*, or Taking against their Wills (without lawful Authority) any Subject in *Cumberland, Northumberland, Westmorland*, and the Bishoprick of *Durham*, and carrying them away to make a Prey of them.

Or, to be privy, consenting, procuring, aiding or assisting thereto:

Or, to receive, carry, or give any Consideration (called *Blackmail*) for Protection therein.

Or, to burn any Barn or Stack of Corn there; or to be aiding, procuring or consenting thereto.

Every of these Offences is Felony without Benefit of Clergy.

Lead fixed to any House, &c. stealing it, is Felony. See *Chap. 156. supra.*

4 Geo. 2. c. 32

Leather and Skins: Forging any Mark made in pursuance of 9 *Annæ, cap. 11.* or counterfeiting the Impression of the same on any Skin or Hide, &c. to defraud the Crown; or selling such Hide with such counterfeit Mark, knowing it to be such, is Felony without Clergy.

9 Ann. c. 11. §. 44.

Linen: Counterfeiting any Seal, (or its Impression) provided in Pursuance of 10 *Ann. cap. 19.* for Marking Linens or Silks, &c. printed in *Great Britain*, is Felony without Clergy.

10 Ann. c. 19. §. 97.

Stealing out of any Bleaching Croft, Linen or Cotton Cloth, or Thread, Yarn, Tape, &c. exposed to be whiten'd, to the Value of 10 s. or Receiving such stolen Goods knowingly, is Felony without Clergy.

4 Geo. 2. c. 16. §. 1.

Lottery Tickets: Forging or Counterfeiting them, or standing Orders made and exchanged for them, or Receipts to be given out in Pursuance of the Lottery-Acts; or Altering the Number or principal Sum of any Order, or Counterfeiting the Hand of any Person to such Order, is, by a Clause inserted in the several Acts, made Felony without Benefit of Clergy.

Lottery Tickets and Orders.

Maiming: Malicious Cutting out, or Disabling the Tongue, Putting out an Eye, Slitting the Nose, Cutting off Nose or Lip, Disabling any Limb or Member of any of the King's Subjects, with Intention to maim or disfigure, is Felony without Benefit of Clergy.

22 & 23 Car. 2. c. 1. §. 1.

(d) *Marriage: sc.* If any Person being married, shall marry a second Husband or Wife, the first Husband being alive, &c. it is Felony; (a) except where the Husband or Wife have been absent seven Years, and the one not knowing the other to be living within that Time; except also Persons divorced, &c. by Sentence in the Ecclesiastical Court; and except Persons marrying within the Age of Consent.

Bigamy. 1 Jac. 1. 1 f. P. Fel. 4.

Moss-Troopers: For the Suppression of Thieves and Robbers, called *Moss-Troopers*, see 13 & 14 *Car. 2. cap. 22.* which is continued by 6 *Geo. 2. cap. 37. sect. 7.* to the first of *September 1744, &c.* and the Clause in the 18 *Car. 2. cap. 3. sect. 2.* taking away the Benefit of Clergy from great and notorious Thieves and Spoil-takers in the Counties of *Northumberland* and *Cumberland*; as also the Clauses in the 29 & 30 *Car. 2. cap. 2. sect. 2 & 3.* empowering the Justices of Peace for the said Counties respectively, to take Security from the Persons by them employed, for the Preservation of the said Counties from Theft and Rapine, &c. are likewise revived and continued to the said first of *September 1744, &c.*

Moss-Troopers. 6 Geo. 2. c. 37. §. 7.

Perjury: Offender may be transported for seven Years, and returning before the Expiration of the Term, shall be a Felon without Benefit of Clergy.

2 Geo. 2. c. 25.

Piracy: Concerning this Offence, see the Statute of 28 *H. 8. cap. 15.* as also 11 & 12 *W. 3. cap. 7.* and by 4 *Geo. 1. cap. 11. sect. 7.* Pirates are debarred from the Benefit of Clergy.

Piracy.

(d) *Plague, sc.* If any Person being infected with the Plague, and being commanded by an Officer to keep his House, shall notwithstanding go abroad, and converse in Company, having an infectious Sore upon him, it is Felony.

Plague. 1 Jac. 1. 31. §. 7. P. Fel. 3.

Poisoning, sc. Wilful killing of any Person by Poison, is wilful Murder in the Offenders, their Aiders, Abettors, Procurers and Counsellors. the Party poisoned must die thereof within a Year and a Day after the Poison received. See *antea*, in the Title *Murder.*

Poisoning. 1 Ed. 6. 12. Co. 11. 31. But P. Fel. 37. P. Mur. 5.

Popish Priests: To receive, relieve, aid or maintain any such, &c. is Felony. Here *antea*, Tit. *High Treason.*

Popish Priests and Recusants P. Jesuits 2.

Popish Recusants: And such other Recusants and Sectaries which (by the Statutes of 35 *Eliz. 1 & 2.*) are to abjure, if they shall refuse to abjure, or after Abjuration shall not depart the Realm, according as they shall be appointed, or after such Departure, shall return again without the King's special License in that Behalf first obtained, it is Felony without Benefit of Clergy.

P. Fel. 5. 35 El. c. 1 §. 3. 35 El. c. 2. §. 10.

Pretended privileged Places: Any Person within the *Mint*, wilfully obstructing any Person serving any Writ, Warrant, or legal Process, &c. shall be guilty of Felony, and transported for seven Years.

9 Geo. 1. c. 28.

* And any Person disguised joining in any Riot, or opposing the Execution of any legal Process, &c. within the Limits aforesaid, shall be adjudged guilty of Felony, without Benefit of Clergy. And every Person aiding or abetting, concealing or harbouring such disguised Person, shall be adjudged guilty of Felony and transported.

ib. §. 3.

- 11 Geo. 1. c. 22. The like Provision is made against the said Offences, if committed within the Hamlet of *Wapping*, *Stepney*, or any other Place within the Bills of Mortality, whereof Presentment shall have been made by the Grand Jury at a General or Quarter-Sessions. *Vide supra* Chap. 78. Tit. *Pretended privileged Places*.
- 9 Ann. c. 16. §. 1. *Privy Council*: Attempting to kill, or striking a Privy Counsellor in the Execution of his Office, is Felony without Benefit of Clergy.
- Purveyors*. *Purveyors*, Purveyance is taken away by 12 Car. 2. cap. 24. *vide supra* Chap. 79. so the old Learning on this Head is here omitted.
- Riot*. *Riot*, &c. where there are twelve Persons or more unlawfully assembled, and will not depart after Proclamation made for that Purpose, they shall be guilty of Felony without Benefit of Clergy.
- 6 Geo. 2. c. 30. §. 53. *Rivers*: Destroying or damaging Banks or other Works, to the Prejudice of the Navigation of the River *Dee* is Felony.
- Robbing*. (d) *Robbing* in the Day-time any Dwelling-house, or any Out-house belonging and used to and with any Dwelling-house, or a * Barn or Stable, &c. if it be to the Value of five Shillings, or above, although no Person therein; or to rob any House by Day or by Night, any Person being therein, and thereby put in Fear; or to rob any Person in any Part of his Dwelling-place or House, the Owner or Dweller, his Wife, Children or Servants, being therein, or in any Place within the Precinct of the same House or Dwelling-place sleeping or awaking; or to rob any Booth or Tent in a Fair or Market, the Owner, his Wife, Children, or any Servant being there within the same (sleeping or waking;) every of these Offences are now by the Statute made Felony, and as penal as Burglary, by the Loss of the Benefit of Clergy. But to break a House in the Day-time, although he hath a felonious Intent, yet if he carrieth away nothing, this is no Felony; for there must be actual Felony done, besides the Breaking of the House in the Day. And by the Report of Master *Dalison*, the * Statutes shall be strictly construed (in favour 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 Servant only, or there be in the House, Booth or Tent, but a Stranger or Sojourner only, the Fact shall not be adjudged an Offence against these Statutes. *Crompt.* 118. *Co.* 11. 36.
- See 11 Co. 31, 32, 36. *Stamf.* 126.
- Lamb. 261. * 23 H. 8. c. 1. 5 E. 6. c. 9.
- 7 Geo. 2. c. 21. (a) Assaulting with an Intent to rob is also Felony.
- Servants*. *Servants* imbeziling their Master's Goods. See hereof *antea*, Tit. *Theft*.
Sheep: Transporting them, when Felony *vide infra* *Transporting*.
- 14 Geo. 2. c. 6. If any Person shall drive away, or in any other Manner steal any Sheep or other Cattle of other Persons, with an Intent to steal the whole Carcase, or any Part, or shall assist any Person to commit such Offence, such Offenders shall be guilty of Felony without Benefit of Clergy.
- Ship*. *Ship*, &c. The Owner, Captain, Master, Mariner, or other Officer belonging to any Ship, who shall wilfully burn or destroy the Ship, or direct or procure the same to be done, to the Prejudice of any Underwriter of a Policy of Assurance, or of any Merchant who shall load Goods therein, shall suffer Death.
- 4 Geo. 1. c. 12. §. 3.
11 Geo. 1. c. 29. §. 5.
22 & 23 Car. 2. c. 11. §. 9.
- A Mariner laying violent Hands on his Commander, to hinder him from Fighting in Defence of his Ship and Goods, shall suffer Death as a Felon.
- 1b. §. 12. Wilfully Casting away, Burning or Destroying a Ship, by the Officers or Mariners belonging to it, is Felony.
- & 1 Ann. Stat. 2. c. 9. §. 1. Making Holes in the Bottom, Sides, or any Part of a Ship, stealing the Pump, or doing any Thing to the Loss of it, Felony without Benefit of Clergy.
- 12 Ann. c. 18. §. 5. *Shop*, *Warehouse*, *Coach-house* or *Stable*: Stealing Goods out of any of them, by Night or Day, to the Value of 5 s. although the Shop, &c. be not broke open, and although the Owner or other Person be not in such Shop, &c. or assisting, hiring or commanding such Stealing; is Felony without Benefit of Clergy.
- 11 & 12 W. 3. c. 23. §. 1. (d) *Soldiers*, *scil.* If any Subject shall pass out of this Realm, to serve any foreign Prince, &c. not having before their Passing taken the Oath of Allegiance, &c. before the Officer thereunto appointed, it is Felony.
- Soldiers*. 3 Jac. 1. c. 4.
- Ibid.* If any Gentlemen, or Person of higher Degree, or any Captain, or other Officer in Camp, shall pass out of this Realm to serve any Foreign Prince, &c. or shall voluntarily serve any foreign Prince, &c. before they shall become bound to the King with two Sureties (before the Officer thereto appointed) with Condition to this Effect, *viz.* not to be reconciled to the Pope, &c. nor to make or consent unto any Conspiracy against the King, &c. but to disclose all Conspiracies upon Knowledge thereof, &c. it is Felony.

Soldiers entred of Record, and having taken Prest-Money, or Parcel of their Wages of their Captain, if they shall not pass the Sea, or go with their Captain, or being in the King's Service shall depart without License, it was made Felony by the Statute of 18 H. 6. cap. 19. But see Co. 6. 27. that this Statute of 18 H. 6. 19. is now of little Force, for that the ancient Manner of retaining Soldiers, to which this Statute hath Reference, is now altogether changed, &c. And yet if a Soldier who is retained, or hath taken any Prest-money, shall at this Day depart out the King's Service without License, it is Felony by the Statutes 7 H. 7. 1. & 3 H. 8. 5. Which two last mentioned Statutes are yet in Force, and are Acts perpetual *. Co. *ibid.* And by the said Statute of 3 H. 8. cap. 5. such License of Departure must be made by the King's Lieutenant.

18 H. 6. 19
P. Fel. 23
P. Capt. 3
Co. 6. 27.
* But see Mr. Cay's Abr. Tit. Soldiers 4

Soldiers, if they shall depart without License, after they have served in the King's Wars, it is Felony without Benefit of Clergy. None but the Lieutenant shall give a Soldier License to depart. See 4 & 5 Ph. & Mar. cap. 3.

2 & 3 Ed. 6. c. 2.
Co. 6. 27.
4 & 5 P. & M. c. 3.

If any Mariner or Gunner, having taken Prest-wages to serve the King on the Sea, shall not come unto, or shall depart from his Captain without License, it is Felony. (a) Yet *quære*, and see the Statute of 5 El. cap. 5. at large, for that it doth relate to the aforesaid Statute of 18 H. 6. 19. which (as appeareth before) is now of little Force.

5 El. 5.
P. Fel. 23.

(d) Soldiers and Mariners, and all idle Persons wandering as Soldiers and Mariners, which will not settle themselves to some lawful Course of Life, but shall wander up and down idly, or beg up and down, it is Felony in them without Benefit of Clergy.

Soldiers.
39 El. 17.
§. 2.

So it is if any idle or wandring Soldier or Mariner, coming from beyond the Seas, or from the Seas, shall not have a lawful Testimonial under the Hand of some one Justice of Peace near the Place of his Landing, setting down therein the Place and Time of his Landing, and the Place unto which he is to pass, and a convenient Time for his Passage.

39 El. 17.

Or having such Testimonial, if they shall wilfully exceed the Time therein limited above fourteen Days.

Ibid.

Or if they shall forge or counterfeit any such Testimonial; or shall have any such forged Testimonial, knowing the same to be forged, &c.

Ibid.

Or being retained into Service after his Arraignment, &c. if he shall depart within the Year without License of his Master. In all these former Cases it is Felony in such Soldier, &c. without any Benefit of Clergy.

(a) Justices of Peace may hear and determine these Offences by Soldiers, Mariners, and idle Persons wandering, and shall execute the Offenders convicted before them, except some Subsidy-man, or honest Freeholder, to be allowed by the Justices, will be content before them, to take him into Service for a Year, and be bound in a Recognizance of 10 l. to keep him a Year, and to bring him to the next Sessions after the Year: And if he depart from his Service before the Year ended, he shall be indicted, tried and judged as a Felon, and not to have his Clergy.

Ibid.

And yet see the Statute of 43 El. 3. that Soldiers and Mariners begging, or counterfeiting a Certificate from their Captain, shall be adjudged and punished but as Rogues. See *hic antea*, Tit. Rogues.

Offences of Soldiers are now provided for by the annual Act for punishing Mutiny and Desertion, which see at large.

South-Sea: Forging any Warrant for a Dividend, or any Indorsement or Writing, &c. or tendering the same, &c. Felony without Benefit of Clergy.

South Sea.
6 Geo. 1. c. 11.
§. 50.

Spirituous Liquors: Tumultuous riotous Assembling to the Number of five, to rescue Offenders against 9 Geo. 2. cap. 23. or to assault, beat, &c. Informers, is Felony; and Offenders may be transported for seven Years.

9 Geo. 2. c. 23.

Stamps: Forging them is Felony without Benefit of Clergy.

Stamps.
5 & 6 W. & 6 Geo. 1. c. 21.

M. c. 21. 9 & 10 W. 3. c. 25. 9 Ann. c. 23. 10 Ann. c. 19. 10 Ann. c. 26. 6 Geo. 1. c. 21.

Stock, or Share of Company, &c. Forging, or procuring to be forged, or wilfully acting and assisting in forging a Letter of Attorney, or other Instrument, to transfer or assign any Share in the Capital Stock of any Corporate Body established by Act of Parliament, or the Name of any Proprietor; or to receive any Annuity or Dividend, or falsely to personate any Proprietor, Felony without Benefit of Clergy.

Stock, or Share of Companies.
8 Geo. 1. 22.
§. 1.

6 Geo. 1. c. 23. The Court, before Felons are convicted, may appoint two Justices of the County, to contract with any Person for transporting them.

Sheep. (d) *Transporting* or sending any live *Sheep* out of the King's Dominions, the second Offence is Felony.

8 El. 3. P. Fel. 2.

Wools. (a) It was made Felony for any Man to carry or to transport any Wools, Leather, Woolfels or Lead, out of *England* or *Ireland*; but see other Statutes since made concerning the same. *Supra* Chap. 113, and *infra* Chap. 196.

1 Geo. 2. c. 19. §. 2. *Turnpikes*: Destroying them, the second Offence is Felony. See Title *Highways*, *supra* Chap. 50.

10 Geo. 2. c. 31. *Watermen* carrying more Passengers than allowed by 10 Geo. 2. cap. 32. if any Passenger shall be drowned, such Waterman shall be guilty of Felony. See *Chap.* 105. *supra*.

Women. (d) *Women*: *sc.* To ravish a Woman where she doth neither consent before nor after; or to ravish any Woman with Force, though she do consent after, it is Felony;

13 E. 1. 34. P. Fel. 14. (a) and the Offender shall have no Benefit of Clergy. 18 El. cap. 6. *Br. Cor.* 204. *Vide Dyer* 202. That Man shall die by the Law of God, *Deut.* 22. 25.

6 R. 2. c. 6. If a Man take away a Maid by Force and ravish her, and after she giveth her Consent, and marrieth him, yet it is a Rape.

Ravishment is here taken in one and the same Signification with Rape, which is a violent Deflowering of a Woman, or carnal Knowledge had of the Body of a Woman against her Will. 9 Ed. 4. 36. *Fl. l. 2. & Co. L.* 123.

Stamf. 22. (d) A Woman that is ravished ought presently to levy open Hue and Cry, or to complain thereof presently to some credible Persons. *Glanvile* 115. See the Statute *De Officio Coronatoris.* 4 E. 1.

1 H. H. P. C. 632. (a) *Fleta* saith, That the Complaint must be made within forty Days, or else the Woman may not be heard. *Lib. 3. cap. 5.* But in *Scotland*, and some other Countries, this ought to be complained of the same Day or Night that the Crime is committed. The Reason is, *Quia lapsu diei hoc crimen præscribitur.* *Minsb.* and *Dr. Cowel.*

And yet in an Indictment of Rape there is no Time of Prosecution necessary, for *Nulum tempus occurrit Regi.* But in case of an Appeal of Rape, if the Woman doth not prosecute it in convenient Time, she shall be barred.

Brit. 55. (d) If a Woman at the Time of the supposed Rape do conceive with Child by the Ravisher, this is no Rape; for a Woman cannot conceive except she doth consent.

Stamf. 24. Finch, l. 2. 1 H. H. P. C. 631. *is contrary.*

5 E. 4. 6. And yet if a Man ravish a Woman, who consenteth for Fear of Death or Dureffs; this is Ravishment against her Will, for that Consent ought to be voluntary and free.

All such as are present, abetting, aiding or procuring another to commit a Rape, are principal Felons.

(a) If a Man and a Woman be present, with Purpose that the Man shall by Violence carnally know the Body of another Woman there also present, against her Will, and the Man doth the Fact in the Presence of the other Woman, she so present (as well as the Man) shall be a principal Ravisher; the Man the Agent, and the other Coadjutant: And so one Woman may be a Principal to the Ravishment of another. *Dod.* 138.

Stamf. 22. (d) It is a good Plea in an Appeal of Rape, to say, That before the Ravishment supposed she was his Concubine, as Mr. *Bracton* saith*.

* *But according to 1 H. H. P. C. 628. this is no Exception at this Day.*

Cromp. 47. And yet to ravish an Harlot against her Will is Felony; for *licet Meretrix fuerit ante, certe tunc temporis non fuit, cum nequitie ejus reclamando consentire noluit.* *Bract. lib. 2.*

3 H. 7. 2. Also to take any Maid, Widow or Wife (having Lands or Goods, or being Heir apparent to her Ancestor) against her Will unlawfully, is Felony; and to receive any such Woman so taken, knowing thereof, or to procure and abet the same, is Felony; and they shall all be reputed as Principals: And as well the Principals as Accessaries before the Offence shall lose all the Benefit of Clergy, by 39 *El. cap. 9.*

But this Act doth not extend to any Person taking any Woman, only-claiming her as his Ward.

The Taking away of a Maid under sixteen Years of Age, without the Consent of her Parents or Governors, or Contracting Marriage with her, or Deflowering, is no Felony; but yet shall be punished with long Imprisonment without Bail, or with grievous Fine. 4 & 5 P. & M. P. Women 7, 8. See Co. 3. 37. &c.

But unlawfully and carnally to know and abuse any Woman Child under the Age of ten Years, is Felony; although such Child consents before, *Cromp.* 47. and the Offender shall have no Benefit of Clergy. 18 Eliz. 7. P. Fel. 14.

Also to take away a Man's Wife with the Goods of her Husband, whether it be against her Will, or against her Husband's Will, seemeth to be Felony by the Statute of *West. 2. cap. 34.* the Words thereof are, *De mulieribus abductis cum bonis virorum suorum, habeat Rex sectam de bonis sic asportatis.* 13 Ass. 6. Br. Cor. 77. Stamf. 94. Cromp. 35.

But if the Wife take her Husband's Goods, and so goeth away voluntarily with another Man, and with those Goods, or delivereth them to another Man; these two last Cases seem not to be Felony. F. Cor. 455. Stamf. 27.

(a) If a Woman be delivered of any Issue of her Body, which, if it were born alive, should by the Laws of this Realm be a Bastard, and that she endeavour (privately, either by Drowning, or secret Burying thereof, or any other Way) so to conceal the Death that it may not come to light, whether it were born alive or not, but be concealed; in every such Case, the said Mother so offending shall suffer Death as in Case of Murder, except she can prove that the Child was born dead. Bastards. 21 Jac. 1. c. 27.

Now the Mother's Proof that her Child was born dead, must be by Witnesses: And therefore, if the Mother will call for no Help at the Time of her Labour, but secretly be delivered, and then the Child be found dead, it is a strong Presumption against her, that she murdered it; and the rather, for that it is a received Opinion, That if the Child were dead in her Body, she could not then be delivered without the Help of some others; which Opinions some grave Matrons have denied, and that of their own Knowledge.

Woods: Malicious setting Fire to any Wood or Coppice is Felony. 1 Geo. 1. c. 48. §. 4

Wool: Vide 4 Geo. 1. cap. 11. *supra* Chap. 113.

Affaulting any Master Woolcomber, or other Person concerned in the Woollen Manufactures, whereby such Master, &c. shall receive bodily Hurt, for not complying with illegal By-Laws, &c. or sending Threatning Letters for that Purpose, is Felony. 12 Geo. 1. c. 34. §. 6.

Entering by Force into any House, with Intent to destroy Woollen Goods in the Loom, or any Tools employed in making thereof; or destroying such Goods in the Loom, or on the Rack, or destroying Racks or Tools, &c. without Consent of the Owner, is Felony without Clergy. Ib. §. 7.

Obstructing or Beating of Officers, &c. in putting the 12 Geo. 2. cap. 21. in Execution, in seizing Wool, &c. or attempting with offensive Weapons, or in Disguise, to rescue such Goods seized by any Officer, the Offenders shall be transported for any Time not exceeding seven Years; and returning before the Time for which they shall be transported, they shall suffer as Felons without Benefit of Clergy. 12 Geo. 2. c. 21.

C H A P. CLXI.

Accessaries.

(a) ONE describeth an Accessary, *Accessarius, quasi accedens ad culpam, & particeps culpe*, as knowing it; another, *Accessarius etiam secundarius dicitur*.

(d) In *High Treason* there be no Accessaries, for the Advisers, Counsellors, Perswaders and Assistants therein, as also the Receivers knowing thereof, be Principals, and as much as if they were Actors or Doers; yea, all that shall advise, counsel, perswade, command, procure or hire another to do any Treason or Felony, (they being indeed the very Cause of the Fact) may well seem as culpable, if not more than the principal Actor; for the Rule is, *Plus peccat auctor quam actor*. Examples also we have hereof in the Book of God, *Gen. 3.* The Serpent, the Procurer of the first Sin, by God's own Judgment, had a greater Punishment than the Woman or Man. Again, *2 Sam. 12. 9.* David is told (from God) that he had killed *Uriah*, whereas he only commanded *Joab* to kill him, &c. Yet in case of Felony our Law is otherwise. In Treason. 3 H. 7. 10. Stamf. 40. Br. Treas. 19.

Stamf. 40.

Note; Whatever Offence doth make a Man Accessary in Felony, the same or like Offence maketh him a Principal in *High Treason*.

Br. Cor. 135.
Brian.* But vide 1 H.
H. P. C. 233.
and 2 Hawk.
P. C. c. 29.
§. 3.In what Of-
fences.

But yet this is to be understood of *Accessaries before the Treason*; for Receiving, Aiding and Comforting a Traitor after the Offence, knowing the same, was holden to be but Misprision of Treason. 12 & 13 Eliz. Dyer 296. * And yet by some other Authorities, the Receiving of Traitors after the Offence, knowing thereof, is holden to be Treason. See 3 H. 7. 10. Br. Treason 19. Hussy Chief Justice, and Cromp. 42. b. who alledged the Book called *The Exposition of the Terms of the Law*, Tit. *Accessaries*.

(a) Sir Edw. Coke L. 57. telleth us, That in the highest and lowest Offences there be no Accessaries, but all are Principals: As in the highest Offence, which is *Crimen læsæ Majestatis*, there be no Accessaries; and so in the lowest, as in Riots, Routs, Forcible Entries, and other Trespasies, *Vi & Armis*.

In Cases of *Præmunire* there may be Principal and Accessary. 44 E. 3. & 8 H. 4. 6. b. Hulls, Br. *Præmunire* 4. 6. *Tamen quare*, for these Offences seem more like a Trespass than a Felony, &c. And upon the Statute of 27 E. 3. the Offenders shall forfeit nothing, if they appear at the first Day; but if they appear not at the first Day, then for their Contumacy they shall be out of the King's Protection, and shall forfeit their Lands and Goods to the King, which are as a Pain given by the Statute; but it is no Attainder: Also, if the Principal appear not, or happen to be dead, yet the other shall answer; and therefore it seemeth that they be all Principals in Cases of *Præmunire*. Br. *ibid.* *

* According to
1 H. H. P. C.

613. there are no Accessaries in *Præmunire*, but 1 Hawk. P. C. c. 29. §. 6. this is said not to be agreed.

(d) In Petty Treason there is a Principal, and there may be Accessaries, as there is in Felonies.

Two Sorts in
Felony.

In Felony there be two Sorts of Accessaries.

The one is Accessary before the Felony committed.

The other is Accessary after the Offence done.

But he that is present at the Time of the Felony committed (be it in Case of Murder, Robbery, Burglary or Larceny) is a Principal at this Day, if he were either a Procurer, or Mover or Aider, Comforter or Consenter thereto, although at that present he doth nothing. See before, *Plö. 100. a.* 11 H. 4. Br. *Coron.* 188 & 228. & *Indictment* 5.

(a) And yet concerning Murder, in every Appeal the Count is, that every Principal *Luy coup' & ferust mortalment*, &c. But these Words are but Form, and the Striking of him which killeth the Party, shall be adjudged the Striking of all those which command, procure, move, aid, or consent thereto, when they be present; and they which give the Stroke or Wound may be termed Principals in Fact, and the other being present, Principals in Law. See *Plö. 97. b.* & *100. a.*

Stamf. 40. b.

(d) If one being present at the Killing or Robbing of a Man doth nothing, yet would have aided his Companion if there had Need been, he shall be adjudged a Principal. *Fitz. Coron.* 309.

Misprifion.

F. Cor. 395.

Stamf. 37.

40. b.

Cromp. 44.

14 H. 7. 31.

1 H. H. P. C.

439.

But if one be present by Chance, and seeth when another is slain or robbed, or when any other Felony is committed, and doth not come in Company with the Felons, nor is of their Confederacy, altho' he doth not make Resistance, or disturb the Felon, or levy Hue and Cry, nor discovereth the same, but concealeth; yet it is no Felony in him, but Misprifion of Felony, and fineable as a Trespas.

(a) And he may be imprisoned by the Justice of Peace until he shall find Sureties to pay such Fine as shall be assessed upon him by the Justice, before whom the Cause shall be heard. See *Fitz. Coron.* 395.

(d) Also in some Cases a Man may be a Principal, altho' he be not present at the Time of the Felony committed; as if *A.* knowing Drink to be poisoned, persuades *B.* to drink it, and after *B.* (in the Absence of *A.*) doth drink it, and dieth thereof, *A.* is here a principal Murderer. *Co. 4. 44.* See other like Cases of Poisoning. *Antea Tit. Murder. Et postea, sub hoc Tit. Accessaries.*

And, Part 1.
p. 116.

(a) Two Thieves, viz. *A.* and *B.* set upon *C.* and *D.* to rob them, *C.* fieth one Way, and *A.* pursueth him, but robbeth him not. *D.* fieth another Way, and *B.* pursueth him, and robbeth him: Adjudged by the whole Court of *King's Bench*, that *A.* is Principal in the Robbery of *D.* and was hanged for it. *H. 26 El.*

(d) Note, that the Accessary in Felony, whether before or after, tho' it be another Offence, and distinct from the principal Fact; yet it is also Felony, and they shall have the same Punishment which the Principal shall have.

(a) Note

(a) Note also, when a Statute maketh an Offence to be Treason or Felony, which was not so before by the Common Law, and yet the Statute saith not that the Abettors, Aiders, Comforters or Consenters to the Doing thereof, shall be also Felons; yet it shall be Felony in them, for that they were the Causes of committing the Offence, which, it may be, otherwise had not been committed. See *Lamb. p. 279, 280. 19 H. 6. fol. 47. & 11 H. 4. fol. 13. Fitz. Coron. 228.*

And so it seemeth of Receivers, &c. after the Offence. *Lamb. 281.* for where a Statute maketh a Thing Felony, it is made as Felony to all Intents and Purposes:

The Book called the *Mirror of Justices* maketh divers Manner of Accessaries; *ſc.*

- | | | | |
|---|---|---|---------------------|
| <p>Those who command.
Those who counsel.
Those who consent.
Those who are Partakers in the Gain.
Those who know thereof, and do not disturb or hinder the same.
Receivers knowing thereof.
And those who are present at the Fact.</p> | } | <p>And so Murder, and other Felonies, may be committed as well in Words and Heart, as by outward Act.</p> | <p><i>Kind.</i></p> |
| <p>as aforesaid.</p> | | | |

And now our Books do divide them into two Sorts, *ſc.* Accessaries before the Felony (or Fact), and Accessaries after the Fact.

(d) *Accessaries before the Felony*, are such as command, hire, procure, move, conspire, counsel, abet, *ſc.* incourage or set on, or consent to commit any Petty Treason, Murder, Robbery, Rape, Burglary or Larceny, but are not present thereat; yet all such are thereby Felons, when the Felony is committed. *Before the Fact. Præcipiendo, Perſuadendo, Conſulendo, Conſentiendo.*

But here some Differences are to be observed, when the Principal and chief Offender doth not accomplish the Fact altogether in the same Sort, as it was before-hand agreed between him and the Accessary; and therefore if *A.* command *B.* to lay hold upon *C.* and *B.* goeth and robbeth *C.* This is no Felony in *A.* if he absent when the Robbery is done, for his Command might have been performed without any Robbery.

But if the Command had been to beat *C.* and the Party commanded doth kill *C.* or beat him so that he died thereof, *A.* shall be accessary to his Felony and Murder; for it is a Hazard in beating a Man that he may die thereof. *F. Co. 314.*

A. commandeth *B.* to rob *C.* and in attempting this *B.* killeth *C.* *A.* shall be accessary to this Murder; for in attempting to rob *C.* the Command of *A.* was pursued, and when in the Execution thereof another Thing falleth out, he which gave the Command shall be adjudged a Party thereof, for that his Command was the Cause thereof. *Plow. 475.*

He that commandeth or counselleth any Evil or unlawful Act to be done, shall be adjudged Accessary to all that shall ensue upon the same evil Act, but not to any other distinct Thing. *Ibid.* As if *Rule.*

A. commandeth *B.* to steal a Horse, and he stealeth an Ox, or to steal a White Horse, and he stealeth a Black; or to rob a Man by the Highway of his Money, and he robs him in his House of his Plate; or to burn the House of *B.* and he burns the House of *C.* These be other Acts and Felonies than *A.* commanded to be done, and therefore *A.* shall not be adjudged Accessary to them. *Plow. 475.*

But if *B.* shall commit the same Felony which *A.* did command or counsel to be done, tho' he doth it at another Time, or in another Place, or in another Sort than *A.* did command or counsel, yet here *A.* shall be Accessary thereto; (a) for *Mandata illicita recipiunt latam & extensam interpretationem.* Vide *Ba. 66, 67.*

(d) As if *A.* doth counsel *B.* to kill *C.* by Poison, and he killeth him with his Dagger, or by other Violence; or to kill *C.* by the Highway, and he killeth him in his House; or to kill him one Day, and he killeth him upon another Day: In these, and the like Cases, *A.* shall be Accessary to the Murder. *Ibid.*

A. counselleth *B.* to poison *C.* and to that End, *A.* buyeth Poison, and delivereth it to *B.* who tempereth it in an Apple, and delivereth it to *C.* with Intent to poison him; and *C.* knowing nothing thereof, giveth the Apple to *E.* who eateth it, and dieth thereof. Here *A.* is not Accessary to the Murder of *E.* yet it is Murder in *B.* *Plow. 475, 476.*

A. counselleth or commandeth *B.* to kill *C.* and before he hath killed him, *A.* doth repent, and countermands it, charging *B.* not to kill *C.* and yet after *B.* doth kill *C.* Here *A.* shall not be adjudged Accessary to the Death of *C.* for the Law adjudgeth no Man Accessary to a Felony before the Fact, but such as continue in that Mind at the Time that the Felony is done and executed. *Plow. 475.*

Dyer 186.
Co. 7. 9. a.

But if *A.* counselleth a Woman to murder the Child in her Body, when it shall be born, and after the Child is born, and then the Midwife or other Person, in the Presence of the Mother, and by her Command killeth the Child, although it be done in the Absence of *A.* yet he is accessary by his counselling it before the Birth, and not countermanding it. *Dyer* 186.

Misprision.
Lamb. 285.
14 H. 7. 31.

A Man knoweth a Felony intended to be done, and doth conceal it, and suffereth it to be effected: This maketh him no Accessary to the Felony, except he consenteth thereto; but such Concealment seemeth to be only Misprision of Felony, and fineable. And yet the Rule is, *Qui non prohibet, quod prohibere potest, consentit. Ideo quære.* (a) And *Bracton*, fol. 121. speaking of Murder, saith thus, *Ille, qui cum possit hominem a morte liberare, non liberabit, immunis esse non debet a pœna.*

Co. 4. 44.

(d) Note, That in Manslaughter there can be no Accessary before the Fact, for Manslaughter is upon a sudden Falling out.

Forgery.
Moor 666.

(a) Also in Forgery made Felony by the Statute all are Principals. See *Booth's* Case.

Clergy.

Note also, That none shall have Clergy who maliciously command, hire or counsel any Person to commit any Petty Treason or wilful Murder, or to do any Robbery. 4 & 5 *Pb. & Ma. cap. 4.* See *Dyer* 183, 186. & *Co. 11. 35.*

Burning.

Also none who is Accessary before the Fact, to any felonious Burning of any Dwelling-house, or any Part thereof, or Barn with Corn, shall have any Benefit of Clergy. 1 *E. 6. cap. 17.* 4 & 5 *Pb. & Ma. cap. 4.* See *Co. 11. Poulter's* Case.

Horse-stealing.

No Horse-stealer, nor Accessary thereto, either before or after such Felony done, shall have any Benefit of Clergy. 2 *E. 6. cap. 33.* & 31 *El. 12.*

After the Fact.
Stamf. 41.
Br. Indictment 4.

(d) Accessaries after the Offence are they, who knowing that another hath committed a Felony, do voluntarily receive, harbour, relieve, assist, comfort, or aid him, whether it be before the Attainder of the Felon, or after his Attainder.

As to comfort or relieve a Felon, before he is attainted, with Money, Meat, Drink, or Lodging, knowing of the Felony, maketh one Accessary. 26 *Aff. pl. 47.*

Ibid.

So to lend him a Horse to go his Way withal, or otherwise to be a Means of his Escape. *Fitz. Coron. 427.*

Br. Cor. 103.
1 H. H. P. C.
600, 601.
Lam. 286.
Crom. 42.
1 H. H. P. C.
621.

But to relieve him being in Prison, maketh not a Man Accessary: Also to aid him by his good Word, or sue for his Deliverance, or to send a Letter for his Inlargement.

A Felon under Bail, and who stands bound to appear for his Trial; to receive, harbour, or relieve such a one with Money or Victual, is no Accessary, because the Felony cannot be concealed, nor the Trial hindered by it.

A Felon getteth his Pardon; such as shall receive or relieve him after shall not be accounted Accessary; but to receive or relieve him before his Pardon obtained, is Felony. See *Plo. 476.* Yet it seemeth upon this Pardon, such Accessary before shall be discharged.

F. Cor. 377.
Stamf. 96.
Dyer 355.

A Felon is attainted by Verdict, Confession, or by Utlary, to receive, harbour, or relieve such a one, by any Person dwelling in the same County where the Felon is attainted, it maketh such Receiver or Aider, an Accessary to the Felony, although such Receiver, &c. did not know of the Felony; because by the Attainder of the Felon, he is so of Record; whereof every Person dwelling in the same County is to take Notice. Yet Master *Bracton* requireth a more direct Knowledge in the Parties to make them Accessaries; for tho' a Record (and specially the pronouncing of an Utlary in the County Court) be so notorious, that every Man may easily know the same; yet it would be a great Extremity, that every Man should, upon the Peril of his own Life, take certain Knowledge thereof. Which Opinion of Mr. *Bracton*, Mr. *Lambard* also holdeth to be very reasonable.

F. Cor. 377.
Vide Stamf. 41.

But a Felon attainted by Verdict, Confession, or Utlary, in one County, if another doth receive or aid him in another County; this maketh such Receiver or Aider no Accessary to the Felony, unless he did also know of the Felony.

Feme Covert.
F. Co. 383.
Stamf. 26. &
43. f.

If a Feme Covert shall relieve, or receive and keep Company with her Husband, knowing him to be a Felon, she is no Accessary thereby; for a Woman Covert cannot be Accessary in Felony to her Husband, for she ought to relieve him, and not to discover his Counsel. (a) But *quære*, if this be not understood of Accessary after the Fact; for if the Wife shall procure, counsel or conspire with her Husband to commit any Felony, and he thereupon shall execute the same, though the Wife be not present thereat, yet she may seem to be Accessary to her Husband in such Case; for Mr. *Bracton* saith, *Uxor virum accusare*

accusare non debet, nec detegere Furtum suum neque Feloniam; consentire tamen non debet Feloniæ viri sui, neque esse coadjutrix. Stamf. 26.

(d) Also if the Wife receiveth, &c. another Felon, she is an Accessary.

(a) A Servant may be Accessary to a Felony, committed by his Master or Mistress, *sc.* *Servant.* By relieving or aiding them, or otherwise by being a Means of their Escape; for Mr. *Braeton* saith, *Concubina & famula domus non sunt in eodem casu quo uxor; ipsæ enim accusare tenentur, aut recedere a servitio, alioquin videntur consentire.* Stamf. 27. a.

A Servant knowing his Master to be a Felon, continueth to do him Service; the Servant is thereby an Accessary. *Lect. M. Cook.*

The Master knowing his Servant to be a Felon, still keepeth him in his Service; the Master is thereby an Accessary. *Ibid.*

(d) A Felon fled to the House of his natural Brother, and the Brother shut the Fore-door against the Pursuers, and conveyed the Felon out of his House at a back Door, whereby he got to the Church: This Brother was adjudged an Accessary for it, for he was a Means of the Escape. *See Stamf. 43. c. sub a Matter.*

Quære, If a Felon flieth and cometh to his Friend's House, and his Friend shutteth the Door against him, and yet maketh the Pursuers believe that he is in the House, whereby he escapes; if this make not the Friend an Accessary.

(a) A Man hath a Felon in his House, and (knowing of the Felony) suffereth him to go his Way, and so to escape; yet this is no Felony, for that he had not arrested him of the Felony before: Neither can such an Escape make him an Accessary, except he were any Means of the Escape. *9 H. 4. 1. Br. Cor. 26. See Br. Efc. 43.*

(d) If one do rescue him that is arrested for the Felony, he is a Principal Felon, and not an Accessary. *Rescous. 1 H. 7. 6. Stamf. 43. c.*

Receiving or buying of stoln Goods, knowing they were stoln, maketh not a Man Accessary to the Felony, unless he receiveth also (or aideth) the Felon himself; yet Mr. *Crompton* maketh a *Quære* thereof, and alledgeth some Cases to the Contrary. See *Crompt. fol. 41, 42, 43.* (a) But it was adjudged, *T. 44 El. B. R. Dawson's Case,* That it maketh no Accessary, *Yelvert. pag. 4.* See at the End of this Chapter, and the Statute 1 *Annæ, cap. 24.* *Buying stoln Goods. 12 Aff. 69. 9 H. 4. 41. Stamf. 43. b. 1 H. H. P. C. 619.*

(d) But herein there seems a Difference between a Buyer, being a Stranger to the Felon, and who for valuable Consideration shall buy such Goods, and a Receiver or Buyer who is an Adherent or Companion to the Felon, or that by Covin shall receive or buy such Goods. See the Preamble to the Statute 2 & 3 *Ed. 6. cap. 24.*

A Man buyeth stolen Goods for five Shillings, which are worth twenty Shillings, this maketh the Buyer an Accessary, by the Opinions of Mr. *Crompton, fol. 43.* and of Sir *Nich. Hyde* in his Charge at *Lent Assises at Cambridge, 1629.* For it may well appear by the Price, that the Seller came not truly by them; and therefore it is safe to lay hold upon such Sellers as shall sell any Thing at any great Undervalue. *Undervalue. Crompt. 43.*

A Man pursueth and taketh a Felon that hath stolen his Goods, and then taketh his Goods again, and suffereth the Thief to escape; he is not Accessary thereby, for he may *in initio agere civiliter, or criminaliter,* at his Pleasure, as Mr. *Braeton* writeth, *Stamf. 28. Quære tamen.* For Mr. *Stamf. fol. 40.* says, that if he take his Goods again from the Felon to favour him; this is Theft-boot, (the Punishment whereof, in ancient Time, was of Life and Member, though at this Day it be punishable only by Ransom and Imprisonment.) Yet by some it is holden to be Felony at this Day. The like if he take his Goods again from the Felon, and then favoureth him, and letteth him go. See *the Mirror of Justices, lib. 2. & Fleta, lib. 1. cap. 27.* *Taking again stolen Goods. Br. Cor. 122. Lamb. 286. Crompt. 37, 41, 42. P. R. 131. Terms of the Law 184. Dyer 50. Fitz. Cor. 353. Finch. l. 2.*

But if the Party robbed take Money or other Goods, &c. of the Thief, to the End he shall favour him, or shall not give Evidence against him, whereby the Thief escapeth; now he is an Accessary to the Felony of his own Goods; though some other seem to take this for Theft-boot, and so to be punishable at this Day only by Ransom and Imprisonment, as aforesaid. *6 E. 6. Lamb. 286. Crompt. 41. P. R. 131. Br. Cor. 1, 2.*

If the Party robbed, or if he that shall have any Goods stoln from him, after Complaint by him made of the Felony (to a Justice of Peace, or to the Constable) shall then take his Goods again, or otherwise be compounded withal, and will not prosecute this Matter against the Felon, but will suffer him to escape after he was once so charged, and perhaps arrested for the same. *Quære,* if this maketh not him an Accessary, for that he did once *agere criminaliter,* by Complaint made to the Officer against the Felon.

I think

I think in such Case the Justice of Peace shall do well (at least) to bind over both the one and the other to the next Quarter-Sessions, or to the next Gaol-delivery, and then to acquaint the Court with the whole Matter.

27 Aff. 62.
Lamb. 285.

But if upon Hue and Cry, a Man do arrest a Thief that hath stolln another Man's Goods, and then take the Goods from the Felon, and so let him go; this maketh him an Accessary to the Felony, if not a Principal Felon.

Time.

Stamf. 287.

Note; In all Cases of an *Accessary after the Fact*, it is requisite that the Fact (to which he is an Accessary) be a Felony at the very Time in which he becometh an Accessary to it: For if *A.* giveth a mortal Wound to *B.* upon the first of *March*, and *C.* knowing thereof, receiveth, &c. *A.* two or three Days together, and letteth him go, and after *B.* dieth of the Wound within the Year; yet this Receipt, &c. makes *C.* no Accessary, because the principal Fact was no Felony at the Time either of the Receipt, or of the letting him go.

P. Trial. 2.
Stamf. 41.
f 63. h.

By the Statute of 2 *Ed. 6. c. 24.* Accessaries may be to a Felony done in another County; whereas before the Statute, the Common Law laid no hold of such Accessaries, for that those in another County, upon the Trial, could not have Cognizance of the principal Offence, &c.

But now by the said Statute, there shall be a Certificate from the *Custos Rotulorum* of the County, where the Principal shall be attainted or convicted, &c. See *antea* Tit. *Felony.*

Rules.

Lamb. 285.
Stamf 44.

Note, That if an Offence be made Felony by Statute, though the same Statute doth not expressly mention Procurers, Counsellors, Abettors, Receivers, Consenters, and Aiders, &c. yet they shall be taken as Accessaries (within the Compass of the same Statute) even in the same Manner, as if it were Felony at the Common Law.

Accessary of Accessary.
26 Aff. 52.
F. Cor. 190.

A Man may be an Accessary to an Accessary; as if he shall receive, relieve, or comfort him who is Accessary to a Felon, knowing the same. *Br. Cor. 104.*

P. Appeal 3.
Co. 4. 43. &
9. 117, 119.
Plo. 98, 99.
Cro. 33, 107.

Although the Accessary shall be punished, and shall have Judgment of Life and Member, as well as the Principal, which did the Felony; yet the Principal, (yea, all the Principals) ought * first to be attainted (by Verdict, Confession, or Utlawry) before the Accessary can be charged, or put to answer (as an Accessary); and the Acquittal of the Principal, is the Acquittal of the Accessary; for *ubi non est Principalis, non potest esse Accessorius*; but yet the Accessary shall be attached, and surely kept, (and be committed by the Justice of Peace, &c.) until the Principal be attached and attainted. See *Westm. 1. cap. 14.*

* This is now altered by the Statute 1 Ann. c. 9. (viz.)
That where a Man is convicted of Felony, it shall be lawful to proceed against the Accessary, though the Principal had his Clergy, was pardoned or otherwise delivered before Attainder; and such Accessary shall suffer as if the Principal had been attainted.

(a) But though the Accessary in Felony cannot be proceeded against, until the Principal be tried, yet if a Man upon Subtilty and Malice, set a mad Man by some Device to kill another, and he doth so; now for as much as the mad Man is excused, because he can have no Will or Malice, the Law accounteth the Inciter as a Principal, though he be absent, rather than the Crime shall go unpunished. 33 *Eliz. Ba. 57.*

(d) And if the Principal be attainted, though erroneously, that shall not avail the Accessary, but he must answer, &c. *Co. 9. 68. b. & 119.*

Co. 4. 43, 44.
F. Cor. 116.
& 378.
Vid Br. Cor.
70, 71,
80, 83, 86,
132, 138.
Cromp. 34. b.

If the Principal die before he be attainted, or if the Principal be found Not guilty by Verdict, or be found by Verdict that he slew the other in his own Defence, or if after Conviction by Verdict, Confession or Utlawry, and before Judgment, he hath his Clergy, or getteth his Pardon, the Accessary in all these Cases shall be * discharged: But it is not safe for the Justice of Peace to discharge such Accessary out of Sessions.

* This is altered by the Statute 1 Annæ, c. 9. as aforesaid.

A Man killeth another *Se Defendendo*, or by Misadventure, and it is so found upon his Trial; the Accessary shall be discharged. For that in these Cases the Principal shall not have Judgment of Death. *Et omne Accessorium sequitur suum Principale.* See *Br. Forf. 13.*

1 Ann c. 9.

(a) If any Principal Offender shall be convicted of Felony, stand Mute, or challenge above 20 of the Panel peremptorily, it shall be lawful to proceed against the Accessary, either before or after the Fact, as if the principal Felon had been attainted, though he had his Clergy, or was otherwise delivered before Attainder, and such Accessary being convicted shall suffer the same Punishment as if the Principal was attainted.

Persons who buy and receive stolen Goods knowing them to be stolen, may be prosecuted for a Misdemeanor, and punished by Fine and Imprisonment, tho' the principal Felon is not convicted; and this shall exempt the Accessary from being punished again, if the Principal is afterwards convicted.

C H A P. CLXII.

Rules concerning Felony.

IF a Man committeth Felony in the Time of one King, he may be charged and arraigned for it after, in the Time of another King. 1 E. 6.
Br. Cor. 178.

If a Man do commit Murder, steal Goods, or do any other Felony in one County, and then flieth into another County, and is taken there, and brought before a Justice of Peace there, he shall (by the Justice) be imprisoned in the Gaol in the County where he is taken; and after shall be removed by the King's Writ into the Gaol of the County where he committed the Felony. And the said Justice shall bind Informers over to appear, and to give Evidence against such Felons, at the next general Gaol-delivery, to be holden in that County where the Trial of such Murder or Felony shall be; whither also the said Justice must certify such Information taken by him. 13 E. 4. 9.
Br. Fresh Suit
3.

If a Man committeth a Robbery, or stealeth a Horse, Beast, or other Goods in one County, and doth carry, lead, or drive the Goods into another County, it is Felony in every County, whither he doth carry or drive them, and the Offender may be indicted or appealed of Felony or Theft, and arraigned, and have his Judgment in any of those Counties: But he cannot be appealed or indicted of Robbery, but only in the County where the Robbery was done; for it is not Robbery in any other County; for Robbery must be done to the Person of a Man. *Br. Cor. 140. & Indictment 26.*

If a Man do steal another Man's Goods, and after another stealeth the same from him, the Owner of the Goods may charge the first or second Felon at his Choice. County.
4 H. 7. 5.
34 H. 8.
Br. Cor. 171.
Co. 7. 2.

Also if a Man shall deliver Cloth to a Taylor to make a Garment, if the Cloth be stolen from the Taylor, the Offender may be charged and indicted for stealing the same, either at the Owner's Suit, or at the Taylor's. Double.
13 E. 4. 5.
4 H. 7. 5.
P. R. 130.
Cro. 70.

Also an Indictment may be, *Quod bona & catalla cujusdam hominis ignoti felonice cepit.* See here before. And any Man may in such Case, both inform the Court, and by their Direction may prefer an Indictment against the Felon, and give Evidence to the Inquest therein. Dyer 99.

And so if the Owner be known, but will not charge the Felon therewith, any other Person (especially after Proclamation made in the Court, that if any will inform or give in Evidence for the King he shall be heard) may safely come in, and may inform the Court, prefer an Indictment, and give in Evidence for the King, against the Felon without any Danger of Conspiracy, because it is for the King's Advantage to have the Forfeiture of the Felon's Goods: Yea, in the two former Cases, if the Justice of Peace shall hear of any Person that can inform any material Thing against such a Felon, or against any Felon, the Justice in his Discretion may send for him, take his Information, and may bind him to give Evidence against such Felon: Conspiracy.
35 H. 6. 15.
Fitz. Cor. 5.
Fit. 115. 2.
Stamf. 163,
173.

(a) For every one shall be admitted to give Evidence for the King. *Stamf. 163.*

(d) Also if any Robbery or Theft be committed, and the Party robbed, or other Owner of the Goods, will not charge the Felon therewith, yet every Justice of Peace may cause such Felon (or any Person suspected for such Felony) to be apprehended, and may examine him thereof; and also may send as well for the Party robbed, &c. as for all such other Persons as can inform any Thing material concerning the said Felony, and may take their Informations (upon Oath:) And if upon such Examination he shall find Cause, the said Justice may commit the Offenders, and bind over the Informer. See *antea* in the other Title of *Felony.* Prosecution.

Note also (for the better Prevention and apprehending of Felons) that upon all Homicides, Burglaries, Robberies and other Felonies, and when Men are put in great Danger, *Hue and Cry* shall be levied, and every Man shall follow the Hue and Cry, and whosoever doth not, and is thereof convicted, shall be attached to appear before the Justices of Gaol-delivery. Also, any Justice of Peace may bind them over to appear Hue and Cry.
3 E. 2. c. 9.
P. Fel. 38.
Hue and Cry
1.

pear before the Justices of Gaol-delivery, and that by Force of the Commission in the first *Assignavimus*.

3 Ed. 1. 9. Yea, upon any Felony committed, all Men shall be ready (at the Command of the Sheriff, and at the Cry of the Country) to pursue and arrest Felons, upon Pain to be grievously fined.

Escape. And such Hue and Cry and Pursuit shall be made from Town to Town, and from Country to Country: And shall be made by Horse-Men and Foot-Men: And in Case of Robbery, if (after Notice given thereof to some dwelling near) none of the Felons be taken within forty Days after the Felony committed, then the whole Hundred where the Robbery was done, shall answer for the Robbery and the Damages: But yet the Inhabitants of any other Hundred, wherein Negligence, Fault or Defect of Pursuit and fresh Suit shall happen to be, shall answer and satisfy the one Moiety, and Half of all and every such Sums of Money and Damages. See more here before, Tit. *Hue and Cry, and Robbery*.

13 E. 1. c. 14.
27 El. 13.
28 E. 3. c. 11.
3 H. 7. c. 1.
Co. 7. 6. b. And if a Man be slain in the Day-time, (*ſc.* so long as it is full Day-light) in a Town not walled, and the Murderer escape, the whole Town where the Murder was done, shall be amerced for this Escape. But if it be in a City or Town walled, then if the Murder, &c. were by Night or by Day, they shall be amerced for the Escape. *Fitz. Cor.* 238, 293, 299, 302. *Stamf.* 33. 3 H. 7. 1. *P. Coroners* 13.

And if a Man be slain in the Day-time, out of any Town, then the Hundred shall be charged therewith; and for the Insufficiency of the Hundred, shall all the County be charged, &c. *Stamf.* 34. Yet see *Dyer* 210. *b.* that the Township shall be amerced for the Escape, although the Murder were committed in a Field of the Town, or in a Lane, &c. And the Justices of Peace are to inquire of such Escapes, and to certify the same into the King's Bench. *P. Just.* 19.

P. R. 156. Also every Man is a sufficient Bailif and Officer to apprehend him that is pursued by Hue and Cry: And if he be taken with the Thing, supposed to be stolen, tho' he neither be of evil Name, nor a Stranger, yet every Man may commit as well such suspected Person, as also such Goods, to the Town where they be apprehended, to answer to the King according to the Law; and the Constables of the Town are to carry before some Justice of Peace, as well such Prisoners, as also the Bringers, that the Justices may take their Information against such Prisoner, and may examine and commit such Offender or Person so suspected.

But if a Man do levy Hue and Cry upon another without Cause, both the one and the other shall be attached, and carried before a Justice of Peace to answer it, as Disturbers of the Peace, and be bound to their good Behaviour.

House. Note also, That the King's Officers may break open any Man's House, to apprehend any Felon, or any Person that is suspected of Felony, being in the said House. See hereof *antea*, Tit. *Forcible Entry*.

Town. And for the better Detecting and Apprehending of such Offenders in great Towns being walled, the Gates are to be shut from the Sun-setting until the Sun-rising; and no Man shall be lodged in the Suburbs from nine of the Clock until Day, unless his Host will answer for him. And in all other Towns, Watch shall be kept from the Feast of the *Ascension* until *Michaelmas*, from the Sun-setting until Sun-rising; and if any Stranger do pass by them, he shall be arrested until the Morning, &c. And if they will not obey the Arrest, then all Men shall be ready to follow with Hue and Cry, until such Night-walkers shall be taken: And for such Arrest none shall be punished.

Night-walkers. And the Constables ought to see these Watches duly set and kept; and as well the Constables of Hundreds and of Franchises, as also the Petty Constables of Towns, ought to make Presentment to the Justices of Peace at their Sessions, (and to all other Justices thereto assigned) of the Defaults of Watches, and of such as lodge Strangers, for whom they will not answer: And the Justices of Peace at their Sessions shall punish such as be found in Default. *P. Watch* 2. See *antea*, Tit. *Watch*, That every Justice of Peace may cause these Watches to be duly kept.

Watch.

2 H. H. F. C.
97.

C H A P. CLXIII.

The Forfeiture of Felony.

(a) **T**HE Punishment of every Person attainted of Felony is fourfold, *scil.* Co. 4. 124. Co. L. 41.
 1. The Offender shall lose his Life, and be hanged between Heaven and Earth, as unworthy of both.

2. He shall lose his Blood, as well in Regard of his Ancestry, as of his Posterity; for his Blood is corrupted, so as he hath neither Ancestor, Heir, nor Posterity. See Co. 11. Ibid.
 1. b. & Littleton 745. &c. Co. L. 391, 392.

3. He shall forfeit his Fee-simple Lands (from the Time of the Offence, &c.) where- in the King shall have *Annum, diem & vastum*, to the Intent that the Offender's Wife and Children shall be cast out thereof, his Houses razed, his Trees rooted up, his Meadows ploughed up, and all his Land wasted and destroyed. And after the Year, Day, and Waste, the Land shall go by Escheat to the chief Lord of the Fee: (But yet the Lord may fine with the King for all, *sc.* for the Year, Day, and the Waste, and so have the Land presently.) *Quere*, if the Lord may enter; it seemeth he cannot. See 17 E. 2. cap. 16. & Stam. de Prær. 49. Fitz. Tra. 48. Refeif. 36. Ibid. Stat. Prær.

4. The Offender shall forfeit and lose all his Goods and Chattels, from the Time of his Attainder only.

(d) The King shall have all the Goods of Felons which be condemned, and which be fugitive, wheresoever the said Goods be found; *scil.* All their Goods moveable and unmoveable, their Corn growing, and the Profits of their Fee-simple Lands, for a Year and a Day, and the Issues and Profits of their other Lands during their Lives; and all their Debts due to them by Statute, Recognizance, Obligation or Simple Contract, and Money due upon Accounts. And the King, or he to whom the King shall give such Debt, shall have an Action therefore in his own Name; and yet the King shall not pay such Debts as the said Felons did owe. P. Prær. 16. Co. 3. 3. a. F. Cor. 317. 334. 19 H. 6. 47. Dyer 30.

(a) But the Offender shall not forfeit his Lands for Manslaughter, nor in Cafes of Homicide by Misadventure, or in doing a lawful Act, nor in Homicide of Necessity, or *Se defendendo*. Vide Ba. 2, 3. & Co. L. 391.

(d) By the Common Law, after a Felon is found guilty before the Coroner, or that it be found, that he did fly for the Felony, there the Coroner, Sheriff, Under-Sheriff, or Escheator, &c. may (for the King) seise the Goods of the Felon, and praise them by an Inquest, &c. before his Attainder; for by such Thing found before the Coroner, the Goods of the Felon are forfeited without further Inquiry or Trial of the Felon; and yet the Officer may not in such Case carry the Felon's Goods away, but (after Appraisement as aforesaid) must leave them in the Custody of the Felon's Neighbours where he dwelt, or in the Custody of the Town where the Goods were, to be answered to the King: And if he were indicted of Felony, yet his Goods should not be removed out of his House until he were attained, but the Officer was to seise and praise them, and to take Surety of the Party, that they should not be imbeziled; and if the Party would not find Surety, then the Officer was to deliver them to the Neighbours, and the said Goods should be kept by his Neighbours all the Time of his Imprisonment: And the Felon must have had reasonable Maintenance of his Goods for himself and his Family, until he were convicted and found guilty of the Felony; and then the Remainder was the King's. See 25 Ed. 3. cap. 14. P. Indiçt. 5. & Braçt. fol. 123. & 136. b. Seizure. 22 Aff. 96. Br. For. 33. 43 E. 3. 24. Br. Forf. 7. 7 H. 4. fol. ult. Stamf. 192.

And now by the Statute made 1 R. 3. cap. 3. it is ordained, That if any Sheriff, &c. or other Person, do take or seise the Goods of any Person arrested and imprisoned for Felony, or Suspicion thereof, before the same Person be convicted or attainted of such Felony, or that the same Goods be otherwise lawfully forfeited; he shall pay to the Party grieved the double Value of the Goods so taken or seised, &c. which Statute seemeth to be but a Confirmation of the Common Law, saith Mr. Stamf. fol. 193. save that it giveth the Party grieved a more ample Recompence, and more speedy Remedy than the Common Law before did: So that before Attainder or Conviction, the Goods of the Felon that is in Prison ought not to be seised nor committed to the Town, nor taken out of the Felon's House or Possession. For (a) a Man attainted of Felony shall forfeit such Goods as he hath at the Time of the Attainder, and not at the Time of the Felony committed; P. Sheriff 24. P. Indiçt 5. Stamf. 193.

mitted; and (d) a Felon or Traitor, after the Felony or Treason committed, and before Attainder or Conviction, may sell (*bona fide*) for his Sustenance, &c. his Goods or Chattels, be they real or personal. (a) But yet they may not disorderly sell or waste their Goods. Therefore it seemeth, that the Officer may still take Surety that the Goods be not imbeziled; and for want of Sureties may seise them, and praise or value them, and then deliver them to the Town safely to be kept, until the Offender be convicted or acquitted. See *Br. Forf.* 44. where Mr. *Brook* delivers his Opinion, That this Order ought to be observed of every one which committeth Felony, until he be attainted.

Relation. (d) Nay, after Attainder, if they shall grant their Goods or Lands, it shall bind all Persons, except the King and Lord by Eicheat; but against them such Grant is void. (a) And as to their Lands, Relation is to be had to the Day of the Felony committed, by the Attainder, by Verdict, Utlary, or otherwise. *Stamf. de Prærog.* 48.

F. Cor. 366. (d) After the Conviction of a Felon, (if the Goods were in the Felon's Possession at the Time of his Conviction) the Town presently stands charged therewith, and shall answer for the Loss or Impairing them, though the Goods were never seised by the Officer, nor delivered to the Town; (except they can shew what other Person hath detained those Goods, and that they could never have Possession of them; which Exception is by Statute of 31 E. 3. P. *Estreats* 3.) So that it shall be safe for the Town to seise such Goods, in whose Hands soever they be found, (a) presently after the Conviction of any Felon; and then it shall be safe for them to do it by Inventory, taken in the Presence, and by the Testimony of some other honest Men. Yet *quære*, for, by the Opinion of *Prisot*, none may seise any Goods for the King, but an Officer who is accountable to the King. 49 H. 6. 1. *Br. Kefeise* 15.

Conviction. (d) Conviction in Felony is, where a Man (being indicted of Felony) upon his Arraignment, submitteth himself to be tried by the Country, and then is found guilty by the Verdict of twelve other Jurors; or shall confess the Offence upon his Trial, or is outlawed for the same, (a) (*scil.* is pronounced outlawed of the Felony at the County Court.) Also Conviction in all other Offences (by the Common Law) is, where the Offender is indicted, or the Offence presented by a Jury, whereto the Offender pleadeth *Not Guilty*, and is found guilty by the Verdict of twelve Jurors.

Recusant. And yet a Popish Recusant indicted thereof (at the general Gaol-delivery, or Quarter-Sessions for the Peace) and Proclamation there made, commanding the Offender to render his Body to the Sheriff of the same County, &c. If at the next Gaol-delivery or Sessions, the same Offender so proclaimed, shall not make Appearance of Record, such Default recorded shall be a sufficient Conviction in Law of the said Offence. 29 El. cap. 6. & 3 Jac. 1. 4. P. *Recusants* 13, 42.

And sometimes (in other Cases) upon Proclamation made, if the Party shall not appear and yield himself, he shall be thereby convicted or attainted of the Fact, &c. See 5 H. 4. cap. 6. 11 H. 6. cap. 11. 13 H. 6. cap. 7.

(d) And (by divers Statutes) you shall find that an Offender may be convicted (out of Court) either upon the View and Record of the Justice of Peace, or by the Confession of the Offender, or upon Examination of Witnesses before one or two Justices of Peace, and that out of the Sessions. See here *antea*.

And sometimes Conviction may be in the Sessions, upon the Certificate or Presentment of the Justice of Peace. See Tit. *Alehouses and Highways*.

And sometimes by Confession, or Examination of Witnesses in Court, without any Verdict taken. See *Cromp.* 130, 131. B. *Confess.* 32.

Attainder. And in some Cases, Conviction shall be taken for Attainder. See Co. 11. 59, 60.

Co. 11. 58. The Difference between Attainder and Conviction in case of Felony, is, The Person attainted hath Judgment of Death given upon him: The Person convict, before Judgment, prayeth his Clergy, and hath it, and so preventeth the Judgment, &c. or after Verdict, Confession or Utlary, the Felon is said to be convicted till Judgment be given. Stamf. 138. & 185. b. Co. L. 390. b.

(a) And so a Man is properly said to be indicted, when the Offence is first found by the great Inquest, or other Jury of Inquiry.

2. Convicted, when the Offender having put himself upon his Trial, is found guilty by a second Jury; here he is Convict before he hath Judgment.

Attainted, when (after such Conviction) Judgment is given against the Offender, and thereby his Lands are forfeited, and his Blood corrupted. Co. L. 391.

C H A P. CLXIV.

Examination of Felons, and Evidence against them.

WHEN any Person shall be brought before a Justice of Peace for Murder, Man-^{2 & 3 P. & M.} slaughter, or any other Felony, or for Suspicion thereof; before the Justice^{13.} shall commit or send such Offender to Prison, he shall take, ^{P. Just. 108.}

1. The Examination of such Offender.

2. The Information of such as bring him, *viz.* he shall take their Examination and Information of the Fact, and the Circumstances thereof, and so much thereof as shall be material to prove the Felony, he shall put in Writing within two Days after the said Examination.

3. Also the same Justice of Peace shall bind all such by Recognizance, as do declare any Thing material to prove the Felony, to appear at the next general Gaol-delivery, (to be holden where the Trial of the said Felony shall be) then and there to give in Evidence against such Offenders. See *antea*, Tit. *Felony*.

4. And then the same Justice shall make his *Mittimus*, to carry the Offender to the Gaol.

Or if such Offender beailable, (and that there be two Justices of Peace present together, the one of them being of the Quorum) after such Examination and Information^{13.} taken, and put in Writing, the said Justices of Peace may bail such Prisoner. ^{P. Just. 107.}

5. And the said Justice or Justices of Peace shall certify at the next general Gaol-delivery such Examination, Information, Recognizance and Bailment.

And if any Justice of Peace shall offend in any Thing contrary to the Intent and Meaning of either of these Statutes of 1 & 2, and 2 & 3 *Pb. & M.* the Justices of Gaol-delivery, in their Discretions, shall fine every such Justice of Peace.

And yet for Petty Larcenies, and small Felonies, the Offenders may be tried at the Quarter-Sessions, and the Examinations and Informations may be certified thither, and the Informers bound thither. See hereof *antea*, Tit. *Felony*, & 3 *H. 7. cap. 3.* & *Fitz. 251. f.*

The Form of the Recognizance, see *postea*, Tit. *Recognizance*.

The Form of the *Mittimus*, see *postea*, Tit. *Mittimus*.

The Form of the Bailment, see *postea*, Tit. *Bailment*.

If the Offender, upon his Examination before the Justice of Peace, shall confess the *Confession* Matter, it shall not be amiss that he subscribe his Name or Mark to it.

If the Offender confesseth the Felony before the Justice of Peace, and notwithstanding he letteth him go, without committing or bailing of him; this seemeth to be a voluntary Escape, and so Felony in the Justice. *Cromp. 39, 44.*

Also, if any Person shall be brought before a Justice of Peace, and charged with any *Bailment* Manner of Homicide, (other than that which shall be done in the orderly Execution ^{Lamb. 229.} of Judgment) as if it were done *Se Defendendo*, or by Casualty, which are not Felonies, or done by an Infant, a Lunatick, or the like; yet it is the Justice's Part, and safest for him, to commit the Offender to Prison, or at least to join with some other in the Bailment of him, (if the Cause will suffer it) to the End the Party may be discharged by a lawful Trial. See *antea*, Tit. *Homicide*.

The like is to be done where any Felony is committed, and one brought before the Justice of Peace upon Suspicion thereof, though it shall appear to the Justice, that the Prisoner is not guilty: For it is not fit that a Man once arrested and charged with Felony (or Suspicion thereof) should be delivered upon any Man's Discretion, without farther Trial. *Vide Cromp. 34. Lamb. 229.*

The Justices of Peace have Authority (by the Words of the Statute) to bind by Recognizance, all such as do declare any Thing material to prove the Felony. And yet the *Evidence by the Wife.* Wife is not to be bound to give Evidence, nor to be examined against her Husband; for, ^{1 & 2 P. & M. 13.} by the Laws of God, and of this Land, she ought not to discover his Counsel, or his Offence, in case of Theft, or other Felony. See *Stamf. 26. b.* Nay, I have known the Judge of Assise greatly to disallow, that the Wife should be examined, or bound to give in any Evidence against others in the Case of Theft, wherein her Husband was a Party; and yet her Evidence was pregnant and material to have proved the Felony against

against others that were Parties to the same Felony, and not directly against the Husband. See *antea*, Tit. *Accessory*.

(a) And *Coke Lit.* 6. b. saith, That it hath been resolved by the Justices, *Termino Pasch.* 10 *Jac.* that the Wife cannot be produced either against or for her Husband. *Quia sunt duæ animæ in Carne una.*

And yet it was resolved by the Judges (in the Case of the Lord *Audley*) that in Criminal Causes the Wife may be a Witness against her Husband, especially where she is the Party grieved. But that in Civil Causes she cannot. 7 *Caroli Regis*.

But in the Lord *Audley's* Case before mentioned, who had procured one to ravish his Lady, and was assisting to it himself, it was resolved, That the Wife might in that Case be a Witness against her Husband: But the Reason of that Case will not hold in other Cases of Felony, for there she was *pars læsæ*, and the Case was capable of no other Proof.

The Child.

E. 3. b. 4. 2.
G. 2, 3, 4.

(d) But for Children, I find in the Book of the Discovery of Witches at *Lancaster Assises*, *Anno Dom.* 1612. that the Son and Daughter of *Elizabeth Device*, a Witch, were not only examined by the Justices of Peace against the said Mother, and the said Examination certified and openly read upon the Arraignment and Trial; but the Daughter also was commanded, and did give open Evidence against her Mother, then Prisoner at the Bar.

By an Infant.

H. H. P. C.
634.

I farther find in the said Book of the Discovery of Witches, that two Children, the one about nine Years of Age, the other of fourteen, did upon their Oaths give Evidence against the Prisoners upon their Arraignment. See the Book, f. 4. lib. b. K. 4. a. b.

(a) The like was done at *Cambridge*, at Lent Assises, *Anno Dom.* 1629. before Sir *Henry Mountague*, Lord Chief Justice of the *King's Bench*. And herewith agreeth Mr. *Bract*. fol. 118. b. That *Minor infra ætatem* may be a Witness or Accuser, *cum tamen accusatus attachietur usq; ad ætatem accusantis*.

Accusation or Information by one that is decrepid or unable to travel is good, and may be taken by the Justice of Peace upon Oath, and certified at the next general Gaol-delivery, or Sessions of the Peace, as the Cause shall require.

If one be an Accuser upon his own Knowledge, Sight, or Hearing, and he shall utter the same to another, that other may be an Accuser. *Dyer* 99.

Accusation by an Approver. See hereof, Tit. *Bailment*.

And note, That an Offender confessing any Felony (upon Indictment or otherwise) against himself, may also accuse others of the same Felony: And such Accusation may be taken by the Justice of Peace, &c.

By Persons discredited.

(d) Two inform against another in Matter of Felony, and they vary in their Tales, (*viz.* in the Day and Place, when and where the Felony was committed) such Information is not much to be credited. See the Story of *Sufanna*.

Crompt. 100.

He that is examined, if Part of what he speaketh be proved to be false, he is not to be credited in the Residue of his Information; and therefore we shall find in 16 *E.* 4. that a Man who was produced as a Witness in the *Chancery*, in his Deposition was found to swear falsely in Part, and thereupon his Testimony was utterly rejected.

(a) Mr. *Bracton*, lib. 3. fol. 118. saith, That an Accuser or Witness, must be *integræ famæ*, & non *criminosus*, *quia criminosi ab omni Accusatione repelluntur: Ut si Accusans fuerit Latro cognitus vel Utlagatus, vel aliquo genere Feloniæ convictus vel convincendus.* Vide Pl. Co. L. 6.

A Man attainted of Perjury, and the King pardons and restores him, &c. *Quære*, Whether such a Person's Information shall be allowed against a Prisoner; for the old Saying is, *Once forsworn, ever forsworn*.

A Man attainted of Conspiracy or Forgery shall not be received to give Evidence, or be a Witness. See *Crompt.* 127. b.

But if one be brought before a Justice of Peace upon Suspicion of Felony, although the Information against the Prisoner shall be by such Witnesses, yet 'tis safest for the Justice to take their Information for the King, and to bind them over to give Evidence, &c. and to commit the Party suspected; and upon the Trial to inform the Justices of Gaol-delivery, concerning the Credit of those Witnesses.

(a) Concerning those Accusers or Witnesses, I have farther seen two old Verses in these Words:

*Conditio, sexus, ætas, discretio, fama,
Et fortuna, fides; in Testibus ista requirunt.*

And yet in Case of Felony any Man (though of no Worth) may be allowed for a Witness or Proof.

By God's Law one Witness shall not be sufficient against an Offender, for any Sin, Trespas or Fault, *Numb. 35. 30. Deut. 19. 15.* And to the same Purpose was the Statute 25 *Hen. 8. cap. 14.* And yet now by our Law one Witness is sufficient, where the Trial is by a Jury; for they are all sworn to try the particular Matter wherewith the Defendant is charged. So also one Witness is sufficient to convict an Offender before the Justice of Peace in divers Cases, he being expressly therein enabled by Statute.

And yet in other Cases where the Matter is to be tried by Witnesses only, it is meet that there be two Witnesses.

But no Man is to be condemned without an Accuser. *Jobn 8. 10.*

(d) When a Prisoner shall be brought before the Justice of Peace for Felony, or Suspicion thereof, but they who bring him, or first complained of him, will not or cannot inform any material Thing against the Prisoner; yet the Justice of Peace ought to commit the Party suspected after his Examination taken, and to bind over such as did first accuse the Prisoner, or such as do bring him before the Justice to give in Evidence, &c. And if afterwards the said Justice shall hear of any other Persons that can inform any material Thing against the Prisoner to prove the Felony, whereof he is suspected; he may grant his Warrant for such Persons to come before him, and may also take their Information, &c. and may bind them to give Evidence against the Prisoner, for every one shall be admitted to give Evidence for the King. *Stamf. 163.* See *antea* Tit. Felony, and Tit. *Accessory.*

And the Parties grieved ought to be bound, not only to give Evidence, but also to prefer a Bill of Indictment against the Prisoner; and the other Persons who can inform any material Thing to prove the Felony, may be bound to give Evidence only.

And for that Men should be the readier and more willing to give Evidence against Felons, the Statute 21 *H. 8. cap. 11.* hath enacted, That if any Man hath Goods stolen from him, if the Felon be thereof indicted, and after in any Sort attainted or arraigned, and thereof found guilty, by Reason of Evidence given by the Party robbed, or Owner of the same Goods, or by any other by his Procurement, (tho' the Thief be not hanged, nor have Judgment of Death) then the Party robbed, or Owner of the Goods, shall be restored to his said Goods by a Writ of Restitution, though he never made any fresh Suit, or Hue and Cry. Before which Statute the Party robbed could have no Restitution, without suing an Appeal against a Felon, and fresh Suit made.

Restitution of stolen Goods.
21 H. 8. c. 11.
P. Restit. 1.
Br. Eltra. 8.
Doct. & Stud. 64.
Stamf. 165, 166.

(a) Also if the Felon shall be outlawed upon the Indictment by Means of the Party robbed, or Owner of the Goods stolen, he shall have Restitution of his Goods by a Writ of Restitution, *ut supra.* *Ba. U. 76.*

And note, That the Justices, before whom any such Felon shall be found guilty, or otherwise attainted by Reason of Evidence given by the Party so robbed, or Owner, or by any other by their Procurement, have Power to award a Writ of Restitution for the Money or Goods stolen, directed to the Party in whose Hands the same Goods are, &c. 21 *H. 8. cap. 11.* *Br. Restit. 22.*

(d) Also the Executors of the Party robbed shall have Restitution by Force of this Statute, *viz.* Upon Evidence given by them, or by their Procurement against the Felon, whereby the Felon is attainted or found guilty.

Co. 6. 80.
Ben. 3 El.

If a Thief do rob or steal Goods from three Men severally, and he be indicted of the Robbing or Stealing from one of them, and arraigned thereupon; in this Case, though the other Two would give Evidence against the Offender, yet shall not they have Restitution of their Goods, by the Meaning of that Statute; for the Felon is not attainted of any other Felony, saving of that whereof he was indicted. But if he be indicted of all the three Robberies or Felonies severally, and arraigned upon one of them, and found guilty by the Evidence given by one of the Parties robbed, &c. yet shall he be after arraigned upon the other two Indictments, to the Intent he also may be found guilty by the Evidence of the other two Persons robbed, and that so they may have Restitution of their Goods stolen, according to the Meaning of the said Statute.

Stamf. 166.
P. R. 162.

And if a Man steal Goods at divers Times from several Men, and is after attainted at the Suit of one of them only, for the Goods stolen from him, but is not attainted at the Suit of the other; by this Attainder the Felon shall forfeit to the King not only his own Goods, but also the Goods stolen from those others at whose Suit he was not attainted, though the Felon had no Property, but only a Possession of those Goods; and the Property

44 E. 3. 44.
1 H. H. P. C. 545.

perty of the Goods which remaineth in the right Owner in this Cafe, is forfeited by the Owner to the King, for Default of the Owner pursuing the Felon.

See *Stamf.* 166.

Also if there be divers Thieves, and but one of the Principals attainted as before, yet the Party robbed shall have Restitution.

Market.

* *The Practice hath been otherwise ever since 5 Car. 1. for if the Criminal is convicted at the*

But in these and the like Cafes of Restitution, if the Felon hath sold the Goods in a Fair or * *Market Overt*, and after be attainted of the Felony, (upon Evidence given by the Party robbed, here the Owner shall not have Restitution; for by Alienation in a Fair or Market Overt, the Property of the Goods stolln is altered. 12 *H.* 8. 10. *b.* Yet if he that bought the Goods in Market were privy to the Felony, such Sale shall not alter the Property, *quia particeps criminis.* See 33 *H.* 6. 7. *Co.* 3. 78. *Vide antea Tit. Horses.*

Prosecution of the Party from whom the Goods were stolln, he shall have Restitution, tho' sold in a Market; and if the Buyer pleads such Sale, the Plaintiff upon a Demurrer shall have Judgment. See also 1 H. H. P. C. 543.

See 1 *H. H. P. C.* 543.

(a) If any Goods of what Nature soever they be, be stolln, purloined, &c. and be sold, exchanged or pawned to any Broker, &c. in *London, Westminster, Southwark*, or within two Miles of *London*, the same shall alter no Property. 1 *Jac.* 1. 21. *sect.* 5.

(d) A Man shall have Restitution of Money stolln, &c. though it cannot be known. *Br. Restit.* 22.

Waifs.

But if a Man hath a Horse or other Goods stolln from him, and knoweth not by whom; if the Felon waiveth the Goods, flieth and escapeth, and the King's Officer, or the Lord of the Manor, &c. seiseth them, the Party robbed shall have no Restitution, for that he cannot indict and attain the Felon. And yet if the Felon had not the Goods in his Possession at the Time when he fled, but had formerly left them elsewhere, *sc.* in the Thief's own House, or in any other Man's House, or in the Custody of any other, or had hid them, then are they no waived Goods, nor forfeited, but the Owner may take them again wheresoever he findeth them, without any Restitution awarded. *Co.* 5. 109.

Also in the foresaid Book of Discovery of Witches, I observe one other Thing, *viz.*

That Examinations taken by Justices of Peace in one County, may be by them certified in another County, and there read and given in Evidence against the Prisoner. *T.* 2. 3.

(a) And in such Cafes the Examinations should be taken upon Oath.

Examination certified. Cromp. 193.

(d) The Offender himself shall not be examined upon Oath: For by the Common Law *Nullus tenetur seipsum prodere.* Neither was a Man's Fault to be wrung out of himself, (nay not by Examination only) but to be proved by others, until the Stat. 2 & 3 *P. & M. cap.* 10. gave Authority to the Justices of the Peace to examine the Felon himself.

Upon Oath. Cromp. 194.

But 'tis convenient, in Cafes of Felony especially, that the Information (of the Bringers and others) which the Justices of Peace do take against the Prisoner, be upon Oath: Otherwise upon the Trial of the Prisoner, such Examination shall not be given in Evidence against the Prisoner upon his Trial. And so was the Direction of Sir *Edw. Coke*, late Lord Chief Justice, (5 *Jacobi* at *Cambridge* Summer Assizes) upon the Trial of a Felon; for, saith he, in Cafe of a Trespass to the Value of two Pence, no Evidence shall be given to the Jury, but upon Oath, much less where the Life of a Man is in Question. See *Lamb. pag.* 210. that he hath heard the Opinions of other Justices of Assize delivered accordingly.

Also if the Witnesses be examined upon Oath, then though it happen they should die before the Prisoner have his Trial, or if they shall not appear upon the Recognizance, and give Evidence against the Prisoner (being laboured, perhaps, to absent themselves) yet may their Information be given in Evidence, as a Matter of good Credit.

Also it is found by Experience, that without Oath many Witnesses will speak coldly against a Felon before the Face of the Justice; yea, and will also speak very sparingly and coldly upon their Evidence given before the Judges of Assize; as I have observed in some, had they not been urged with their former Information taken upon Oath; for the Labouring (by the Offender and his Friends) to such as are to give Evidence, both before the Matter cometh before the Justice of Peace and after, is now grown very common and usual.

Lamb. 219.

Also Mr. *Brook* (*Tit. Examinations* 32.) is of Opinion, That every Examination ought to be upon Oath: And so also is the Practice of the Justices in the higher Courts at *Westminster*, in all the Examinations of Summoners, Viewers, Sheriffs, Clerks, or other Officers, &c.

Oaths.

And here let me admonish all such as are Witnesses against a Prisoner, or any Offender, before a Justice of Peace, or other Magistrate, that they be well advised what they testify upon

upon their Oaths, knowing that in such Cases, if either they should not speak the Truth, or should conceal any Part of the Truth, they should offend against God, the Magistrate, the Innocent, the Commonwealth, and their own Souls, *ſc.* Against

God, in despising of him, taking his Name in vain, and belying the Truth.

Magistrate, in misleading and deceiving him, and causing him to do Injustice.

Innocent, in spoiling him of his Name, Goods or Life.

Commonwealth, *ſc.* If the Party be guilty, and he clears him by false Witnesses.

His own Soul; for it is Perjury in him, at least in the Presence of God and good Men.

(a) And though he be not presently sensible of the Sore, yet, as one well saith, it will fester, and he shall then feel it most when no Plaister shall be found to cure it: Yea, a Hell will come to them, before they come to Hell; for a Conscience is,

1. *Testis*, a Witness accusing them.
2. *Judex*, a Judge judging and condemning them.
3. *Carcer*, a Prison.
4. *Tortor*, an Executioner; yea, no Tongue can express the Torture of a troubled Conscience.

C H A P. CLXV.

Whether Information, Evidence or Proof of Witnesses shall be taken against the King.

IT seemeth just and right, that the Justices of Peace, who take Information against a Felon or Person suspected of Felony, should take and certify as well such Information, Proof and Evidence, as goeth to the Acquittal or Clearing of the Prisoner, as such as makes against the Prisoner; for such Information, Evidence, or Proof taken, and the Certifying thereof by the Justice of Peace, is only to inform the King and his Justices of Gaol-delivery, &c. of the Truth of the Matter.

And Sir *Edw. Coke* (at Lent Assizes at *Bury*, 5 *Jac.*) advised a Coroner, that he ought to have done accordingly, as I have heard.

But *quere*, if the Justices of Peace, or Coroner, may take upon Oath such Information, Evidence or Proof, as maketh against the King? It seemeth no.

Upon Trial of Felons before the Justices of Gaol-delivery, the said Justices will often hear Witnesses and Evidence which goeth to the Clearing and Acquittal of the Prisoner, yet they will not take it upon * Oath, but do leave such Testimony and Evidence to the Jury to give Credit or to think thereof, as they shall see and find Cause.

Crom. 110. b.
*This is altered by the Stat. 1 Annæ, c. 9. That the Witnesses must be upon Oath.

Popkam, Chief Justice, (at *Cambridge Assizes tempore Eliz.*) committed one to Prison, who, upon the Trial of a Felon, called out, That he could give Evidence for the Queen; and when he was sworn, he gave Evidence to acquit the Offender.

But by the Statute of 31 *Eliz. cap. 4.* it was enacted, That such Persons as shall be impeached for any Offence made Felony by that Statute (being against imbezilling of Armour, &c.) shall be admitted to make any lawful Proof that they can, by Witnesses or otherwise, for their Discharge and Defence.

P. Armour.

In 7 *H. 4.* we shall find, that one of the Serjeants, as *Amicus Curie*, and to inform the Court, (that they should not err) did shew his Opinion to the Benefit of a Prisoner, upon the Insufficiency of the Indictment. The like is to be seen in *Brooks's Case*. 28 *Eliz.* in *Banco Regis*. Co. 4. 39.

Stamf. 141. b.

Co. 4. 39.

C H A P. CLXVI.

Causes of Suspicion.

NOW upon the Examination of Felons, and other like Offenders, these Circumstances following are to be considered.

1. His Name, *sc.* if he be called by divers Names. *Duplex nomen malum omen.*

- His Parents; if they were wicked, and given to the same Kind of Fault.
 His Education; whether brought up idly, or in any honest Occupation.
 His Ability of Body; *sc.* if strong and nimble, or weak or sickly, not likely to do the Act.
 His Nature; if civil or haughty, witty and subtil, a Quarreller, Pilferer or bloody-minded, &c.
 His Means; if he hath whereon to live or not, (a) or *Si solito ditius se habuerit in vestibus & in aliis ornamentis, cibus, & potibus, & kujusmodi.* Br. fol. 120, 122.
 2. Quality. (d) His Trade; for if a Man liveth idly or vagrant, (*Nullam exercens artem nec laborem*) it is a good Cause to arrest him upon Suspicion, if there has been any Felony committed. 7 E. 4. 20. Br. *Faux Imp.* 22.
 His Company; if Ruffians, suspected Persons, or his being in Company with any of the Offenders. 7 E. 4. 20.
 His Course of Life; *sc.* if a common Alehouse-haunter, or riotous in Diet, Play, or Apparel.
 Whether he be of evil Fame or Report.
 Whether he hath committed the like Offence before, or if he hath had a Pardon, or been acquitted for Felony before: *Nam qui semel est malus semper praesumitur esse malus in eodem genere mali.*
 (a) So if he hath been transported or outlawed for Felony, although he hath his Pardon.

- (d) If he hath any Blood about him or his Apparel, or that his Weapon be bloody.
 If any of the Goods stolen be in his Possession.
 (a) If any of the Apparel of the Party murdered be in his Possession.
 (d) The Change of his Countenance, his Blushing, Looking downwards, Silence, Trembling.
 His Answers doubtful or repugnant.
 If he offereth Agreement or Composition.
 3. Marks or Signs. (a) If he hath laboured his Neighbours not to speak thereof.
 (d) The Measure of his Foot, or his Horse's Foot.
 The Bleeding of the dead Body in his Presence.
 If, being charged with the Felony, or called Thief, he saith nothing. *F. Cor.* 24.
 If he fled: *Fatetur facinus, qui judicium fugit.* Co. 11. 60.
 (a) If he hides himself.
 If he lies lurking in a Place where he had nothing to do.
 If he were the first that found the Party murdered.

- (d) Place, *sc.* if convenient for such an Act, as in a House, in a Wood, Dale, &c.
 Time; the Year, Day, Hour, early or late.
 4. The Fact. Where the Offender was at the Time of the Fact, and where the Day or Night before; his Business and Company there: And Witnesses to prove all these.
 Manner; if willingly, by Chance or Necessity.

5. The Cause. { If former Malice.
 { If to his Benefit, or what Hope of Gain.
 { If for the Eschewing of any Hurt or Danger.

6. The Person. { *Agens*: If Principal or Accessary, Infant, Lunatick, &c.
 { *Patiens*: If against the King, Commonwealth, Magistrate, Master, &c.

(a) Note That a Man accusing another but upon Suspicion, is not to be reproved, though the Party accused be proved innocent. *Numb.* 5. 28, 31.

(d) A Felon brought before a Justice of Peace accuseth others; it is sufficient Cause for the Justice to grant out his Warrant for the rest. See *postea*.

A Man going to Execution accuseth another of Felony; it is sufficient Cause to arrest him. F. Co. 211.

Communis vox & fama, that he did the Offence, is sufficient Cause of Suspicion; *sc.* where such a Felony is done, otherwise not. Br. Faux Impr. 16.

But yet for the better conceiving what may give just Cause of Suspicion, mark some of Mr. *Bracton's* Rules.

Oritur suspicio ex fama: Fama vero quæ suspicionem inducet, oriri debet apud bonas & graves, (non quidem malevolas & maledicas, sed providas & fide dignas) personas, idque non semel, sed sæpius: Vanæ autem voces populi non sunt audiendæ. Fame. Stamf. 97.

And therefore where the common Proverb is, *Vox populi est vox Dei*, it should be, *Vox populi Dei est vox Dei*.

Si Furtum in manu alicujus inveniatur, vel sub potestate alicujus, tunc ille in cujus domo vel potestate res furtiva inventa fuerit, tenebitur, (nisi Warrantum invenerit quod eum inde defendere possit); for, as another saith, *Cum adjunct testimonia rerum, quid opus est verbis?* Stamf. 29.

Si quis noctu cubaverit in domo solus cum aliquo qui interfectus sit, vel si duo aut plures ibi fuere, & Hutesium non levavere, nec plagam a latronibus vel interfectoris in defensione facienda acceperit, nec ostendunt quis de se vel de aliis hominem interfecerit; his casibus mortem dedicere non possunt. Stamf. 179.

Si quis in domum suam notum vel ignotum acceperit, qui vivus ingredi visus est, vero postea nunquam nisi mortuus, dominus domus, si tunc domi sit, vel alii de familia qui tunc interfuerunt, pœnam capitalem subibunt, nisi forte per patriam fuerint liberati. Ibid.

Sunt etiam quædam præsumptiones ita violentæ, ut probationem non admittunt in contrarium; ut si quis cum cultello cruentato captus sit super mortuum, vel fugiendo a mortuo, vel mortem confitetur: quibus casibus non admittitur mortem dedicere, nec alio opus est probatione. Stamf. 97 & 179. Co. L. 6.

(a) Sir *Ed. Coke*, *Lit.* 6. maketh three Sorts of Presumption, *viz.*

Presumption.

1. *Violenta*, as in this last former Case, which he saith is *plena probatio*.
2. *Probabilis*, which, saith he, moveth little.
3. *Præsumptio levis, seu temeraria*, which moveth not at all.

(d) And yet in Cases of Felony, &c. the Confession of the Offender, upon his Examination before the Justice, shall be no Conviction, except he shall after * confess the same again upon his Trial or Arraignment, or be found guilty by Verdict of twelve Men, &c. *Confession of the Offender. * Co. 11. 30 a. vide.*

(a) To the like Purpose also is the Rule of the Civil Law, *Si quis in Judicio sponte de seipso confiteatur, & postea maneat in Confessione, satis est*: If any Man in Judgment do confess of himself, of his own Accord, and doth persevere in his Confession, it is enough, and such Confession shall be taken for an Evidence of the Crime.

But yet at Lent Assizes at *Cambridge*, *Anno quarto Caroli Regis*, before Sir *Francis Harvey*, upon the Arraignment of a Prisoner for Felony, his Examination, which was taken before the Justice of Peace, wherein he had confessed the Felony, was only given in Evidence, no other Evidence then coming in upon his Trial; and the Prisoner upon that his own Confession before the Justice of Peace was found guilty by the Jury of Life and Death, and had Judgment, &c.

(d) Also in Cases of secret Murders, and in Cases of Poisoning, Witchcraft, and the like secret Offences, where open and evident Proofs are seldom to be had, there half Proofs or probable Presumptions are to be allowed, and are good Causes of Suspicion, (a) and are sufficient for the Justice of Peace to commit the Party so suspected.

!(d) But

8 E. 4. 4.
c H. 7. 4.
Br. F Impr.
4. 10.

(d) But note, by the Common Law, That in an Action of False Imprisonment brought against the Constable (or other Person that shall arrest another upon Suspicion of Felony, it is no Plea for them to say, that the Plaintiff was suspected of Felony: But they must alledge, That there was such a Felony committed, and that the Plaintiff was suspected for the same; for Suspicion only, without a Felony committed, is no Cause to arrest another. (a) Yet see the Statute of 5 E. 3. cap. 14. that if any Man have any evil Suspicion of any Person for Felony, &c. be it by Day or Night, they shall be arrested by the Constables of the Towns, &c. and kept in Prison till they be delivered by the Justices, &c.

17 E. 4. 5.
22 H. 7. 29.

Also the Defendant must alledge some special Matter, in Fact, to prove that he, who was arrested, was suspected of Felony, as to say, that the Party arrested is a Man of an evil Fame, or a vagrant Person, &c. otherwise one Man may arrest any other, yea every Man in the Town may be arrested, when any Felony is committed.

7 E. 4. 20.

(a) But what is sufficient Cause of Suspicion, and what not, shall be tried by the Justices. *Fi.* 127.

Br. Exem. 8.
14, 16, 25.

(d) Also the Defendant must plead, That he himself had a Suspicion of the Plaintiff; for if the Constable, or other Person that shall arrest one that is suspected, doth not suspect him himself, it seemeth he may not arrest him upon his own Authority. (a) And yet by the Opinions of *Keble*, *Vavafor*, and *Townsend*, as well the Constable, as others in his Aid, may arrest one that is suspected of Felony, upon the Suspicion and Complaint made to the Constable, of the Party robbed. 2 H. 7. 15, 16. *Br. Faux Impr.* 14. yet *alii econtra ibid. sc.* that the Suspicion can extend to no other, but only to him that hath the Suspicion, and *Br.* 14 H. 8. 16. a. accordeth; *tamen quære.* For if Felons may not be arrested or stayed but only by those who shall suspect them, and that others, may not aid and assist the Party that shall suspect another to have robbed him, many Felons shall escape, and go unpunished. See *Plo.* 46. a. & *Finch* 127.

(d) But now by the Statute 7 Jac. 1. 5. the Constable, &c. in the former Cases may plead the General Issue (Not guilty), and give the said special Matters in Evidence.

Also if the Constable, or other Person, shall arrest another upon Suspicion of Felony, by Virtue of a Warrant from a Justice of Peace, such Warrant shall excuse him, it being given in Evidence, &c. *Vide postea Tit. Warrants.*

See 2 Hawk. P. C. Chap. 13. for Arrests by Publick Officers.

C H A P. CLXVI. Part 2.

Bailment and Mainprise.

Definition.

BAilment, Mainprise or Replevin, is the Saving or Delivery of a Man out of Prison, or the Freeing or Setting at Liberty one arrested before that he hath satisfied the Law; *sc.* by finding Sureties to appear at a certain Day, and to answer, and be justified by the Law.

And to this Purpose these three Terms, *Bailment*, *Mainprise* and *Replevin*, be indifferently used in our Statutes and Books.

Nature of it.
Stamf. 65.
P. Mainp. 18.

He that is bailed is taken or kept out of Prison, and delivered, as it were, into the Hands of his Sureties, who are reputed his Guardians, and who may keep him with them, and may imprison him by some Opinions. See 22 H. 6. *Br. Surety* 8. & *Mainp.* 89.

Crom. 157.

If the Mainperners or Sureties do at any Time, or in any Case, doubt that their Prisoner, or the Party by them bailed, will fly, they may take him, and bring him before any Justice of Peace; and upon their Prayer the said Justice of Peace may and ought to discharge such Sureties, and commit the Party to Prison, except he shall find new Sureties, &c.

So if a Prisoner be bailed by insufficient Persons, the Justice of Peace *ex Officio*, may cause him to find better Sureties, and may commit him till he shall so do; for the Stat. of *West.* 1. cap. 15. requireth, That such as be bailed be let out by sufficient Surety. *P. Mainp.* 2. *Vide antea Tit. Surety for the Peace.*

(a) If the Prisoner cannot find sufficient Sureties, the Justice of Peace is not bound (nay ought not, knowing their Insufficiency) to let the Prisoner to Bail. See *Co.* 10. 101.

(d) And therefore, altho' the Number of such Sureties, their Sufficiency, and the Sum wherein they shall be bound, resteth in the Discretion of the Justices; yet it is safe for them to take two Sureties at the least, and those to be Subsidy-men, and to be bound in good Sums, especially if the Prisoner be in for Felony, or Suspicion thereof; for the more able the Sureties are, the rather they will cause him that is bailed to appear. And again, for Want of taking sufficient Bail the Justices of Peace are fineable. And at Cambridge Assizes, A. D. 1613. Judge Warburton threatned to have set 40 l. Fine upon two Justices of Peace, who had bailed a Prisoner that was committed for Suspicion of Felony, and appeared not, for that the Sureties were not Subsidy-men.

Quære, If the Justices of Peace may not examine upon their Oaths the Sureties concerning their Sufficiency, or whether they be Subsidy-men. (a) The Justices of the Common Pleas (7 H. 6. 25.) did examine the Ability of the Sureties upon their Oaths, &c. And that which the higher Courts do, may be a good Rule for others. *Vide* 2 H. 7. f. 1.

(d) Now Bailment by the Justices of Peace, in Case of Felony, or for any other Matter, is always in a certain Sum of Money, (as 40 l. &c.) the which Sum the Sureties, &c. shall forfeit to the King, if the Prisoner appeareth not at his Day:

Sufficiency.
Oath.
Nature.
Stamf. 77.
21 H. 7. 20.
2 H. H. P. C.
125.

Also the Bailment in Felony is, *Ad standum rectum de latrocinio prædicto secundum Legem*, &c. which seemeth to imply, That they which have taken him to Bail shall not only cause him to appear, but also to answer the Felony: *Stamf.* 77. d.

And in this Business of Bailment, being a Matter of much Weight, it behoveth the Justices of Peace to be very circumspect, as well for Fear of Wrong by denying it to him that isailable, as also for Fear of Danger to the Service it self, by yielding where it is not grantable; and for Fear of Danger to themselves in both Cases:

Danger.

For whosoever detains Prisoners who areailable, after they have offered sufficient Sureties, shall be amerced to the King: And he that doth take any Reward for the Deliverance of such, shall be amerced to the King, and pay double to the Prisoner.

3 E. 1. 15.
P. Main. 6.
See 23 H. 6.
c. 10.
P. Sh. 8. 11.
25 E. 3. f. 39.
Stamf. 33. 77.

So on the other Side, if one who by the Law is notailable, shall be let to Mainprise, this shall be adjudged a negligent Escape to him or them that do let him at Mainprise; and for such an Escape or Offence, they shall be fined and punished as followeth.

If the Sheriffs, Constable, or any Bailiff of Fee who hath the Keeping of Prisoners, shall bail any Person which is notailable, and be thereof attainted, they shall lose their Fee and Office for ever. And if the Under-Sheriff, Constable, or Bailiff, or such as have Fee for keeping of Prisoners, do it contrary to their Master's Will, or any other Bailiff being not of Fee, they shall have three Years Imprisonment, and make Fine at the King's Pleasure.

3 E. 1. 15.
P. Mainp. 3.
4.
Doct. & Stud.
135.

Note, That the Sheriffs and other Officers which do let to Bail any Persons forbidden by the Statute of *Westm.* 1. to be bailed, shall be punished by the Justices of Gaol-delivery, according to the Form of the same Statute; or else by the said Justices they may be put to their Fine, as for an Escape punishable at the Common Law. 25 E. 3. 39.

27 E. 1. c. 3.
P. Main. 4.
3 E. 1. c. 15.

(a) *Quære*, if it be not Felony for them to bail Felons, or Persons suspected for Felony, for that these Officers have no Authority at this Day to bail such Prisoners.

The Writ of *Mainprise* * lieth properly where a Man is taken for Suspicion of Felony, or indicted of Felony, for the which Thing by the Law he isailable, and he offereth sufficient Sureties unto the Sheriff or others who have Authority to bail him, and he or they do refuse to let him to Bail; then he who is so kept in Prison may sue for such Writ. *F. N. B.* 553. g.

* L. Coke says this is taken away; but this is a Mistake according to 2 H. H. P. C. 142, 143.

What Persons be forbidden to be bailed by the said Statute of *Westm.* 1. see *postea sub hoc tit.*

(d) Note, that the Sheriff or Constable might at the Common Law have bailed one suspected of Felony, (because they were Conservators of the Peace;) but now that Power is transferred to the Justices of Peace only.

3 H. 7. 3.

If any Justices of Peace do let to Bail or Mainprise, any Person who (for any Offence by him committed) is declared not to beailable, or forbidden to be bailed by the aforesaid Statute of 3 Ed. 1. the said Justices of Peace so offending shall pay such Fines as shall be assessed by the Justices of Gaol-delivery where the Offence shall be committed.

By the Justices.
1 & 2 P. & M.
c. 13.
P. Just. 108.
P. Mainp. 4.
Fitz. 251. I.
1 & 2 P. & M. c. 13.
See Co. 10.
100. b.

But the Justices of Peace and Coroners within *London* and *Middlesex*, and in all other Cities, Boroughs, and Towns Corporate, have Authority to let to Bail Felons and Prisoners, as they have formerly accustomed. *P. Just.* 107.

If the Sheriff, Justices of Peace, or other Officers, shall bail one that is notailable, such Bailment being against Law, *quære* if the Recognizance or Bond taken upon such

Bailment (for the Appearance of the Prisoner) be not void. See the Opinion of *Moile* 37 *H. 6.* 1. and of the Court there, that such a Bond taken by the Sheriff is void.

Now to shew farther the Authority of the Justices of Peace in this Behalf.

The Manner.
1 & 2 P. &
M. c. 13.
P. Just. 107.

No Person arrested for *Man-slaughter, or Felony*, or Suspicion thereof, (beingailable by the Law) shall be let to Bail or Mainprise, by any Justice of Peace but in open Sessions, or by two Justices of Peace at the least, whereof one to be of the *Quorum*, and the same Justices to be present together at the Time of the said Bailment.

Ibid.

And this Bailment the said Justices shall certify in Writing (subscribed with their Hands) at the next Gaol-delivery, &c. *Vide antea Tit. Examination of Felons.*

Ibid.

Also before the Bailment of such Prisoner, the same Justices or one of them, shall take the Examination of the Prisoner, and Information of them that bring him, or of the Fact and Circumstances thereof; and so much thereof as shall be material to prove the Felony shall be put in Writing, before they make the Bailment: Which Examination, Information, and Bailment, they shall certify at the next general Gaol-delivery, *ut supra.*

But if any Justice of Peace hath taken the Examination of the Felon, and Information against him, and after hath sent him to Gaol; now upon Bailment of him by other Justices, they need not take any new Examination of the Prisoner or Information against him, but under their Recognizance (or together therewith) to certify by what Justice of Peace the Felon was committed, to the End that at his Hands those Examinations and Informations may be required, if he have not certified them.

Cromp. 156.

By the Opinion of Mr. *Crompton*, a Prisoner (*taken for Felony*) before his Commitment, ought to be examined and bailed by two Justices of Peace being together, (as before): But after that the Prisoner is examined and once committed, then he may be bailed by any one Justice of Peace. *Quære* thereof.

Mittimus, the Form.

The Justices of Peace which shall send any Prisoner to the Gaol, ought to shew in their *Mittimus* the Cause of the Commitment, to the End it may appear whether such Prisoner beailable or no.

Cromp. 153.

And if the Justices of Peace shall commit one to the Gaol, with these Words in the *Mittimus*, *sc.* without Bail or Mainprise, (shewing a certain Cause in their *Mittimus*) yet if such Prisoner beailable by Law, other Justices of Peace may bail him: (Yet *Quære*, seeing their Authority is equal:) But if the Prisoner were committed without Bail or Mainprise, and without shewing Cause in the *Mittimus*, then other Justices of Peace cannot (or at least shall not do well to bail him,) without making the other Justices, who committed him, privy thereto; for he might be committed for such Cause, as that he is notailable, (as for Treason, &c.)

Poph. 96.

(a) I have seen a Report of a Case, *Term. Trin. 37 El.* That upon an Assembly of all the Judges and Barons at *Serjeants Inn*, it was resolved and agreed by them to be put in ure in their Circuits, that if a Justice of Peace should commit a Man to the Gaol for Felony, for which by the Law he is notailable, but by his *Mittimus* he commits him generally, not shewing any Cause, if any other Justices of Peace shall bail him, not knowing the Matter, &c. they shall be fined for the same; for they at their Perils ought to inform themselves of the Truth of the Matter before they bail him.

14 H. 7. 10. a.

Note; where a Man isailable, yet when he cometh before the Justices he must offer Surety to the Justices, otherwise they may commit him to Prison. *Br. Peace 7.*

Next it followeth, that I shew what Persons beailable, and what not.

Persons notailable.

P. Main. 1. Stamf. 72.

E. Mainp. 11, 47, 57, 60, 63, 68.

F. Cor. 361.

It appears by the Statute of *Westm. 1. cap. 15.* that in these four Cases following, a Man was notailable at the Common Law. *Br. Mainp. 47. F. N. B. 66. e.*

1. No Person taken for the *Death of a Man, sc. for Murder*, or any other Homicide; wasailable by the Common Law.

And yet the Justices of the King's Bench do use to bail them; yea, although it be for Murder. *Br. Mainp. 60, 63, 78, 47.* See the Statute *3 H. 7. cap. 1.*

P. Just. 107. Lamb. 336.

Also the Statute *1 & 2 P. & M. cap. 13.* seemeth to admit that for *Man-slaughter*, and all other *Homicides* (except Murder only) the Slayer may be bailed by the Justices of the Peace; which also I take to be the common Practice at this Day. But let the Justices be well advised herein, *viz.* that the Offence be but *Man-slaughter*, and not Murder.

Also it seemeth the Justices of Peace cannot bail him that hath committed Man-^{P. Main. 15} slaughter, if either he hath confessed the Offence upon the Examination, (*vide postea*, Tit. *Bailment*) :

Or that he be taken with the Manner :

Or that it be apparently known that he killed the other. *Vide pag. sequent.*

He that hath dangerously hurt another, may be bailed, &c. See before, & *Stat. 3 H. 7. cap. 1.*

2. Secondly, no Person taken by the *King's Command* wasailable by the Common Law : But this must be intended of the King's Commandment by his own Mouth * or ^{* Vide 2 H. P. C. 131. contra.} by his Privy Council, which are incorporate to him. See *Stamf. 72. e. Br. Mainp. 37. 47.*

3. Thirdly, no Person taken by the Command of the King's Justices wasailable by the Common Law : But this must be intended of their absolute Command : As if the Justice commands one to Prison without shewing Cause why he doth so command, or for a Misdemeanor done in his Presence, or for some other Cause which lieth in the Discretion of the Justice, more than his ordinary Power, &c.

(a) And therefore if the *Lord Chancellor of England*, or *Lord Keeper* of the Great Seal, who have Power to commit one to Prison wherefoever they are in *England*, shall command or commit one to Prison (by such their absolute Authority) such Person shall not be bailed.

And so if the *Justices of the King's Bench* shall command one to Prison.

And so if the *Justices of the Court of Common Pleas* sitting in their Court.

Or *Justices of Assise* in their Places ; if these shall commit any to Prison they are notailable.

But where any Justice or Justices shall commit one rather to be safely kept, than for a Punishment, such Commitment may be said to be an ordinary Command ; and the Party so committed isailable. *Terms de Ley.*

(d) 4. Fourthly, *Trespassers in the Forest* were notailable by the Common Law : But that was remedied by the Statute 1 *E. 3. st. 1. cap. 8. & 7 R. 2. cap. 4. F. N. B. 67. c.*

But now, for that by the Statute 1 & 2 *P. & M. cap. 13.* it is provided, that no Justice or Justices of Peace shall let to bail any Person contrary to the aforesaid Statute of *Westm. 1. made 3 E. 1. cap. 15.* and so the Statute of *Westm. 1.* is now as a Line, whereby the Justices of Peace are to guide themselves in Cases of Bailment ; I will shew here what Persons areailable by that Statute of *Westm. 1.* and what not.

By this Statute of *Westm. 1.* no Prisoner shall be let to Bail which is taken in any of these 12 Cases following.

1. Such as have *abjured the Realm*, shall not be bailed.

2. Nor any *Approver or Appellor*, for that he confesseth the Felony, and himself Guilty, before he can accuse another, as Coadjutor or Helper with him in doing the same.

3. Nor he which is *appealed by an Approver*, so long as the Approver doth live, except he be of good Name, or that the Approver doth waive his Appeal. See *Stamf. 74. (a)* Or that the Approver be vanquished. 25 *E. 3. 43.*

4. (d) Nor he which is taken for *burning a House*, &c. feloniously. *Vide antea Felony by the Common Law.*

5. Nor any *Excommunicate Person*, taken at the Bishop's Request ; *sc.* upon his Certificate into the Chancery by the Writ of *Excom. capiend. F. N. B. 66. c.*

And yet when the Party is so taken, if he will conform himself to the Laws of Holy Church, and give Surety for his Obedience, he shall have a Writ *de Cautione admittenda*, directed to the Bishop ; and if the Bishop will not, then he shall have a Writ to the Sheriff to deliver him. See *Fitz. 63. c. d.*

(d) 6. Nor any Felon taken with the *Manner*, * or taken for a manifest Offence.

Manner. * *Manner may be derived from the French, Manceuvre, or Main-avoir, which last answers to the Saxon Hand-habbend used by Bracton, for furtum Manifestum. See 2 Hawk. P. C. 98. Not. [28] of the third Edition, and 1 H. H. P. C. 187, 348, 349 and 2 H. H. P. C. 133, 156.*

7. Nor a *Thief openly defamed* and known.

Thief openly defamed.

8. Nor he which is *Outlawed in Case of Felony* ; and yet in some Cases, such as be Outlawed may be bailed by the Court, &c. See *Stamf. 74.*

Outlawed in Felony.

9. Nor

Prison-breaker.

9. Nor he who hath broken the King's Prison. *Vide antea Felony by Statute.*

Treason.

10. Nor he which is taken for Treason touching the King himself.

Coining.

11. Nor he which is taken for falsifying the King's Money.

Counterfeiteth
the King's
Seal.12. Nor he which counterfeiteth the King's Seal. *Br. Mainp. 59.*

(a) In all these Cases, if the Cause for which the Party is imprisoned be Treason or Felony, or otherwise toucheth Life or Member, then shall he not be bailable; otherwise he may be bailed.

Manifest Of-
fence.

Nor shall he which is taken for a manifest Offence be bailed; as if a Man be indicted and imprisoned for a Riot, or other great Offence, before Justices, by Force of the King's Commission of Oyer and Terminer, this (and the like) are the manifest Offences whereof the Statute speaketh. See *Fitz. 250. f.*

Persons bail-
able.

(d) But by the same Statute of *West. 1.* such Persons are bailable, which be taken in any of these six Cases following,

West. 1. 15.

First, He that is taken (or indicted) for light Suspicion of Felony, is bailable. See *Lamb. 335. F. N. B. 249. g. 250. cap. 251. f.*

1. Persons sus-
pected.

P. Main. 2.

He that is taken upon Suspicion of Burglary, Robbery or Theft, if he be not of evil Fame, nor that there be any strong Presumption against him, is bailable.

Stamf. 74. c.

16 E. 4. 7.

Br. Main. 95.

A Man had stolen certain Hogs, and (for that he was of evil Fame) he was committed without Bail; yet if he could have brought Proof or Witness that he bought them, he should have been bailed.

Cro. 154.

A Man is arrested for Suspicion of Felony, and brought before the Justice; if it shall appear that there is no such Felony committed, the Party may be set at Liberty without Bail: But if there be a Felony committed, though the Prisoner can clear himself, yet the Justices may either commit or bail him. *Vide antea, Tit. Felony by Statute.*

2. Petty Lar-
ceny.

Secondly, he that is taken (or indicted) for petty Larceny, that amounteth not above the Value of 12 *d.* if he were not guilty of some Larceny before, is bailable.

P. Main. 2.

Fitz. 250. 6.

3. Persons in-
dicted by In-
quest of Office.

Thirdly, such as be indicted of Larceny by Inquest of Office before the Sheriff, or before Coroners or Bailiffs, &c. or in any base Court, they shall be set at Liberty upon sufficient Surety.

P. Main. 2.

Stamf. 74.

Fitz. 247. &

250. c.

B. Mainp. 97.

And yet they shall not be bailed, if they be not also of good Fame; but if they be of good Fame they are to be bailed, though they be indicted as aforesaid (before Sheriffs, Bailiffs, Coroners, or before any other such Officers, by their Office, or in any base Court): Yet *Quære*, if the Justices of Peace out of their Sessions may safely bail such Persons; for being indicted, they are more than vehemently suspected, &c.

(a) One that was indicted before the Coroner, that he had killed another *se defendendo*, was (by the Justices of Gaol-delivery) bailed till the next Assises to purchase his Pardon 26 *El. Cromp. 153.* See *antea, Tit. Misadventure.*

One that is indicted before the Sheriff for stealing of a Horse (which seemeth to have been in his Torn) may be bailed by the Sheriff (if he be of good Fame) by the Writ *de Manuptione.* *F. N. B. 249. g.*

Also one that was indicted of Burglary, as Principal, pleaded Not guilty, and was afterwards bailed. 29 *Lib. Aff. Fitz. Mainpr. 9.* See *infra.*

Another that was indicted of Robbery was bailed. 41 *Lib. Aff. 30. Br. Mainp. 61.*

If any Murderer being indicted, and after arraigned at the King's Suit, shall be thereof acquitted within the Year and Day, the Justices before whom he is acquitted shall not suffer him to go at large, but either shall remit him to Prison, or else may bail him (at their Discretion) till the Year and Day be passed, to the End that the Wife, or next Heir to the Party murdered, may have their Appeal of the same Murder within the Year and Day after the same Murder done, &c. 3 *H. 7. cap. 1. Fitz. 151. g.*

Persons attaint
or convicted.

Stamf. 74. d.

F. Cor. 297,

354.

(d) But such as are attainted or convicted of Felony are not bailable. For although it doth not appear by any Words of the said Statute of *West. 1.* that it doth prohibit the Bailment of such as be attainted by Verdict, yet it is to be intended, that the Statute doth as well prohibit the Bailment of those attainted by Verdict, as it doth of them who are attainted by Outlawry: And therefore if a Prisoner, after he hath pleaded not guilty, be attainted by Verdict, That he killed a Man *se defendendo*, or by Misfortune, yet shall he not be bailed by the Justice of Peace. *Tamen vide antea, Tit. Felonies by Casualty, & Stamf. 15. c. F. N. B. 246. c.* (a) That he shall be bailed by the Justices of Gaol-delivery before whom he is tried.

(d) And if a Man that is arraigned of Homicide doth plead Not guilty, and is found guilty, and doth pray his Clergy, and is reprieved without Judgment, he is notailable; for being convicted of the Felony, he is more now than vehemently suspected, and the Intendment of the Law in Cafes of Bailment is, that it resteth indifferent whether he be guilty or not, until Trial. Dyer 179.
See Br. Mainp. 94.

The same Reason seemeth to hold, if a Man be found guilty of Homicide before the Coroner. (a) Yet see 22 *Aff. p.* 94. *Br. Cor.* 90. that such areailable as are found (before the Coroner) but suspicious.

One *Poynes* was found guilty of Manslaughter before the Coroner, and it was certified in the King's Bench; and *Poynes* at the Bar prayed to be bailed, but it was denied him: For (as *Coke* said) peradventure it may be Murder. And it appears by the Statute of *Queen Mary*, that in Manslaughter the Party is not alwaysailable, for if he confesses the Fact he is notailable; which *Haughton* granted, and said, that he is notailable if the Fact be notorious, which the Court granted. *Poyne's Case, Mich. 13 Jac. Roll's Rep. Part 1. p.* 268. *Manslaughter*

Also a Man convicted of Felony remaineth in Prison, and after obtaineth the King's Pardon; the Justice of Gaol-delivery may bail him till the next Gaol-delivery, that he may then come with his Pardon and plead it. 2 *E. 6. Br. Mainp.* 94.

(d) 4. Those that be charged with the Receipt of Thieves or Felons, or of Command, or Force, or of Aid (in Felony done) beailable. 4. *Accessaries.*
P. Main. 2.
Stamf. 71.
Stamf. 71. e.

And it seemeth that *Abettors, Consenters* and *Procurers*, and all other *Accessaries* to *Felonies*, are within the Equity of this Statute, and areailable: Yea, *Accessaries* (as well in case of the Death of a Man, although it be Murder, as in Case of other Felonies) areailable, if they be of good Fame, until the Principal be convicted or attainted; but after the Principal is attainted the *Accessary* shall not be bailed, but kept in Prison: And yet if (after the Attainder of the Principal) the *Accessary* shall appear, and plead Not guilty, or other Plea, he shall be bailed. (a) The Reason is, for that when the *Accessary* shall make Default, then is it as a *fugam fecit*, and a great Cause of Suspicion of the Thing; but when he appeareth, by that the Suspicion is taken away, and so he isailable. See more in *Br. Mainp.* 6, 9, 22, 54, 64 & 97. Fitz. 250. c.
Br. Main. 11.
39 & 58.
40 E. 3. f. 28.
Stamf. 71. c.
Br. Main. 58.

(d) If a Man be *accessary* to two, and the one Principal is attainted, though the other be not, yet the *Accessary* shall not be bailed. Stamf. 71.
F. Co. 200.

(a) In *Felony*, if the Principal die in Prison, or be attainted of another Felony, the *Accessary* shall be bailed. *F. Cor.* 378. *Br. Mainp.* 91.

But note, that in case of *Treason* the Principal shall not be bailed.

(d) Also the said Statute of *West. 1. cap.* 15. doth no more restrain the Principals (to be bailed) than the *Accessaries*, in those Cafes where the same Statute doth not prohibit to let to Mainprife: And therefore if a Man be indicted of *Burglary* as Principal, yet he may be bailed. *Stamf.* 74. *Br.* 56. 29 *Aff. Pl.* 44. Principals.
Stamf. 74.
B. Mamp. 58,
90.
F. Main. 9.

Also the Principal in an *Appeal of Robbery* may be bailed; and so may he be bailed upon an Indictment of Robbery. *Br.* 61. (a) 75 & 97. Yet in an *Appeal of Robbery* the Book 6 *H. 7. f. 1. b.* seems to the contrary. Stamf. 74.

(d) But the Principal in the *Death of a Man is notailable*, either by the Common Law, or by the Statute of *West. 1.* yet see hereof before in this Title, that the Justices of the King's Bench do use to bail them. Also see there for what Homicides the Justices of Peace may bail one that is a Principal. Stamf. 71.
Br. 56, 58, 97.

5. Fifthly, Those that be charged with (or guilty of) any *Trespafs* that toucheth not Loss of Life nor Member, beailable by the Statute of *West. 1. 15.* But yet let the Justice of Peace have a Care, that Bail be not prohibited by any other later Statute in such Cafes of *Trespafs*. 5. *Trespafs.*
West 1. 15.
P. Main. 2.

If any Person be committed to Prison by Process from the Sessions made upon an Indictment upon any penal Statute (not prohibiting Bail, or for any *Trespafs*) he may be bailed (out of Sessions) by two Justices of the Peace, the one being of the Quorum. Fitz. 250. g.
I amb. 337.
Br. 97.

Or he may have a Writ out of the Chancery directed to the Justice of Peace, or to the Sheriff, to take Surety of him for his Appearance before the Justices at their Sessions, &c. Or he may have a *Certiorari* to the Justices of Peace, to remove the Record into the King's Bench; and a *Habeas Corpus* to the Sheriff to remove the Body thither also. *Fitz.* 250. g. b. i. & 251. c.

If Process from the Sessions shall go forth upon an Indictment of *Trespafs*, &c. it seemeth that any one Justice of Peace may take Bail of the Party to appear at the Day, Sessions Process.
Cromp. 197.
234.

&c. to answer to the Indictment: And the same Justice may thereupon make his *Superjudeas de cap. Indictat.* and so of the Exigent; for otherwise, besides the Mischief of Imprisonment, the Party may be outlawed before the Sessions. See some Precedents therein, *postea*, Tit. *Precedents*.

Note, That the Justices of Peace are not to bail any Prisoner, except he be committed for such Cause whereof the said Justices of Peace be competent Judges, *sc.* such Causes as they may hear and determine.

Lamb. 337.
Crompt. 152. And therefore if a Man be taken upon Process of Rebellion issuing out of the Chancery, the Justices of Peace are not to bail him. And Mr. *Crompton* reporteth of two Justices of the Peace who were fined for bailing one in such a Case.

If a Man be arrested by Force of any Process, Writ, Bill or Warrant, in any Action personal, the Justices of Peace are not to bail him.

(a) Persons condemned in any of the King's Courts, and by virtue thereof committed to Prison; and Persons being in Execution upon any Statute or Recognizance, &c. at the Suit of any Person, the Justices of Peace are not to bail any such.

Approver.
Fitz. 250. d.
P. Main. 2. (d) 6. Sixthly, He that is appealed by an *Approver*, being no common Thief, nor defamed, after the Death of the *Approver*, is bailable by the said Statute of *West. 1.*

(a) An Approver or Appellor is he who hath committed some Felony, which he confesseth, and then appealeth others, accusing them that they were Coadjutors or Helpers with him in doing the same. *Et sic dicti, quia ad hoc probandum, quod in Appello allegarunt, tenentur, idque vel * Duello, vel per Patriam, sc. Jurat. legalium hominum, juxta reorum electionem.* Cow.

* This is dis-
used.

And this Accusation by the Approver must be done before the Coroner, either assigned to the Felon by the Court, to take and record what he saith; or else may be called by the Felon himself, and required, for the good of the King and the State, to record his Accusation, and what he saith. *Ibid. Exceptiones contra Appellum.* Vide *Bract. lib. 3. cap. 20. &c.*

Stamf. 144. a.
B. Peace 1.
Abr. d' Aff.
72, 76.

(d) Note, That a Man cannot become an *Approver* before Justices of Peace (because they have no Authority to assign him a Coroner): Nevertheless it seemeth both reasonable and serviceable, that if a Felon will become an *Approver*, that is, will confess his Felony, and also accuse others that were Coadjutors with him in doing the same Felony, (or other Felonies) before a Justice of Peace, that such Justice may take his Confession, and commit him to the Gaol, and may also grant out his Warrant for the apprehending others that are so accused.

(a) Concerning an Approver observe these Rules.

- Stamf.
Finch. 1. One cannot be an Approver but in Felony or Treason. 9 *H. 6.*
2. One cannot be an Approver but upon Indictment only. 1 *H. 7. 5.*
3. An Approver must accuse the other of such an Offence as he himself did together with the other. *Stamf. 143.*

Execution.

Again, the Statute of 23 *H. 6. cap. 10.* taketh away Bail from all such as be in Prison by Condemnation, Execution, *Capias utlagatum*, Excommunication, Surety for the Peace, or by the special Command of any Justice, prohibiting that such be not bailed either by the Sheriff or other Officer or Minister.

There be divers Statutes which take away Bail from the Offenders, and that not only upon their solemn Conviction after publick Hearing, Trial and Judgment, but also upon the Record of one or two Justices of Peace, or by private Examination and Confession of the Offender, or Proof of Witnesses, or such other private Trial had before the Justices of Peace out of their Sessions, most of which I have here set down, leaving the Rest to the Reader's better Search.

See 2 Hawk. P. C. Chap. 15. of Bail.

C H A P. CLXVII.

Where Bailment is taken away by Statute.

Where Bail is
taken away.

NO Person being imprisoned or taken for any of the Offences or Causes hereunder mentioned, shall be bailed or let to Mainprife, otherwise than as hereafter followeth, &c.

Such as have abjured the Realm shall not be bailed. *West. 1. cap. 15.*

Alijured.
13 E. 1. St 1.
c. 11.
Accountants.

Accountants found in Arrearages before Auditors shall be imprisoned (without Bail) until they have satisfied their Master all Arrearages.

Alehouse-keeper without License shall be committed to Prison for three Days without Bail; and before his Delivery shall enter into Recognizance with two Sureties, that he shall not keep any common Alehouse, &c. *Vide antea, Tit. Alehouses.*

Alehouse-keeper prohibited by two Justices of Peace, and notwithstanding continuing his Selling, &c. shall be committed for three Days as aforesaid. *Ibid.*

Alehouse-keepers without License, for their second Offence, shall be committed to the House of Correction for one Month: And for every such their Offence after shall be committed to the House of Correction, there to remain till they be delivered by Order from the General Sessions. *Ibid.*

See antea Tit. Alehouses.

Alehouse-keepers, Inn-keepers, and Victuallers, which shall suffer Townsfolk to continue drinking in their Houses contrary to the Statute of 1 Jac. 1. cap. 9.

Or which shall sell less than one full Ale-quart of their best Beer or Ale for 1 d. and of the small two Quarts for 1 d.

Such Offenders, not having sufficient whereby to be distrained for the Forfeiture, shall be committed to Prison until they have paid the Penalty.

Aliens conveying Bows and Arrows into any Parts beyond the Seas, without License, shall be committed until they have made Fine (by Discretion of the Justices of the Peace in their Sessions) and give Surety for the Payment thereof.

Aliens.
33 H. 8. c. 9.
P. Arch. 6.

Appellors or Approvers shall not be bailed. *West. 1. cap. 15.*

Approvers.

Nor he which is appealed by an Approver. *Ibid.*

Armor: Persons going or riding armed, contrary to the Statute of Northampton, and being thereof convicted, shall be imprisoned until they have payed such Fine as shall be therefore imposed upon them. *See postea sub hoc tit.*

Armor.

Arrest: If any Person shall procure one to be arrested in another Man's Name, he not knowing thereof, or without his Consent, such Offender being convicted thereof, shall suffer six Months Imprisonment without Bail; and before his Delivery shall pay to the Party so arrested treble Costs, Damages, and Expences; and also shall pay unto the Person, in whose Name he procureth such Arrest, ten Pounds for every such Offence.

Arrest in the Name of another.
8 El. c. 2.
P. Dam. 3.

(a) If any of a petty Jury in London shall be attainted by the Verdict of a Grand Jury, and therefore committed to Prison; or if any of a petty jury in London shall receive any Money or Reward, or Promise thereof, of the Defendants in the Attaint, for the Intent to give such his or their Verdict.

Attainted by Verdict.

As also the Defendant's giving or promising such Reward, &c. every such Offender being therefore committed to Prison, shall there remain without Bail, &c. 12 H. 7. cap. 21.

(d) *Bastard*: The Mother or reputed Father of a Bastard Child, that shall not perform the Justice's Order, after Notice thereof, shall be imprisoned until they shall put in Sureties according to the Statute. See before, Tit. *Bastardy.*

Bastardy.
Where Bail is taken away.

The Mother of a Bastard Child, committed to the House of Correction for her first Offence, shall there remain for one whole Year; and for her second Offence for one whole Year, and farther, until she can put in good Sureties for her good Behaviour not to offend so again. See *Ibid.*

Breakers of Prison are not bailable. *West. 1. cap. 15.*

Bridges: Surveyors and Collectors appointed for the Repairing of Bridges, if they refuse to account for the Money by them received, they shall be imprisoned until they have truly accounted. 22 H. 8. cap. 5. P. *Bridges* 4.

Where the Bail is taken away.

Burners of Houses feloniously are not bailable. *West. 1. cap. 15.*

Burning Houses.

Persons conspiring to indict another of Felony, are not Mainpernable or Bailable. 27 Aff. Pl. 12. *Fit. Mainp.* 7.

Conspirators.

Constables and Church-wardens, neglecting to levy the Forfeitures for Abuses in Alehouses, &c. not having sufficient whereby to be distrained for their Forfeiture of forty Shillings, they shall be committed to Prison until they have paid the same Forfeiture. See *antea*, Tit. *Alehouses.* 1 Jac. 1. cap. 9.

Constables.

(a) Constables neglecting to execute the Justice's Warrant concerning Alehouses unlicensed, the Constable shall be committed to the County Gaol, there to remain without Bail, until he hath punished the Alehouse-keeper, or until the Constable shall pay forty Shillings to the Use of the Poor. 3 *Caroli Regis.*

(d) Con-

See 23 H. 6.
c. 10.

(d) Constables neglecting to whip Trespassers in Corn, Wood, Orchards, &c. (at the Justices Command) shall be imprisoned until they have caused the Offender to be whipped. See Tit. *Trespass*.

Persons condemned in any of the King's Courts, and by virtue thereof committed to Prison, they shall not be bailed until they have agreed with the Plaintiff. 1 R. 2. cap. 12. 2 H. 5. cap. 2. Fitz. N. B. 121. a.

Counterfeiters of the King's Seal or Money are notailable. West. 1. cap. 5.

Cloth: Refusers to be Overseers of Cloth shall be imprisoned until they have paid the Forfeiture. See *antea*, Tit. *Cloth*.

(a) Such Persons as shall be convicted for making of deceivable Cloth, if two Justices of Peace shall make Certificates thereof, and make their Warrant to the Church-wardens, &c. for the Levying of the Forfeitures, and if the said Offenders shall not have whereby they may be distrained for the same Forfeitures, the said two Justices of Peace may commit the Offenders to the common Gaol, there to remain without Bail, until Payment shall be made of the Sums so forfeited, &c. *hic antea*, Cloth.

Deer. (d) *Deer*: Persons committed to Prison for committing any Offence prohibited by the Statute, 5 Eliz. cap. 21. concerning unlawful Hunting or Killing of Deer, shall remain there three Months and farther, until they shall find sufficient Sureties for their Good Behaviour for seven Years, &c. See *hic antea*.

Where Bail is taken away. Excommunicated. Excommunicated Persons, taken by a Writ de *Excommunicato capiendo*, or yielding their Bodies to the Sheriff or other Officer, upon any Writ of *Capias* awarded, and Proclamation thereupon made, according to the Statute of 5 El. cap. 23. provided for the due Execution of the said Writ de *Excommunicato capiendo*, such Persons shall not be bailed.

West. 1. 15.
5 El. 23.
See 23 H. 6.
c. 10.

Execution.

Execution: Such Persons as are in Execution upon any Statute or Recognizance, or upon Judgment given in the King's Court at the Suit of any Person, they shall not be bailed until they have agreed with the Plaintiff. 1 R. 2. cap. 12. 23 H. 6. cap. 10. Fitz. Na. Br. fol. 93. c. & 121. a. And yet then the Justices of Peace are not to bail them.

Pheasants. See *Partridges*.

Felons. 1. Felons taken for the Death of a Man are notailable; and yet if it be not Murder, and their Offence not apparent, it seemeth they may be bailed. See *hic antea*.

2. Felons taken with the Manner are notailable. West. 1. cap. 15.

3. Nor if it be apparently known that they did the Felony. *Ibid*.

4. Nor if they confess the Felony upon their Examination before the Justices of Peace. *Crompt. 152. b.*

5. Nor if it be a Thief openly known. West. 1. 15.

6. Nor if he be of evil Fame by credible Report. *Br. Mainp. 75.*

Yet in these former Cases of Felony, if the Theft be not above the Value of twelve Pence the Justice of Peace may bail the Prisoner, it being no Felony of Death.

7. Nor is he which is convicted or attaint of Felonyailable. See before *sub hoc tit.*

Accessaries in Felony.
5 El. c. 21.
P. Fish 7.

(a) Accessaries in Felony shall not be bailed, after that the Principal (or any one Principal) is attainted. But before the Principal is attainted the Accessary isailable by the Common Law. *Stamf. 71.*

Fish.

(d) *Fish*: Destroyers of Ponds, Pools or Moats, wherein any Fish are; or unlawfully to fish in any several Pond, Pool or Moat, to the Intent to take, kill or destroy any Fish there; every such Offender being thereof lawfully convicted shall have three Month's Imprisonment, and then shall find sufficient Sureties for the Good Behaviour for seven Years after, or else shall remain in Prison without any Bail, until they have found Sureties accordingly.

11 H. 7. c. 23.
P. Fish 12.
25 El. c. 9.
P. Fish 12.

2. Gaugers, Packers or Searchers of Fish, that shall take any Extortion for doing their Office, shall have forty Days Imprisonment without Bail.

3. Eaters of Flesh upon any Fish-day shall forfeit and pay for every Time 20 s. or else suffer one Month's Imprisonment without Bail, (after any lawful Conviction in that Behalf.) 5 El. cap. 5.

Forcible Entry.

Forcible Entry or Detainer; Persons convicted thereof shall not be bailed until they have paid their Fine, or have found Sureties by Recognizance for Payment thereof. See *antea*, Tit. *Forcible Entry*.

Forestallers, Regrators and Ingrossers, being thereof convicted, shall be imprisoned for two Months without Bail. 5 *E. 6. cap. 14. P. 4.* *Forestallers.*

Forgers of any Deed, Writing sealed, Will, or Court-Roll: *Forgery.*

2. And the Assenters thereto:

3. And the Publishers thereof, knowing the same, &c.

Every of the Offenders aforesaid, (in Cases of Forgery) being thereof convicted, shall suffer perpetual Imprisonment during their Lives, where any Man's Estate of Inheritance, Freehold or Copyhold, shall be defeated, charged or molested thereby: Otherwise the Offender shall suffer one Year's Imprisonment without Bail. 5 *El. c. 14. P. 1, 2.*

Fowl: Destroyers of any Pheasant, Partridge, Pigeon or House-dove, or of any Heron, Mallard, Duck, Teal, or other Fowl; or Shooters at any such Fowl, and the Offence proved before any two Justices of Peace; every such Offender shall be committed for three Months without Bail, unless the Offender shall forthwith pay to the Use of the Poor there 20 s. for every such Fowl so destroyed, &c. See *antea*, Tit. *Partridge.* *Fowl.*

Fraudulent Conveyances, Gifts, Bonds or Suits, &c. *Fraud.*

1. The Parties thereto.

2. The Defenders or Justifiers thereof, or Putters thereof in Ure, knowing the same. 13 *El. c. 5. P. 1, 2.*

3. And those who shall assign over any Lands, Leases or Goods, so to them conveyed, knowing the same.

Every Person being of any of these last Offences lawfully convicted, shall suffer Imprisonment one half Year without Bail. See more Statute 14 *Eliz. 11 & 27. cap. 4.*

Games unlawful.

1. The Maintainers of Houses or Places for any unlawful Game. *Games.*

2. Players in common Houses or Places at any such Game. 33 *H. 8. c. 9.*

3. Players elsewhere at any unlawful Game.

Every Justice of Peace, seeing or finding any such Offence, may imprison the Offenders till they find Sureties by Recognizance no more to offend in the Premises, &c. See *antea*, Tit. *Games unlawful.*

Guns: Such Persons as shall shoot in, keep, carry, or use any Gun, Dag, Cross-bow or Stone-bow, contrary to the Statute of 33 *H. 8. cap. 6.* (upon Proof thereof made before any Justice of Peace) shall be imprisoned until they have paid 10 *l.* for every such Offence. See *antea*, Tit. *Guns.* *Guns.*

No Person under the Degree of a Lord shall shoot in any Hand-gun within any City or Town at any Fowl, or other Mark upon any Church, House or Dove-Cote: Neither shall any Person shoot in any Place any Hail-shot, or any more Pellets than one at one Thing, upon Pain to forfeit 10 *l.* and to have three Month's Imprisonment. 2 & 3 *E. 6. cap. 14.*

1. *Hares*: Every Person which shall shoot at, kill or destroy, with any Gun or Bow, any Hare. *Hares.*

2. Or shall trace or course any Hare in the Snow.

3. Or shall take or destroy any Hare with Cords, or any other Engine. *Where Bail is taken away.*

Any of these last Offences being proved before any two Justices of Peace, the Offender shall be committed for three Months without Bail, unless the Offender shall forthwith pay to the Use of the Poor there 20 s. for every Hare so destroyed or taken. See *antea*, Tit. *Partridges.*

1. *Hatters*: Which shall take above two Apprentices. *Hatters.*

2. Or which shall take an Apprentice for less Time than seven Years.

The Offenders in either of the same Cases shall suffer one Month's Imprisonment without Bail. 8 *El. cap. 11. P. Hats 3.*

Hawks: Takers (unlawfully) of any Hawks, or of their Eggs, out of another Man's Ground, and being thereof lawfully convicted, shall have three Months Imprisonment, and then shall find Sureties for their Good Behaviour for seven Years after; or else shall remain in Prison without Bail until they find Sureties accordingly. 5 *El. 2. P. Hawks 1. See 11 H. 7. c. 7. hic poller Partridges.* *Hawks.*

Hawkers between the 1st of July and the 31st of August, the Offence being proved before any two Justices of Peace, the Offenders shall be committed to the Common Gaol for one Month without Bail, unless they pay forthwith 40 s. for every such Hawking, and 20 s. for every Pheasant or Partridge that they shall so kill or take. 7 *Jac. 11.* See *antea*, Tit. *Partridges.*

Highways.

Highways : Bailiffs and High Constables, who shall not pay the Forfeitures by them collected, shall be imprisoned until they have paid the same. See before, Tit. *Highways*. 2 *Pb. & M. cap. 8. P. 11.*

Honey.

Honey. See *Wax*.

Hofflers.

Hofflers or Innholders which shall make any Horfe-bread, (contrary to the Statute 21 *Jac. 1. cap. 21.*) or which shall not sell their Horfe-bread, Hay, Oats, Beans, Pease, Provender, or other Kind of Victual (for Man or Beast) for reasonable Gain, and be thereof lawfully convicted, &c. the second Time, shall be imprisoned by the Space of one Month without Bail.

So of such Hofflers and Innholders, as are allowed by the said Statute to make Horfe-bread within their Houses, if the Horfe-bread which any of them shall make be not sufficient, lawful, and of due Assise, &c. and that they be thereof lawfully convicted the second Time, they shall be imprisoned one Month without Bail. *Ibid.*

Hunting.

(*d*) *Hunting* : If any Layman, not having in Land 40 *s. per Annum*, or if any Priest or Clerk, not having 10 *l. Living per Annum*, shall have or keep any Hound, Greyhound, or other Dog for to hunt, or any Ferrets, Hays, Hare-pipes, Cords, Nets, or other Engines, to take or destroy Deer, Hares, Conies, or other Gentlemens Game, and shall be thereof convicted at the Sessions of Peace, every such Offender shall be imprisoned for one whole Year. 13 *R. 2. cap. 13. P. 1.*

If any Person shall keep any Greyhound for Deer or Hare, not having sufficient Living, and shall be thereof convicted before any two Justices of Peace, he shall be committed for three Months without Bail, unless he forthwith pay 40 *s.* for having such Greyhound. See before, Tit. *Partridge*, 1 *Jac. 1. cap. 27.*

Hunters, and Takers of the King's Deer. See the Statute of *Charta de Foresta*, *cap. 10.*

Where Bail is taken away.

Hunters or Killers of any Deer or Conies (in the Night or Day-time) in any Park or Warren, or in any other inclosed Grounds, being thereof lawfully convicted, every such Offender shall suffer three Months Imprisonment, and find sufficient Sureties for his Good Behaviour for the Space of seven Years after, or else continue still in Prison without Bail, until he shall find Sureties accordingly. 5 *El. cap. 21. 3 Jac. 1. cap. 13. P. Forest 9. & 7 Jac. 1. 13.*

The Statute of *Westm. 1. 20.* provideth, That Trespassers in Parks and Ponds, being thereof attainted, shall yield to the Party wronged great Damages, and shall have three Years Imprisonment, making Fine at the King's Pleasure; and at the End of three Years find good Sureties not to commit the like Trespass afterwards, or for Want of such Sureties shall abjure the Realm, or be outlawed. See *Fit. 67. d. & Dyer 238. 5 H. 5. f. 1. Fit. Judgment 62.*

But note, That this Statute *de Malefactoribus in Parcibus* extendeth only to Hunting or Killing of Beasts there, and not to other Trespass. 34 *E. 3. f. 11. Fitz. Judgment 144.* And if a Man hunts there, or shall but come into a Park for that Purpose, yet he shall be punished according to this Statute. *Fitz. Judgment 62.*

The Statute of 19 *H. 7. 11.* ordaineth, That if any Person having no Park, &c. of his own, shall keep any Deer-hays or Buck-stalls; or if any Person shall stalk at any Deer without License, the Offenders being thereof convicted, shall be committed to Prison, till they have found Surety for the Payment of the Forfeiture of the Statute.

King.

King : Speakers of False News, which may Cause discord between the King and his People, &c.

And Speakers of False News or Lies of any of the Peers or great Officers of the Realm.

The Offenders in either of the former Cases shall be imprisoned until they have brought him into the Court who was first Author of the Tale. 3 *E. 1. cap. 33. 2 R. 2. cap. 5. P. News 1.* See *Dyer 155. & 285.* and the Statute of 1 & 2 *P. & M. cap. 3. 1 El. cap. 6. & 23 El. cap. 2.*

3. No Person committed by the special Command of the King, or by the Command of his Privy Council, shall be bailed. See *antea sub hoc tit.*

4. No Person committed by the special Command of any of the King's Justices shall be bailed. *P. Mainp. 1 & 23 H. 6. cap. 10.* See *Ibid.*

5. So in all Cases where a Statute ordaineth, That an Offender shall be imprisoned at the King's Will or Pleasure, there the Prisoner cannot be bailed or delivered, until the King hath signified his Pleasure of him (as if one be imprisoned for going or riding armed,

armed, contrary to the Statute of *Northampton*, made *Ann. 2 E. 3. cap. 3. 24 E. 3. f. 3. Br. Contempts 6.*

And in such Cases the Prisoner is to redeem his Liberty with some Portion of Money, Lamb. 556. as he can best agree with the King or his Justice for the same: And the Justices before whom such an Offender shall be convicted, may assess such Fine or Ransom according to their Discretions, and upon Payment thereof may bail the Prisoner; for the King therein signifieth his Pleasure by the Mouths of his Justices. See the first Tit. of *Forcible Entry*.

Inn-keepers or Inn-holders: See *hic antea*, Tit. *Alehouse-keeper, and Hostler.*

Inn-keepers.

Labourers and Artificers, departing from their Work before it is finished, shall have 5 El. 4. one Month's Imprisonment without Bail. *5 Eliz. cap. 4. P. Labour 10.*

2. Servants departing before their Term be ended, unless it be for some Cause to be allowed by some Justice of Peace. Servants.

3. Servants departing at the End of their Term, without any Quarter's Warning given before two lawful Witnesses.

4. Persons (compellable to serve) that upon Request made shall refuse to serve for the Wages rated and appointed by Proclamation, &c.

5. Persons (compellable to serve) that have promised or covenanted to serve, and do not serve accordingly.

Every of these four last recited Offenders (upon Proof of the Offence before any two 5 Eliz. 4. P. Lab. 6. Justices of Peace, &c. shall be committed to Ward, there to remain without Bail, until he shall be bound, to the Party offended, to serve and continue with him according to the Statute.

6. Persons refusing to be bound Apprentices, according to the Statute, upon Complaint thereof made to any Justice of the Peace, he may commit such Offenders to Ward, who shall there remain until they will be bound to serve according to the Statute 5 Eliz. 4. P. Lab. 24.

7. Women (of the Age of twelve Years, and under forty, and unmarried) that shall refuse to serve, shall be committed to Ward, there to remain until they shall be bound to serve according to the Statute 5 Eliz. 4. P. Lab. 14.

8. Masters giving Wages, and Servants, Workmen or Labourers, taking Wages (or other Commodity) contrary to the Rates assessed by Proclamation, &c. every such Master shall have ten Days Imprisonment without Bail; and every such Servant, Workman or Labourer, shall have twenty-one Days Imprisonment without Bail. 5 Eliz. 4. P. Lab. 4.

9. Masters retaining or hiring a Servant for less Time than for one whole Year, shall have ten Days Imprisonment without Bail: But *quære*, whether this extends to Servants in Husbandry, or only to Servants to Artificers and Tradesmen. *P. Lab. 1.*

10. Masters retaining a Servant that is departed out of Service without shewing a Testimonial according to the Statute, it seemeth such Master shall have ten Days Imprisonment without Bail. 5 El. 4.

11. Masters taking Apprentices contrary to the Statute, it seemeth by the general Words of the Statute, that such Masters shall have ten Days Imprisonment without Bail.

Liveries: Such Persons as at their proper Costs shall buy or wear any Livery, Clothes or Hats, to have Maintenance, and be thereof convicted, shall have one whole Year's Imprisonment without Bail. But this Statute is now repealed by the Statute 3 Car. 1. 4. 8 H. 6. 4. P. Liver. 2.

In an Appeal of *Maihem*, where upon Evidence the Act shall appear to be heinous, the Offender or Defendant shall not be bailed. 6 H. 7. f. 1.

Malting notwithstanding Restraint; but this is repealed. See Tit. *Malt supra.*

Malting.

Money: Persons taken for falsifying the King's Money shall not be bailed. West. 1. Money. cap. 15.

Musters: Persons absenting themselves from Musters, being commanded to muster before any having Authority for the same, and having no lawful Impediment. Musters.

2. And Persons, being commanded to muster as aforesaid, that shall not bring with them their best Furniture and Armour, which they have for their own Person.

The Offender in either of the former Cases shall for every such Offence suffer ten Days Imprisonment without Bail, unless they agree with two of the said Commissioners to pay to the King's Use *40 s.* a Time for every such Offence. *P. Captains 12.* Where Bail is taken away. 4 & 5 P. & M. 3

(a) To muster is to make a Shew of Soldiers well armed and trained before the King's Commissioners in some open Field, *Ubi se ostendentes præhudent prælio.* *Co. L. 71.*

And it is worthy of Observation, that by the Law before the Conquest, the Musters and Shewing of Armour should be *uno eodemq; die per univèrsùm regnum, ne aliqui possint arma familiaribus & notis accommodare, &c.* *Ibid.*

News: See before, *King*.

Oath of Allegiance.

(*d*) *Oath*: Refusers to take the Oath of Allegiance (being lawfully tendred to them) shall be committed to the common Gaol; there to remain without Bail until the next Assizes or Quarter-Sessions. See before, *Tit. Oath and Recusants*.

Parliament, and Knights of the Parliament. See *hic postea*, *Sheriffs*.

Park. Hunting therein. See *Hunting and Hunters*.

Partridges.

Partridges: If any Person shall shoot at, kill or destroy (with any Gun or Bow) any Partridge, Pheasant, or other Fowl, &c.

2. Or shall take, kill or destroy any Partridge, Pheasant or Pigeon, with Setting-dogs and Nets, or with any Manner of Nets, Engines or Instruments;

3. Or shall take out of their Nest, or willingly destroy in the Nest, Eggs of any Partridge, Pheasant or Swan;

4. Or shall have or keep any Setting-dog or Net, or take Partridges or Pheasants, except they have Sufficiency of Estate, &c.

1 Jac. 1. 27.

Every of these four last recited Offenders (upon Proof of the Offence before any two Justices of Peace) shall be committed to the common Gaol, there to remain for three Months without Bail, unless the Offender shall forthwith pay 20 s. for every such Fowl and Egg so taken and destroyed; and 40 s. for having such Setting-dog or Net. See *Tit. Partridges*.

7 Jac. 1. 11.

5. Hawkers at Partridge or Pheasant in *July* or *August*, upon Proof of the Offence before any two Justices of Peace, shall be committed to the common Gaol, there to remain for one Month without Bail, unless the Offender shall forthwith pay 40 s. for every such Hawking, and 20 s. for every Pheasant or Partridge so killed or taken. See *Ibid*.

13 El. 10.

6. Persons convicted according to the Stat. of 23 *El. cap. 10.* for destroying or taking of Pheasants or Partridges in the Night-time, shall have one Month's Imprisonment without Bail, unless they pay the Penalty of that Statute within ten Days; and farther become bound with good Sureties, for the Space of two Years not to offend so again.

11 H. 7. 17.
Co. 7. 18.

7. Persons convicted according to the Stat. of 11 *H. 7. cap. 17.* for taking the Egg of any Hawk or Swan, out of their Nests, shall be imprisoned for a Year and a Day, and fined at the King's Will. See *Hawks*.

Perjury.

Eliz. c. 9.

Perjury: Persons committing Perjury by his, or their Deposition in any Court of Record or Court-Baron, being thereof lawfully convicted, shall have six Months Imprisonment without Bail. *P. Per. 1, 2. & 14 Eliz. cap. 11.*

2. So of Procurers of such Perjury, they being thereof lawfully convicted, and having not to pay the Penalty of the Statute, they shall have one Year's Imprisonment without Bail.

Physicians.

(*a*) *Physicians*: He which is committed to Prison by the President of the College of the Faculty of Physick of *London*, &c. shall there remain without Bail, until he shall be discharged by the same President, or by such as he shall authorize. *1 M. cap. 9.*

Plague.

1 Jac. 1. 31.
P. 1, 2, 3.

(*d*) *Plague*: Refusers to pay the Rates for the Relief of Persons infected with the Plague, and not having whereon to be distrained for such their Rate, they shall be committed to the Gaol, there to remain without Bail until they satisfy the same, and the Arrearages. See *Tit. Plague*.

Poor.

43 Eliz. 2.
P. 2, 4.

Poor: Refusers to pay their Rates towards the Relief of their Poor, Setting them on Work, or Putting out of poor Children to be Apprentices, and not having whereon to be distrained for such their Rates, they shall be committed to the Gaol, there to remain without Bail until they shall pay the same and the Arrearages.

P. 2.

2. Overseers of the Poor refusing to make their Account, or refusing to pay to the new Overseers, such Arrearages, Sums of Money, or Stock as shall remain in their Hands upon their Account made, they shall be committed to the Gaol, until they have performed the same. See *antea*, *Tit. Poor*.

P. 2.

3. Overseers, negligent (or otherwise failing in their Office, shall forfeit for every Default 20 s. and not having whereon to be distrained for such Forfeiture, they shall be committed to the Gaol, there to remain without Bail until the said Forfeiture shall be paid. See *ibidem*.

P. 8. 12.

4. The Grandfather or Grandchild, or the Parents or Children, refusing to relieve one the other, in such Manner as shall be assessed by the Justices of Peace at their Sessions, shall forfeit for every such Default 20 s. for every Month: And not having whereon to be distrained for such Forfeiture, they shall be imprisoned, as aforesaid, until the said Forfeiture shall be paid. See *Ibid*.

5. Refusers to pay their Rates towards the Relief of the Prisoners in the *King's Bench* ^{P. 13.} or *Marshalsea*, and not having whereon to be distrained for such Rates, they shall be imprisoned without Bail, until they shall pay the same. See *antea*, Tit. *Stock of the Shire*.

Prayers: Such as offend against the Statute 1 *Eliz. cap. 2.* concerning Uniformity of ^{*Prayers.*} Common Prayer and Service in the Church, being thereof lawfully convicted by Verdict of ^{P. Sacra 2.} twelve Men, or by their own Confession, or by the notorious Evidence of the Fact, they shall be committed without Bail: See the Statute 1 *Eliz. 2.* for in some Cases the Offender shall suffer six Months Imprisonment, in other Cases one whole Year's Imprisonment, in other Cases Imprisonment during Life.

Preachers: Disturbers of Preachers in the Time of their Sermons, and their Aiders and ^{*Preachers.*} Procurers. 1 *Mar. 3.*

2. Such as shall disturb the Arresting of any such Offender;

3. Such as shall rescue any such Offender being apprehended;

Every such Offender, being thereof convicted before any two Justices of Peace, shall be ^{1 M. 1. c. 3.} committed to the Gaol, there to remain without Bail for three Months, and farther till ^{P. 1. 2.} the Quarter-Sessions, &c.

Prison: Breakers thereof shall not be bailed. *West. 1. cap. 15.*

Propbesiers: To the Intent to make Disturbances within the King's Dominions, every ^{*Prison-Breakers.*} such Offender being thereof lawfully convict for his first Offence shall suffer one Year's ^{5 El. ca. 5.} Imprisonment without Bail; and for the second Offence shall suffer Imprisonment with- ^{P. Prophef. 1.} out Bail during his Life.

Recusants: Persons suspected to be Jesuits, Seminaries, or Massing-Priests, and being ^{*Recusants.*} examined thereof, by any having lawful Authority in that Behalf, if they shall refuse to ^{15 El.} answer directly thereto, they shall be imprisoned without Bail, until they shall make di- ^{35 El. c. 2.} rect Answer thereto.

2. Persons suspected, if they shall refuse to answer the Justice of Peace upon Oath, ^{2 Jac. 1. 4.} whether they be Recusants or no, they shall be committed to the common Gaol, there to remain without Bail, until the next Assizes or Quarter-Sessions. See *antea*, Tit. *Re- cusants.*

3. Popish Recusants refusing to take the Oath of Allegiance, (being lawfully tendred them) they shall be imprisoned till the next Assizes or Quarter-Sessions as aforesaid. See *Ibid.*

4. Every other Person of the Age of eighteen Years, refusing to take the Oath of Al- ^{7 Jac. 1. 6.} legiance, shall be committed until the next Assizes or Quarter-Sessions as aforesaid. See *antea*, Tit. *Oath.*

5. A Woman Recusant convicted, and not conforming her self, being therefore com- ^{*Ibid.*} mitted to Prison, shall there remain without Bail, until she shall conform herself, &c. See *antea*, Tit. *Recusants.*

6. A Woman covert refusing in the open Assizes, or at the Quarter-Sessions of the ^{8 Jac. 1. 4.} Peace, to take the Oath of Allegiance, she shall be committed to the common Gaol ^{7 Jac. 1. 6.} without Bail, until she will take the said Oath.

7. If any Woman or Child under the Age of 21 Years, shall pass over the Sea with- ^{1 Jac. 1. 4.} out lawful Licence, the Master of any Ship permitting the same, shall suffer Imprison- ^{§. 8.} ment 12 Months without Bail.

8. Recusants refusing to declare what Armour, &c. they have, or if they, or any ^{P. Rec. 75.} other Person, shall hinder or disturb the Delivery of such Armour to any Person lawfully authorized to seize the same; every such Offender shall have three Months Imprisonment without Bail. 3 *Jac. 1. cap. 5.*

9. Recusants and Sectaries which shall impugn the King's Authority, in Causes Ec- ^{P. Rec. 18.} clesiastical: ^{35 El. 1.}

10. Or that shall persuade others thereto, or from coming to Church, to that End and Purpose:

11. Or shall meet at any Conventicles, under Colour of any Exercise of Religion, con- trary to his Majesty's Laws:

12. Or shall persuade any other to meet at any such Conventicles or Meetings.

Every Person which shall be lawfully convicted of any of these four Offences shall be committed to Prison, there to remain without Bail, until they conform themselves to come to Church, and make open Submission and Declaration of their said Conformity.

13. Persons absent from Church upon any Sunday, and not having whereon to be di- ^{3 Jac. 1. 4.} strained for the Forfeiture, shall be committed until Payment be made thereof. See *antea*, ^{§. 27.} Tit. *Recusants.*

Persons above the Age of sixteen Years, which shall absent themselves from the Church by the Space of one Month, and shall be thereof lawfully convicted, shall forfeit for every Month 20 *l.* And if he shall not be able, or shall fail to pay the same within three Months after Judgment thereof given, he shall be committed to Prison, there to remain until he hath paid the said Sum, or conform himself to go to Church, &c. 23 *Eliz.* 1.

So of such Persons as shall keep any School-masters, which shall absent themselves from the Church as aforesaid, or which shall not be allowed by the Ordinary; if such Persons shall not be able, or shall fail to pay the Penalty, (*sc.* 10 *l.* for every Month) within three Months, &c. he shall be committed without Bail, as aforesaid. *Ibid.*

Persons convicted for Rediversion are notailable. *Merton, cap. 3. Fitz. 66. e.*

Rioters.

2 *H.* 5. 8.

Rioters attainted of great Riots, shall have one Year's Imprisonment, without Bail. *P. Riots* 11.

All Persons convicted by the View of the Justices, or upon their Inquiry, or otherwise, of any Riot, shall be committed until they have paid their Fine. See before, *Tit. Riots*.

Rogues.

Rogues incorrigible, committed to the Gaol or House of Correction, shall remain there until the next Quarter-Sessions. But see *antea*, *Tit. Rogues* and 13 *Geo. 2. cap. 23. infra Chap. 196.*

Servants. See *Labourers.*

Schoolmaster that is a Recufant.

23 *El.* 1.

P. Recuf. 2.

2. Or that is not allowed by the Ordinary, and being of either of the said Offences convicted, shall be imprisoned for one whole Year without Bail.

Sheriffs.

8 *H.* 6. 7.

23 *H.* 6. 15.

P. Parl. 4.

Sheriffs not making their Election of Knights for the Parliament in their full County; between the Hours of Eight and Eleven in the Forenoon.

2. Or returning Knights for the Parliament contrary to the Statute, and being of either of the said Offences attainted before the Justices of Assize, they shall be imprisoned for one whole Year without Bail.

Sheriffs, Under-Sheriffs, or other Persons, making any Warrant for the Summons, arresting or attaching of any Person to appear in any Court, not having the original Process or Writ warranting the same, upon Examination or Proof thereof before the Judges of Assize, or Judges of the Court, &c. such Offenders and their Procurers shall be committed to the Gaol, there to remain without Bail, until they have paid among them 10 *l.* to the Party grieved, and his Costs and Damages, and also 20 *l.* apiece to the King.

Where Bail is taken away.

Soldiers.

2 *E.* 6. 2.

Soldiers, who have purloined their Horses or Harness, shall be committed without Bail, until they have satisfied the Party grieved, his Executors, or Administrators, for such Horse or Harness. See before, *Tit. Soldier.*

Stock of the Shire.

43 *El.* 2.

Stock of the Shire: Refusers to pay their Rates thereto, and not having whereon to be distrained, &c. shall be committed till they have paid it. *Vide antea*, *Tit. Stock.*

Tithes.

27 *H.* 8. 20.

32 *H.* 8. 7.

Tithes: The Defendant in a Suit for Tithes that disobeyeth the Judge's Sentence, shall be committed without Bail, until he shall find sufficient Sureties by Recognizance, &c. to obey and perform that Sentence. *Vide Tit. Tithes.*

Transportation.

Transportation: The Masters or Mariners transporting any Corn, Beer, Herring, Whitage, or Wood, without Licence.

P. Corn 1.

2, 3.

1 & 2 *P. & M.*

3, 5.

2. The Owners of such Things transporting more than they are licensed.

3. The Mariners carrying such Things into any Ship to be transported.

Every such Offender shall be imprisoned one whole Year without Bail; and yet see *antea*, *Tit. Transport*, that every Man may transport Corn without Licence, (or Danger, as it seems) it being at the Price there mentioned.

18 *El.* 8.

P. Leather 50.

4. The Master or Mariners transporting or shipping to that Intent, any Leather, Tallow, or Raw Hides, and being thereof convicted, shall have one Year's Imprisonment without Bail.

5. Transporters of live Sheep.

8 *Eliz.* 8.

P. Sheep 1.

6. And every Person that shall bring, deliver, send, receive, take or procure any live Sheep to be conveyed out of any of the King's Dominions, their Aiders, Procurers and Comforters.

The Offenders in either of the former Cases, being thereof convicted, shall for the first Offence suffer one whole Year's Imprisonment without Bail.

1 *Jac.* 1. 4.

7. The Master of any Ship permitting any Woman or Children under 12 Years of Age to pass over the Seas without Licence, shall suffer 12 Months Imprisonment without Bail.

8. Aliens transporting Bows or Arrows. See *Aliens*

Treason:

Treason : Persons committed for Treason touching the King are notailable. *West. 1. cap. 15.* Treason. Where Bail is taken away.

Counterfeiters of Money, or of the King's Seal, are notailable. *West. 1. cap. 15. Br. Mainp. 59.*

Vagabonds : See before *Rogues*.

Outlawed Persons, taken for the same, are notailable. *West. 1. 6. 15. & 26 H. 6. cap. 10.* Outlawed.

(a) *Wards* : By the Statute of *W. 2. cap. 25.* if any Person shall ravish, (*sc.* shall take and carry away) any Ward, the Offender shall have two Years Imprisonment; and if he do not restore, or do marry the Child after the Years of Consent, and be not able to satisfy for the Marriage, he shall abjure the Realm, or have perpetual Imprisonment. And it is said, that it is at the Election of the Justices to award the Offender to abjure the Realm, or to have perpetual Imprisonment; and that if the Justices shall award him to perpetual Imprisonment, that the King cannot pardon him that Imprisonment, for that is in lieu of Damages to the Plaintiff, and that Imprisonment is an Execution thereof, the which the King cannot pardon without the Assent of the Party Plaintiff. Wards.

(d) *Wax*, and Vessels of Honey; if any Person shall counterfeit any the Marks thereof, or shall mark them with any other Man's Mark, and shall be thereof convicted, he shall suffer three Months Imprisonment without Bail. Wax. 23 El. 8. P. Wax, 7.

Weights : Falsifiers or Counterfeiters thereof, such Offenders (after they be indicted thereof) shall be taken and imprisoned without Bail, until they be acquitted or attainted; and if they be attainted, they shall remain in Prison until they have made Fine and Ransom, according to the Justices Discretion. *9 H. 5. 8. Parl. 2.* *Quære* whether this Statute be now in Force. * Weights. P. Jult. of Peace 61. P. Weights 13. * It is expired, according to the last Edition of the Statutes at Large. Women. P. Women 7.

Women : Taking of Women (unmarried, and under the Age of 16 Years) out of the Possession of their Parents, or other Person having lawfully the Keeping, &c. of them, and against their Wills, the Offender being thereof convicted, shall be two Years imprisoned without Bail, &c. P. Women 8.

2. Taking away and Deflowring such Maid or Woman Child, as aforesaid :

3. Contracting of Marriage with such a Maid, against the Will of, or unknown to the Father of such a Maid, (if he be living) or against the Will, &c. of the Mother, having the Custody and Governance of such Child :

The Offenders in these two last Cases, being thereof lawfully convicted, shall have five Years Imprisonment without Bail, &c.

See more concerning Women *antea*, *Recusants*.

(a) There be divers other Statutes made since the Publication of the Author, which take away Bail, but they being abridged in the first Part of this Book under their proper Titles, I forbear to repeat them.

See also 2 Hawk. P. C. Chap. 15. of *Bail*.

C H A P. CLXVIII.

Recognizance.

A Recognizance is a Bond of Record, testifying the Recognizor to owe a certain Sum of Money to some other; and the Acknowledging of the same is to remain of Record; and none can take it but only a Judge or Officer of Record.

And these Recognizances, in some Cases, the Justices of Peace are inabled to take, by the express Words of certain Statutes: But in other Cases (as for the Peace and good Behaviour, and the like) it is rather in Congruity, than by an express Authority given them, either by their Commission or by Statute.

Note; Wheresoever any Statute giveth them Power to take a Bond of any Man, or to bind over any Man to appear at the Assises or Sessions, &c. or to take Sureties for any Matter or Cause, they may take a Recognizance. Yea, wheresoever they have Authority given them to cause a Man to do a Thing, there it seemeth they have (in Congruity) Power given them to bind the Party by Recognizance to do it. And if the Party shall refuse to be bound, that then the Justice may send him to the Gaol; for it is a Rule in Law, *Concesso uno aliquo, etiam id concedi videtur sine quo prius concessum haberi nequit.* Crompt. 197. See Fitz. 82. Co. 11. 52. a.

nequit. But yet inquire of this last Case, for there is also another Rule, *In generali concessione non veniunt ea, quæ quis non esset verisimiliter in specie concessurus.*

I will here set down only some Particulars where the Justices of Peace (out of their Sessions) may take a Recognizance.

One Justice of Peace may take Recognizance for the Peace.

Also one Justice of the Peace may take a Recognizance for the Good Behaviour (by the Commission): And these the Justice of Peace may take either upon Discretion, or upon Complaint made to him, or upon a *Supplicavit* delivered to him.

1 H. H. P. C.
585.

One Justice of Peace may bind by Recognizance such as do declare any Thing against a Felon, to appear at the Assizes or Sessions, there to give Evidence against the Offender: And so in divers other Cases.

One Justice of Peace may bind by Recognizance such as keep any common Houses or Places for unlawful Games, that they keep the same no longer. See *antea*, Tit. *Games, &c.*

And also such as play at unlawful Games, contrary to the Statute of 33 H. 8. cap. 9. that they use the same no more.

One Justice may bind by Recognizance Takers of Partridges, &c. and Hawkers in Corn, to appear at the next Sessions, to answer their said Offences. See *antea*, Tit. *Partridges.*

One Justice of Peace may bind by Recognizance any Persons convicted for taking or destroying any *Pheasants, Partridges, Fowl, or Hare*, that they offend not thereafter, in any the Particulars any more.

Also they use (by way of Prevention) to bind *Tramellers for Larks*, that they shall destroy no Partridges, &c. *Quære* of this, how it is warranted. See *postea*, Tit. *Warrants.*

(a) But the Binding of *Tramellers* in this sort seemeth rather to do hurt than good, in that it doth enable to tolerate the Use of Tramelling in the Night-time, whereby many Partridges are secretly taken and killed; whereas any two Justices of Peace may more legally prevent that Night-taking and Destroying of Partridges, by taking away all such Nets, where they shall see Cause; the which they may do by Force of the Statute 7 Jac. 1. cap. 11. which see here before, Tit. *Partridges.*

I have known sundry Proclamations, authorizing and commanding the Justices of Peace (at or before the Beginning of the Lent-time) to convene and call before them all Taverners, Inn-holders, Alehouse-keepers, Keepers of ordinary Tables, and other Victuallers within the Precinct and Rule of the said Justices; and to take Bonds (by Recognizance) with sufficient Sureties of every of them, and in good Sums of Money, to the King's Use, that they shall not dress any Flesh in their Houses in the Lent-time, for any Respect, nor suffer it to be eaten there.

(d) One Justice of Peace may bind by Recognizance the Master that shall misuse his Apprentice, &c. to appear at the next Sessions, &c. See *antea*, Tit. *Apprentices.*

Two Justices, &c. may take Recognizance of Alehouse-keepers for keeping good Orders, &c. See before.

They may bind by Recognizance an Alehouse-keeper (committed for Victualling without Licence,) that he shall keep no more an Alehouse. See *antea*, Tit. *Alehouses.*

Two Justices, &c. may bail Prisoners, and upon such Bailment they are to cause the Prisoners to find Sureties for their Appearance, &c. which must be done by their Recognizance. See here, Tit. *Bailment.*

They may bind the Overseers of Cloth by Recognizance, to see the Statute observed. See hereof *antea*, Tit. *Cloth.*

Also two Justices of Peace may bind by Recognizance the Defendant in a Suit of Tithes, to obey the Sentence of the Judge. See *antea*, Tit. *Tithes.*

Whether the Justices of Peace may bind an Offender against a penal Statute, to appear and answer his Fault at the Sessions; see hereof *postea*, Tit. *Warrants.*

To whom.

Note, That every Obligation and Recognizance taken by Justices of Peace must be made to the King, and shall be made by these Words, *Domino Regi*, upon Pain of Imprisonment of any Person that shall take it otherwise: And all such Bonds or Recognizances shall be in the Nature of a *Statute-Staple* to all Intents. See hereof *postea*, Tit. *Recognizance.*

A Justice of Peace can take no Recognizance, but only for such Matters as concern his Office. See hereof Tit. *Surety for the Peace, antea.*

Note also, That a Recognizance taken by a Justice of Peace is a Matter of Record presently, so soon as it is taken and acknowledged, although it be not made up, but only entred into his Books; nay, although it be not entred, as it seemeth. See *Stamf.* 77. a. such a Matter. 33 H. 8. 39.
Br. Rec. 58.

If a Justice of Peace shall take a Recognizance where he hath no Authority, it seemeth void.

And these Recognizances taken by the Justices of Peace, are to be certified by them at their Quarter-Sessions: Except Recognizances taken of such as shall inform against Felons, and upon Bailment of Felons, which by Statute they are appointed to certify at their next General Gaol-delivery. See *antea*, Tit. *Felony*.

For the Forms of Recognizances see hereafter, Tit. *Recognizances*.

C H A P. CLXIX.

Warrants.

NOW concerning the Precepts or Warrants to be made by the Justices of Peace: *By Parol.*
The Justice of Peace, (seeing that he is a Judge of Record) his Precept or Command by Word of Mouth (in some Cases) is as strong as his Precept in Writing. Lamb. 87.

And therefore the Justice of Peace, upon any Riot done in his Presence, may command the Rioters to be arrested, and cause them to find Sureties for their good Behaviour. 14 H. 7. 8, 9.

So upon an Affray, Assault, Threatning, or other Breach of the Peace done in his Presence, the Justice of Peace may command by Word, the Officer being present, or his own Servant, to arrest such Offenders to find Sureties for the Peace. See before, Tit. *Surety for the Peace*.

And where the Justice of Peace commandeth one being present to arrest another that is also in his Presence, though that Command be by Word only, it is good, and it is reputed as an Arrest made by the Justice himself, he being present when the Arrest is made. 1 H. H. P. C.
587.
B. Faux Im-
pris. 33.

(a) One in false Imprisonment justified that the Plaintiff being in the Presence of a Justice of Peace, the Justice not having Opportunity to examine him, commanded the Defendant to take him into Custody, and keep him safely until next Day, the which he being Constable did so; and this was a good Justification without shewing the Cause the Justice of Peace had to imprison him, and without shewing the Warrant, because it was done in the Presence of a Justice of Peace. *Broughton v. Mullock, T. 37. El.* Moor's Rep.
408.
1 H. H. P. C.
585.

(d) But the Justices of Peace cannot command by Word to arrest another being out of their Presence; neither may one in the Absence of the Justice arrest another upon his Command by Parol, but it must be by a Precept or Warrant in Writing, by the greater Opinion of the Justices. 14 H. 7. 8.
Br. Peace 7.

And yet in Case of Rioters, the Justice of Peace may by Word command his Servants to arrest them in the Absence of the Justice; by the Opinions of *Fineux* and *Tre-male* Justices: See hereof *antea*, Tit. *Riots*. 14 H. 7. 9, 10.
1 H. H. P. C.
587.

Next their Warrant or Precept by Writing ought to be under their Hand and Seal, or under their Hand at least. See *hic infra*. *By Writing*

And if it be for the *Peace or Good Behaviour*, or the like, where Sureties are to be found or required, there the Warrant ought to contain the *Special Cause* and Matter whereupon it is granted, to the Intent that the Party (upon whom it is to be served) may provide his Sureties ready, and take them with him to the Justice of Peace to be bound for him: But if the Warrant be for *Treason, Murder or Felony*, or other Capital Offence, or for great Conspiracies, Rebellious Assemblies, or the like, it needs not contain any special Cause, but there the Warrant of the Justice of Peace may be, to bring the Party before him, to make Answer to such Things or Matters generally as shall be objected against him on the King's Behalf: And this is now the common Usage, by the Report of Mr. *Crompton*. *The Form.*
Crompt. 148.

And I once received a Warrant, brought me by one *Thomas Evans*, (a Purfivant or Messenger of his Majesty's Chamber) under the Hand of the Right Honourable *Thomas Lord Ellesmere*, late Lord Chancellor of *England*, for the apprehending one *James Malin*, An. Dom.
1607.

for a Matter of Contempt ; and the said Warrant was in general Words, *scil.* to answer to such Matters as were objected against him, without any special Cause therein mentioned.

3 Jac. 1.
2 H. H. P. C.
111, 112. Also I saw another Warrant granted under the Hand of *Popham*, Chief Justice, to bring one *Edmonds* (of *Barnwel* by *Cambr.*) before him to answer to such Matters as he had to object against him on the King's Behalf, without any special Cause or Matter therein set down.

(a) The like Form you shall find in the Book of *Entries*, Tit. *Attachment* : *Non omit- tas, &c. quin attach. E. H. &c. ita quod habeas corpus ejus coram Justic. nostris ad Affissas in Com. tuo capiend. assign. apud W. in Octab. Sanct. Mich. ad respond. nobis de his quæ sibi ex parte nostra tunc ibidem objicientur, & ad faciendum ulterius & recipiend. quod Curia nostra de eo consider. in hac parte, &c.*

Blank War-
rant.
1 H. H. P. C.
577. But it is not safe for a Justice of Peace to grant out his Warrant with a Blank : For about 30 *Eliz.* one wrote to Sir *I. R.* a Justice of Peace, to send him a Precept or Warrant with a Blank, that he might put therein one whom he would attach upon Suspicion of Felony ; and the Justice of Peace did so, (granting a Warrant with a Blank, where he neither knew the Party's Name nor the Matter) : And for this the Justice was fined in the Star-Chamber, as Mr. *Crompton* reporteth, *Author. des Courts* 34.

Sealed. Also the Warrant of the Justice of Peace should be under the Seal of the said Justice : For every Justice of Peace (being a Judge of Record) hath a Seal of his Office ; and when he maketh a Warrant under his Seal to the Officer, then the Officer ought to give Credence to the Seal, for that is his Authority ; *per Brudenel.* 14 *H. 8.* 16.

14 H. 8. 16.
Lamb. 90. (d) Again, the Warrant of the Justice of Peace is the better, if it bear Date of the Place where it was made, and it must express the Year and Day when it was made. See 21 *H. 7.* 22.

Out of the
County.
Plow. 37. A Justice of Peace who is dwelling out of the County granteth his Warrant to be served within the County ; the Officer cannot carry the Party out of the County to the Justice of Peace who made the Warrant, but must carry him before some other Justice within the County.

Vide supra
c. 6. p. 19. *Quere* whether such a Warrant be good or no. First, for that a Justice of Peace hath no Authority but in the County where he is a Justice, and in Commission. See *antea*.

And again, for the Date of the Place seemeth to be material by the Books 14 *H. 8.* aforesaid, & 21 *H. 7.* 22. *Br. Fx. Imp.* 12.

Return.
Br. Peace 9.
Co. 5. 59. The Justice of Peace may make his Warrant to bring the Party *before himself*, and then the Officer needs not to carry the Party before any other Justice. And yet upon a Warrant for the Peace granted *ex officio*, the usual Manner is otherwise. See *antea*, Tit. *Sureties for the Peace*.

Also the Justice of Peace may in some Cafes make his Warrant to attach the Offender to be at the next Sessions of the Peace, there to answer his said Offence, &c. See *antea*, Tit. *Counterfeiters, & postea Warrants*.

(a) If a Justice of Peace shall make his Warrant to the Sheriff to attach one, and to bring him to the next Sessions, there to find Sureties for the Peace, &c. it is good. *Crompt.* 135, 136.

So if the Justice shall make his Warrant to warn a Man to appear at the next Sessions, there to give in Evidence for the King ; and where the Justice shall command one by his Warrant to be or appear at the next Sessions, &c. if the Party do not appear, then from that Sessions there shall go out a Precept to attach him for such his Contempt. *Crompt.* 123.

For what
Cause. (d) A Justice of Peace (*ex officio* by the first *Assign.* in the Commission) may grant his Warrant to arrest or attach one that hath broken the Peace, or committed other Misdemeanour against the Peace, to find Sureties for the Peace or Good Behaviour, as the Cause shall require.

Also the Justices of Peace in divers Cafes may grant their Warrant against a Man for his Neglect or other Default, as for refusing to pay *Town-Rates*, and the like : And such Warrant may be either to attach the Offender to be at the next Sessions, there to answer, &c. or else to bring him before the said Justice, or any other Justice, who, finding Cause, may bind him to appear at the next Sessions to answer the said Default.

Also where any Statute doth give Authority to the Justices of the Peace to cause another Person to do a Thing, there it seemeth they have Power given them (of Congruity)

gruity) to grant their Warrant to bring such Persons before them, that so they may take Order therein. *Quære.* See *antea*, Tit. *Recognizance*.

But I find it much controverted, whether a Justice of Peace may grant a Warrant to attach Persons suspected of Felony, or against Offenders upon a penal Statute, unless such Persons or Offenders be first thereof indicted: For that the Justice of Peace, as he is a Judge of Record, so it is said he must have a Record, whereupon he doth award his Process or Precept. Some hold that the Justice of Peace may grant his Warrant to attach Persons suspected of Felony, &c. for that it seems by the first *Assignavimus* in the Commission, and by the Statute of 5 *Ed.* 3. 14. that any one Justice of Peace may cause the Constables to arrest and imprison Offenders suspected of Felony, &c. and how shall the Justices of Peace cause this to be done, but by his Warrant or Command?

Again, if a Felony be done, there is no Doubt but that every private Man without a Warrant may arrest whomsoever he suspecteth of it, being a Man of evil Fame, &c. See hereof Tit. *Arrest*. But if the Offender being pursued shall resist, *quære* who shall be aiding to a private Man, whose Goods are stolen, and who suspected another to have stolen them, either to search for his Goods, or to apprehend the Party suspected, if the Justice of Peace (by his Warrant) shall not command the Constable to aid him therein? If it be objected, that the Constable may do all this of his own Authority, (upon Request to him made by the Party robbed) it is true; yet we find by common Experience that the Constables, without the Justice's Warrant, are fearful and remiss herein, as neither knowing their own Authority, nor the Danger.

Besides, this is no new Thing, for there is such a Precedent in the old Book of Justices of Peace, *impress.* 1561. fol. 41. a. yea, it is the common Practice at this Day, and it seemeth to be very serviceable; and of two Evils the less is to be chosen, *sc.* that an Offender or suspected Person, should be imprisoned for a Time, (though sometimes wrongfully) rather than one which hath committed Felony should escape unpunished.

And yet by the Opinion of the Court 14 *H.* 8. a Justice of Peace cannot make a Warrant to arrest a Felon, unless he be indicted of Felony, (or that the Justice himself hath Suspicion of the Felon). But if the Constable, or other Officer, shall serve such a Warrant, he shall justify the same, though the Justice did err in the awarding thereof. See 24 *E.* 3. 9.

Next, for the Justices of Peace to bind over, or to grant a Warrant against Offenders upon any penal Statute, to appear at the Sessions to answer to their Offence or Fault, though such Statute be within the Power of the Justice of Peace, yet such Warrant or Binding over of such Offenders may seem not warranted, unless it be specially so appointed in the Statute, as it is by the Statutes of 5 *El.* cap. 4. 23 *El.* 10. 39 *El.* 11. See *antea*, Tit. *Counterfeiters*, *Dying*, and *Labourers*.

But such Offenders ought first to be indicted, and thereupon Process from the Sessions is to be awarded against them until they come in, &c.

(a) No one or more Justices of Peace can make a Warrant upon a bare Surmise to break any Man's House to search for a Felon, or for stolen Goods; for they are constituted by Acts of Parliament, which Acts give them no such Authority. It would be inconvenient if they might so do. But if a Man be indicted for Felony, the Sheriff upon Process may demand him; and if he render not himself, may break the House. *Co.* 4. *Inst.* p. 176.

(d) And yet there are several Precedents of Attachments made from one Justice of Peace against Labourers and Servants that shall refuse to serve, or that shall depart out of their Service, contrary to the Statute, to be before the Justices at their Sessions, to answer to their said Defaults. But these may seem also to have been warranted, and so appointed by the Statute of Labourers, made *An.* 25 *E.* 3. cap. 6. which Statute is now repealed by the Statute of 5 *El.* 4.

Also it is usual (by Way of Prevention) to bind by Recognizance such as do trammel for Larks, that they shall destroy no Partridges. And for these Purposes the Justices of Peace do grant out their Warrants to convene the said Persons before them, for Victuallers, (*sc.* Taverners, Inn-keepers, Alhouse-keepers, Keepers of ordinary Tables, and other Victuallers) I have known fundry Proclamations which seem to warrant the Justices of Peace therein. But for the other, what Law or Warrant there is for it, I know not, until the Offender is convicted. See *hic* Tit. *Partridges*. Yet see *antea*, where the Justices may in some Cases grant their Warrants against Offenders upon penal Statutes. (a) But there the Justices have Power to hear and determine out of the Sessions.

Also where the Offence prohibited by such a Statute amounteth to the Breach of the Peace or Good Behaviour, there the Justice may (either upon Discretion or Complaint of such an Offence and Breach of the Statute) grant out his Warrant, and bind over the Offender to the next Quarter-Sessions, &c. to answer his said Default, and in the mean Time to be of the Good Behaviour. See *hic*, *Servants assaulting their Master*.

To whom directed.

14 H. 8. 16.
Br. Peace 6.

1 H. H. P. C.
581.

Crompt. 147.

Lamb. 91.

(d) The Justice of Peace may direct his Warrant to the Sheriff, Bailiff, Constable or other Officer, or to any other indifferent Person by Name, though he be no Officer, yea to any Person that he shall think meet; but yet the safest Way is to direct it to the Constable, or to some other sworn Officers.

A Warrant directed by the Justice of Peace to the Constable, or other sworn Officer, and to a Stranger, who is no Officer, and the Warrant is made *conjunctim & divisim*, and is delivered to the Stranger, who executeth it; all this is good.

A Warrant directed by the Justice of Peace to *two Men jointly*, to arrest another, &c. yet any one of them alone may do it.

A Warrant directed by the Justice of Peace to the Sheriff, he may by Word command his Under-Sheriff, Bailiff, or other known or sworn Officer, to serve it, without any Precept by Writing.

And so the Sheriff's Servant, or other Person by the Sheriff's Command, and as Servant to the Sheriff, may serve or execute such Warrant without any Precept by Writing. See *Br. Ex. Impr.* 43. & *Trespafs* 339.

But if the Sheriff will command another Man (that is a Stranger) to serve it, he must deliver him a Precept in Writing; otherwise a Writ of False Imprisonment will lie for the Arrest.

A Warrant directed by the Justice of Peace to the *Sheriff's*, *Bailiff*, or to the *Constable*, or to the *Justice's Servant*, or to a *Stranger*, to arrest one, &c. such Person (to whom the Warrant is made) must serve it himself, for these can command none other to do it neither by Word nor Writing, nor make any Deputy.

The Officer's Duty.

8 E. 4. 14.

14 H. 7. 9. b.

20 H. 7. 13.

21 H. 7. 24.

Co. 9. 69.

The Officer to whom any Warrant shall be directed and delivered, ought with all Speed and Secrecy to find out the Party, and then to execute the said Warrant.

A sworn and known Officer, (be he Sheriff, Under-Sheriff, Bailiff, or Constable, &c.) needs not shew his Warrant to a Man whom he cometh to serve it upon, although he demandeth it: But if the Justice will direct his Warrant to his Servant or to another (who is no sworn Officer) to serve it, they must shew their Warrant to the Party if he demand it, or otherwise the Party may make Resistance, and needs not to obey it. *Br. Ex. Impr.* 23.

Co. 6. 54. &
9. 68.

Co. 9. 69.

But a sworn and known Officer, if he will not shew his Warrant to the Party, yet he ought (upon the Arrest) to declare the Contents of his Warrant, &c.

And an Officer giveth sufficient Notice what he is, when he saith to the Party, *I arrest you in the King's Name*, &c. and in such Case the Party at his Peril ought to obey him, though he knoweth him not to be an Officer; and if he have no lawful Warrant, the Party grieved may have his Action of False Imprisonment against him.

Dyer 244.
F. Bar. 248.
Lamb. 93.

If an Officer do arrest a Man *for the Peace*, or the like, before he hath any Warrant, and then afterwards doth procure a Warrant, (or a Warrant cometh after to him) to arrest the Party for the same Cause, yet the first Arrest was wrongful, and the Officer is subject to an Action of False Imprisonment. See the Statute 43 *El. cap.* 6.

(a) Where there be two or three known by the Name of *I. S.* of *D.* Ycoman, and upon a Warrant (or other Process) granted out against one of them, another of them is arrested, an Action of False Imprisonment will not lie against the Officer for this; for he is not bound at his Peril to take Notice which of them is the Offender, &c. And perhaps no particular Offence is mentioned in the Warrant. *Tamen vide L. 5 E. 4. fol. 51. & 48. pro & contra, & 11 H. 4. fol. 90. contra. Ideo quere.*

Where a Warrant is granted out against *I. N.* the Son of *W. N.* and the Officer arresteth *I. N.* the Son of *T. N.* although in Truth he be the same Person that offended, and against whom the Complaint was made, yet this Arrest is tortious, and the Officer subject to an Action of False Imprisonment. See the like Matter, 10 *E. 4. f. 12. Br. Faux Imp.* 38.

Break open an House.

*Tho' the Party be not indicted, and this is the constant

(d) The Officer, upon any Warrant from a Justice, either for the Peace, or Good Behaviour, or in any other Case where the King is a Party, may by Force break open a Man's House, to arrest the Offender*, &c. See hereof *antea*, in the former Title, *Forcible Entry*.

Practice, against the Opinion of Lord Coke. 4 *Inst.* 177. See 1 *H. H. P. C.* 582

If any Officer or other Person hath arrested a Man by virtue of his Warrant, which he hath from a Justice of Peace, and then taketh his Promise that he will come again to him such a Day, to go to the Justice with him according to his Warrant, (and so letteth the Party go) who comes not again at the Day appointed, the Officer cannot after arrest or take him again by Force of his former Warrant; for that this was by the Consent of the Officer: But if the Party arrested had escaped (of his own Wrong) without the Consent of the Officer, now upon fresh Suit the Officer may take him again and again, so often as he escapeth, although he were out of View, or that he shall fly into another Town or County. See more *postea*, Tit. *Imprisonment*, & L. 5 E. 4. fol. 12. *Br. Faux Imp.* 18.

How to be executed.

See *Cromp.* 214. a. & 148.

Co. 3. 44, 52.

(a) Where an Officer hath received a Warrant, he is bound to pursue the Effect of it in every Behalf, or otherwise his Warrant will not excuse him of that which he hath done. See *antea*, Tit. *Surety for the Peace*.

(d) If an Officer, having a lawful Warrant to arrest another, shall be resisted or assaulted by the Party, or by any other Person, then may that Officer justify the Beating or Hurting of such Persons; and other Persons (upon his Prayer) may and ought to aid the Officer.

Resistance.

21 H. 7. 39.

If a Justice of Peace shall make any Warrant for a Matter wherein he hath Jurisdiction, although it be beyond his Authority, yet it is not disputable by the Constable, or other such Officer, but must be obeyed and executed by the Officer; as if the Justice of Peace shall make his Warrant to arrest one for the Peace or Good Behaviour, &c. without Cause, the Officer shall not be punished for executing this: But if a Justice of Peace shall make his Warrant to do a Thing out of his Jurisdiction, or in a Cause whereof the Justice of Peace is no Judge, if the Officer shall execute such a Warrant, here he is punishable; for the Officer is not bound to obey him who is not Judge of the Cause, no more than a meer Stranger: And so note, That the Officer is bound to take Notice of the Authority and Jurisdiction of the Judge. See such a Matter, 22 *Jff.* 64. *Plo.* 394. b.

Officer not to question the Warrant.

14 H. 8. 16.

E. Faux

Imp. 8.

Lamb. 67, 94.

1 H. H. P. C.

579, 580,

583.

2 H. H. P. C.

79, 80, 107 to

110.

Co. 10. 76.

Cromp. 147.

2 Hawk. P. C. c. 13. §. 10.

If any Man shall abuse the Justice of Peace his Warrant, as by casting of it into the Dirt, or treading it under his Feet, &c. he may be bound to his Good Behaviour, and may also be indicted and fined, for it is the King's Proceis.

Contempt.

Cromp. 149.

When any Person cometh before a Justice of Peace, by Force of any Warrant for the Peace, Good Behaviour, or for a Riot, or the like, the Party must offer Sureties, or else the Justice may commit him. See *antea*, Tit. *Sureties for the Peace*.

If a Justice of Peace shall grant his Warrant to one to apprehend another for Murder, Robbery or Felony, it shall be safe for the Justice, upon the Delivery of his said Warrant, to take (upon Oath) the Examination of the said Party that requireth the Warrant, or at least to bind him over by Recognizance to give Evidence at the next Gaol-delivery, &c. against the Offender, lest that afterwards, when the Offender shall be brought (by the Officer) before the Justice upon his said Warrant, or else happen to yield himself to the said Justice, then the Party that procured the Warrant be gone: For by credible Report I am informed, That one having procured a Warrant from a Justice of Peace in *Suff.* against another for a Robbery done upon the Highway, and the Justice upon the Delivery of his Warrant not having bound over the Complainant to give Evidence, nor taken his Examination, as aforesaid, that at the next Assises and Gaol-delivery, the Party charged with the Robbery came and offered himself to the said Justice of Peace, who immediately acquainted Sir *Tho. Flemming* (then Lord Chief Justice, and Judge of Assise there) with the whole Matter; but the said Judge much blamed the said Justice of Peace for not having bound over the said Complainant at the first when he granted him the Warrant, and charged the said Justice of Peace, at his Peril, presently to send for the Party Complainant to come to give Evidence, &c. and farther directed the said Justice of Peace to bind over the Party charged with good Sureties for his Attendance and Appearance.

See 1 H. H. P. C. 582

C H A P. CLXX.

Arrest and Imprisonment.

What. **A**N *Arrest* is the Apprehending and Restraining of a Man's Person, and may be called the Beginning of Imprisonment.

Imprisonment is where a Man is arrested against his Will, or is restrained of his Liberty, by putting him into the Gaol, Cage or Stocks, or into some Houses, or otherwise by keeping him in the High Street, or open Field, so as he cannot freely go at Liberty, when and whither he would.

If the *Constable* or other *Officer* (upon a Warrant received from a Justice of Peace) shall come unto the Party, and require or command him to go or come before the Justice, &c. this is no Arrest or Imprisonment. And upon a Warrant for the Peace, the Officer ought first to require the Party to go before the Justice before he may arrest him. See hereof *antea*, Tit. *Surety for the Peace*.

(a) A Bailiff or Sheriff says to a Man being present, I arrest you, altho' he touch him not; this is a good Arrest, and if the Party go away it is a Rescue. 8 Car. 1. B. R. *Sir James Wingfield's Case*.

(d) But this Arrest (being in Execution of the Command of some Court, or of some Officer of Justice) is expressed in their Writs, Precepts or Warrants, by these Words or the like, *sc. Capias, Attachias, &c. To attach, arrest, take, bring or convey, or cause to be attached or arrested, &c.* All which Words do imply the Taking or Laying hold of the Person.

What Persons. To this Arrest all Lay Persons (under the Degree of Barons or Peers of the Realm) are subject, and that by Warrant from the Justices of Peace, as you may see here before, Tit. *Surety for the Peace*.

But the Justices of the Peace are not to grant their Warrants for the Peace, or the like, against any Nobleman; and yet if a *Capias* or Attachment shall be awarded against a Baron or Peer of the Realm from the King's Justices at *Westminster* for a Contempt, or in Case of Debt or Trespass, the Officer without any Offence of Law may execute the same, for that the Officer is not to dispute the Authority of the Court.

Ecclesiastical Persons. *Ecclesiastical Persons* may also be arrested, and that by Warrant from the Justices of Peace, in some Cases. See hereof, Tit. *Surety for the Peace*.

Feme Covert. (a) A *Woman Covert* may be imprisoned by the Justice of Peace for a Force or a Riot committed by her. See *antea*, Tit. *Forcible Entry and Riots*.

But otherwise of *Infants* in such Cases. See *Ibid*.

Yet if an *Infant cannot find Sureties for the Peace*, being demanded against him, he shall be committed until he hath found Sureties. See *antea*.

Infant. An *Infant*, though of Years of Discretion, yet he shall suffer no Imprisonment, nor other corporal Pain, for any Offence committed or done by him against any Statute, except an *Infant* be expressed by Name in the Statute. *Br. Imprif. 101. Covert. 68. Pl. 364. Doct. & Stud. 147, 148.*

For what Cause, and by whom. (d) The Liberty of a Man is a Thing specially favoured by the Common Law; and therefore if any the King's Subjects shall imprison another without sufficient Warrant, the Party grieved may have his Action, and shall recover Damages against the other; and the King also shall have a Fine of him. For Imprisonment of another without Offence of the Law, is one of the King's Royal Prerogatives, and only annexed to the Crown.

P. Accuf. 1. 5 E. 3. c. 9. See Pet. Anno 3 Car. Regis, & Stat. 5 Ed. 3. c. 9. Co. 10. 74. Also by the Statute *Magna Charta*, made 9 H. 3. cap. 29. no Freeman shall be taken or imprisoned, &c. but by the lawful Judgment of his Equals, *sc.* upon his Conviction for some Offence, by the Verdict of a Jury of twelve good and lawful Men, or by the Law of the Realm.

And by this Statute of *Magna Charta*, every Arrest or Imprisonment, and every Oppression against the Law of the Land, is forbidden; and if any Judge, Officer, or other Person, against the Law, shall usurp any Jurisdiction, and by Colour thereof shall arrest, imprison or oppress any Man, it is punishable by the Statute. See *Co. 10. 75.*

Magna Charta confirmed. (a) This Grand Charter is a Declaration of the antient Common Law. *Co. 10. 48.* And the Statute of *Magna Charta, & Charta Forestæ*, for their Excellency have since been confirmed by the Authority of above 30 several Parliaments. See *Co. Preface* to the 2th Report.

(d) Note.

(d) Note, That all Jurisdiction ought to be either by Charter or Prescription. *Co. Jurisdiction.* 11. 99.

(a) Also by the Statutes of 25 E. 3. cap. 4. 28 E. 3. cap. 3. & 42 E. 3. cap. 3. no Person shall be *taken or imprisoned*, nor put to answer, unless it be by *Indictment or Presentment* of a Jury, before Justices, or by Matter of Record, or by due Process made by Writ Original at the Common Law. See *P. Accusation* 1. & 42 *Aff.* 5. And *Br. Faux Imprif.* 30. 2 H. 4. the Body of a Man shall not be taken but by Process out of a Court of Record.

A Commission to arrest or take a Man (and his Goods) was holden to be against Law, for that this ought to be either upon Indictment, or Suit of the Party, or other due Process of Law. *Br.* 15, 16. & *Faux Imprif.* 9. & *Indictment* 38. 42 *Aff.* 5. 12. 24 E. 3. 9. *Co.* 5. 64.

(d) Also note, that no Man shall be arrested for Debt, Detinue, Trespafs, or other Cause of Action, but only by Virtue of a Precept or Command out of some Court of Record.

Neither shall any Man commit another to Prison, except he is a Judge of Record. *Co.* 10. 103.

But yet for *Misdemeanors done against the King's Peace*, (as for *Treason, Felony, or breaking of the Peace, &c.*) the Offenders as well by the *Common Law*, as by *divers Statutes*, may be arrested and imprisoned by the Officers of Justice, and sometimes by *private Persons*, as hereunder followeth; (a) without either *Presentment, Process, Precept, Warrant*, or other Command. And these being by the Law of the Realm, are warranted by the aforefaid Statute of *Magna Charta*. *See Co. 3. 12. a.*

And Mr. *Bracton* (*l. 5. in fine*) saith thus; *In criminalibus causis, ubi sequi debet capitale iudicium, vita viz. vel mutilatio membrorum, non sequitur Attachiammentum aliquod, sed corpus tale (quicumque fuerit ille) ab omnibus arrestatur qui sunt ad fidem Domini Regis, sive inde Præceptum habuerint, sive non habuerint.* *By a private Man.*

And yet you must observe, that for arresting the Body of a Man in such Cases there must be some just Cause, or some lawful and just Suspicion at the least. And therefore where a Man is indicted of Felony, that is a good Cause to arrest him. But if an Appeal of Felony be commenced against another, that is no sufficient Cause, for it is but private Suspicion, &c.

Every private Man may arrest another, whom he knoweth or seeth to have committed a Robbery, Manslaughter, or other Felony, and may deliver him to the Constable of the Town where such an Offender is apprehended, or in the Constable's Absence may imprison and set him in the Stocks; and if there be no Stocks there, it seemeth he may carry the Offender to the next Town, and deliver him to the Constable there. See 9 E. 4. 28. or else he may carry him before a Justice of Peace, by him to be examined and sent to the Gaol, there to abide until the next Assizes, or Sessions of the Peace, &c. *10 E. 4. 17. Fitz. Bar. 101*

Also when a Felony is committed, every Man may arrest suspicious Persons that be of evil Fame, &c. and if such Person shall make Resistance, the other may justify to beat him.

But for the Arresting of such suspicious Persons, note, that there must be some Felony committed indeed.

Also the Party that shall arrest such suspected Person must have a Suspicion of him himself, and for the same Felony, or otherwise Suspicion generally is no Cause to arrest another. See *antea*, Tit. *Examination.* 5 H. 7. 4. & *Libr. Intr. Faux Impr. div.* 5. *9 E. 4. 28.*

(a) So that when any Felony is done, every Man that shall suspect another to be guilty thereof may arrest him. See 5 H. 7. 4. b. *Br. Faux Imprif.* 16.

Any Man suspecting another of a Felony committed, or only intended, may arrest him, so as thereupon he commits him to the Gaol, or carries him before a Justice of Peace. 9 E. 4. 26. 20 E. 4. 6. *Vide Finch* 127. *Caus.*

Also when a Felony is committed, the common Voice and Fame that *I. S.* did the Felony, is sufficient Cause for any Man to suspect him, and to arrest him. *Ibid.*

Also Hue and Cry after *I. S.* for Felony, seemeth to be sufficient Cause to arrest him, though there be no Felony committed. *Ibid.*

Also Hue and Cry is sufficient Cause to arrest any suspicious Person. *Br. Faux Imprif.* 25.

So when a Felony is done, to be in Company of the Offenders, is sufficient Cause to arrest him.

So to live idly and vagrant. *Br. Faux Imprif.* 22. See *antea*.

(d) Also

9 E. 4. 28.
Finch 127.

(d) Also every Man may arrest such as apparently go about to commit any Felony, and may imprison them.

29 E. 3. 39.
5 H. 7. 4.

Also upon Hue and Cry for stolen Goods, (*sic*. for a Horse or Bullock, &c. of such Colour, &c.) if *A.* be taken driving or leading, &c. such a Horse, or such a Bullock, or having such other stolen Goods about him, though he be a Man of good Name and Credit, yet every Man may apprehend and stay *A.* hereupon, and may deliver him to the Constables, by them to be set in the Stocks, or safely kept, until they carry him before a Justice of Peace, that so he may be delivered by Course of Law.

10 H. 7. 28.

If any Man shall be dangerously hurt in Affray, or otherwise, every Man may arrest and imprison the Offender, &c. What every private Man may further do in Affray, see before, Tit. *Affray*.

Justification.

(a) Unlawful Hunters in Parks, the Keepers, or their Servants, may for such Offence justify to arrest the Offenders, and to cause them to depart, &c. *Libr. Intr. Tit. Faux Impr. div. 12.*

Co. 9. 63. b.

4 H. 7. 18.

Br. Faux

Impr. 15.

* But there

ought to be pro-

vable Causes of Suspicion, otherwise (according to *Ch. Just. Holt*) it is not lawful even for a Constable to take up a Person, having been guilty of no Breach of the Peace, nor any unlawful Act. See 2 H. H. P. C. p. 89. in notis.

(d) Every Man knowing of any that keepeth or useth any Gun, &c. contrary to the Statute, may arrest him, and bring him to the next Justice of Peace, &c. See *antea*, Tit. *Guns*.

Night-walkers, being Strangers or suspected Persons, Watchmen may arrest them, and may stay them till the Morning, &c. See hereof Tit. *Watch ante*. Yea, every Man may arrest such Night-walkers, for it is for the Good of the Kingdom. *

(a) But in all these Cases before, where a private Man shall arrest another, he ought thereupon to commit the Prisoner to the Gaol, or to carry and deliver him to the Constable, or to some other Officer, &c. See 20 E. 4. 6. *Finch* 127.

Officer.

(d) The Sheriff, Bailiff, Constables and other the King's Officers, may arrest and imprison Offenders in all Cases where a private Person may, and without any Writ or Warrant.

Where a Constable may arrest one, &c. See hereof *antea*, Tit. *Conservators of the Peace, Affray, Forcible Entry, and Examination*.

A Constable, being informed of a lewd Man and Woman that are together in Incontinency, may take with him so many of his Neighbours as he will to arrest the said Man and Woman, to find Sureties for their Good Behaviour. 1 H. 7. 7. 13 H. 7. 10.

(a) If any Man makes an Assault upon the Constable, he may justify to arrest him that makes the Assault, and to carry him to the Gaol for the Breach of the Peace, although the Constable be the Party upon whom the Assault was made. 5 H. 7. 6. *Br. Faux Impr. 41.*

(d) The Justice of Peace may arrest and imprison Offenders in all Cases where a private Man may. See *hic ante*.

(a) The Justice of Peace, upon his own Motion and Discretion, or upon Complaint, may also grant out his Warrant for the Arresting, or convening before him, of all such Persons as shall break, or go about to break the Peace, or as he shall suspect to be inclined to break the Peace, and may commit them to Prison, if they shall refuse to find, or cannot find Sureties to keep the Peace.

The Justice of Peace, in divers Cases, may in like Sort grant out his Warrant for the Good Behaviour against Offenders, (as you may see before) and may commit them to Prison for not finding Sureties accordingly.

And these Things the Justices of Peace may do by Force of the Commission, and of the Statutes 18 E. 3. *cap. 2.* & 34 E. 3. *cap. 1.*

(d) If one cometh before the Justice of Peace upon his Warrant for the Peace, Good Behaviour, or for a Riot, or the like, the Justice needeth not to demand Sureties of him, but may commit him if he do not offer it. *Br. Peace 7.*

Also the Justices of Peace upon their own View, &c. of the Offence, may imprison the Offender against divers penal Laws; as namely such as keep common Alehouses without Licence, Offenders for unlawful Games, Rioters, such as shall make any Forcible Entries or Holdings of Possessions, &c. See for these before under their particular Titles.

There be divers other Offences which by the Statute are committed to the Justices of Peace, out of their Sessions, to hear and determine, and of which the Offenders shall be convicted, sometimes upon their own Confession before the Justices, and sometimes upon Examination and Proof of Witnesses; in all which Cases the said Justices of Peace may convene

convene the said Offenders before them, by their Process or Warrant; and after such Examination and Conviction, they may imprison or otherwise punish the Offenders, according as they are limited by the said Statutes. See before.

Wheresoever the Justice hath Authority given him by any Statute to bind over any Man, or cause him to do any Thing, if such Person, being in his Presence, shall refuse to be bound, or to do such Thing, the Justice may send him to the Gaol, there to remain till he shall perform the same. See hereof *antea*, Tit. *Recognizance*.

In what Cases the King's Officer may break open a Man's House for to arrest an Offender. See hereof, Tit. *Forcible Entry*. *Break open an House.*

All Men being required ought to assist the King's Officers, to pursue and arrest Offenders against the Peace, &c.

If the Party against whom any Warrant is granted shall make *Resistance*, or shall make an Assault upon the Officer, or shall fly; the Officer may justify the Beating and Hurting of him, and may also imprison him in the Stocks for the same; but if the Party resisteth or flieth before he be arrested, the Officer cannot justify the Beating of him. *Resist.*
2 E. 4. 7.
21 H. 7. 39.
2 Ed. 4. 7. a. *Br. Tresp.* 296.

(a) If the Warrant was to arrest one who is indicted of Felony, then may the Officer justify the Killing of such a Person, if he shall resist or fly, or that he cannot otherwise be taken. See *hic antea*, *Homicide tolerated*.

(d) None shall be imprisoned by any Justice of Peace, but only in the common Gaol, by the Statute of 5 H. 4. & 23 H. 8. cap. 2. *Gaols.*
5 H. 4. 10.

And therefore Justices of Peace cannot commit Felons to any of the Counters in *London*, nor to other Prisons which be not common Gaols; nor make a Gaol of their own Houses. *The Place.*
Co. 9. 119. b.

And yet Justices of Peace may commit to the Stocks some Offenders against certain Penal Statutes, as Townsmen tipping in Alehouses, &c. See hereof *antea*, Tit. *Alehouses*. *Imprisonment.*

Persons refusing to work in Hay and Harvest-time. See *antea*, Tit. *Labourers*.

And in some Cases the Justice may commit an Offender to safe Custody by his Discretion. *Vide antea*, Tit. *Preachers*.

Also in some Cases the Justices may send Offenders to the House of Correction, there to be continued for any reasonable Time, at the Discretion of the Justice. *Vide antea*, Tit. *Rogues*.

The Sheriff or Gaoler may imprison a Felon or other Prisoner in their own House, or in the common Gaol, at their Pleasure. (a) *Tamen quere & vide Cromp.* 184. that the Gaol is the King's Prison, and that for Causes touching the King, Offenders shall be sent thither. *Lam.* 136.
Cromp. 169.

(d) The Constable, or other such Officer, cannot imprison any Man in his House, but in the Stocks; and that not above such a reasonable Time, as he may provide convenient Aid safely to convey the Prisoner to the Justice or Gaol. 20 E. 4. 6.
22 E. 4. 35.
3 H. 4. 9.
Finch.

(a) And yet in Case of an Affray, &c. the Constable may for a Time imprison the Offender, being a Man of Quality, in the Constable's own House, or may commit him to some other safe Custody. *Vide hic cap.* 1.

(d) If a Man commit Felony in one County, and be arrested for the same in another County, he shall be imprisoned in that County where he is taken. *Vide antea*, Tit. *Felony*. *County.*
Br. Faux Imp.
25.

The Justice of Peace, Constable, or other Officer, pursuing a Felon into another County, takes him there; the Felon shall be committed to the Gaol of the County where he was taken: For the Justice of Peace or Officer, being out of his County, hath no more Authority than a private Man. *Vide antea*, Tit. *Accessaries & Felony*. 13 E. 4. 9.
Br. Fresh Suit.
3. & *Plow.*
37. a.

Also if the Constable, or other Officer, shall see an Affray, and he coming to arrest them, the Affrayers do fly into another County, the Officer, as every other private Person, may pursue them into the other County, and may arrest them there; but the Officer cannot bring them out of that County, but must carry the Affrayers before some Justice of Peace of the same County where they were taken, &c. But if the Affray be in one Town, and the Affrayers do fly into another Town, or into a Franchise or Liberty within the same County, the Officer may pursue them, and take them out of the Franchise, &c. by fresh Suit. *Vide antea*, Tit. *Affray*.

But if the Constable hath arrested one upon a Warrant from a Justice of Peace, and after the Arrest the Party escapeth (of his own Wrong), and flieth into another County, the Constable may pursue and take him in the other County by fresh Suit, and bring him *See* 2 E. 4. 6.
Br. Tresp.
296.

before the Justice of Peace upon whose Warrant he was first arrested. See *Crompt.* 172, 173. & *antea*, Tit. *Felony by Statute*.

If a Prisoner taken in Execution shall make an *Escape of his own Wrong*, and shall fly out of Sight, and into another County, where the Sheriff hath no Power, yet the Sheriff, &c. upon fresh Suit, may take him again in any other County, and he shall be still said to be in Execution; yea, without fresh Suit, the Sheriff, &c. may take him again, and keep him until he hath agreed with him: Otherwise, if the Escape were by the Consent of the Sheriff, &c. *Co.* 3. 52. *Br. Escape* 4. 12.

Charges.

3 Jac. 1. c. 10.
P. Prif. 7, 8.
21 Jac. 1. c. 28.

Now for the Conveying of Prisoners to the Gaol, it must be at the proper Charge of the Prisoners, if they have Means or Ability thereto; otherwise it must be at the Charge of the Town where they are taken.

(a) And if the Prisoner shall refuse to bear the Charge, the Justice, by his Warrant under his Hand and Seal, may cause the *High Constable of the Hundred, or Petty Constable of the Town*, where he hath any Goods, to sell so much thereof as will satisfy the Charges; and if the Prisoner have no Goods known, then the Parishioners of the Town, where he was apprehended, refusing to pay their Rate towards that Charge, may by like Warrant be distrained to pay the same. *Vide Stat.* 3 Jac. 1. *cap.* 10.

10 H. 4. 7.
F. Esc. 8.

(d) And if a Man be arrested for Felony, and the Constable shall carry him to the Gaol, and the Gaoler will not receive him, the Constable must bring him back to the Town where he was taken, and that Town shall be charged with the Keeping of him until the next Gaol-delivery, by the Opinion in the Book 10 H. 4. (a) or the Constable or other Party that arrested him may in such a Case keep the Prisoner in his own House. See 1 E. 4. *Br. Faux Impr.* 25. *fine*.

P. Prif. 6.
4 E. 3. c. 10.

(d) But the *Gaoler denying to receive a Felon* by the Delivery of any Constable or Township, or taking any Thing for receiving such, shall be punished for the same by the Justices of Gaol-delivery.

The Time.

Co. 8. 119.
Plow. 17. b.

When a Statute doth appoint Imprisonment, but limits no Time when the Offender shall be imprisoned, then he is to be imprisoned presently; as in Case of a Force, the Justices of Peace, upon View thereof, ought to commit the Offenders presently, (a) for after they may not commit them.

Crompt. 171.

(d) Also when a Statute doth appoint Imprisonment, but limits no Time how long, in such Case the Prisoner must remain at the Discretion of the Court.

Where a Statute doth ordain that an Offender shall be imprisoned at the King's Pleasure. *Vide antea*, Tit. *Bailment*.

Where a Statute ordaineth that a Prisoner shall not be delivered without the King's special Command, and that upon a Fine to be made to the King; who may assess the same Fine, and deliver him. See 18 H. 8. 1.

Br. Impr. 100.
Co. 11. 43.

But Imprisonment to be inflicted by the Justice of Peace, almost in all Cases, (except for the Peace, the Good Behaviour, or for Felony, or higher Offences) is but to retain the Party until he hath made Fine to the King for his Contempt or Offence; and therefore if he shall offer to pay his Fine, or shall find Sureties by Recognizance to pay it, he ought to be delivered presently. 2 Mar. 1.

The Manner.

Co. 8. 100.
& 9. 87.

Now for the Manner of Imprisonment, it seemeth generally in all Cases where a Man is committed to Prison, especially if it be for Felony, or upon an Execution, (or but for a Trespass, or other Offence) every Gaoler ought to keep such Prisoner *in salva & arcta custodia*: *Salva*, sc. that he ought to be imprisoned so surely as that he cannot escape; *Arcta*, in respect that he ought to be kept close, without Conference with others, or Intelligence of Things abroad.

Escapes.

Co. 3. 44.

And therefore if the Gaoler shall licence his Prisoner to go abroad for a Time, and then to come again, or to go abroad with a Keeper, though he come again; yet these are Escapes: And if the Prisoner were in for Felony, this is fineable in the Gaoler at least, and so it is if it be not Felony; and if the Prisoner were in upon an Execution, this is so penal to the Officer, as that he shall be charged for the Debt; and if the Prisoner were in but for a Trespass, yet the Officer is fineable: For Imprisonment was ordained for Punishment of Offenders, and in Terror of all others; *ut pœna ad paucos, metus ad omnes perveniat*. *Vide antea* Tit. *Felony by Statute*.

1 R. 2. c. 12.
7 H. 4. c. 4.

(a) And yet see *Co. L.* 260. That *Imprisonment* must be *Custodia*, & *non pœna*: For *Carcer ad homines custodiendos, non ad puniendos, dari debet*: But 'tis just that it should be *pœna* as well as *custodia*, sc. for Malefactors, that it should be a Punishment to them, and a Terror to others; and for Debtors, that they may the sooner pay their Creditors.

For, as one saith, *Maxima illecebra peccandi impunitatis spes*, A great impulsive Cause of Offence is the Hope to escape unpunished: And so a great Cause that Debtors care not to pay their Creditors, is their Hope to escape Imprisonment, or of too much Favour and Liberty in Prison.

(d) Also (by the Law) those which are in Execution ought not to go at Liberty within the Prison, nor abroad with their Keeper, 24 H. 8. much less in Cases of Felony, or of higher Offences. *In Execution, Dyer 249. Co. 3. 44.*

Also by the Statute of *Westm. 2. cap. 11.* Accountants, and such as are in Execution, the Sheriff or Gaoler may put Irons or Fetters upon them: And yet if the Gaoler shall imprison a Man so straightly, by putting him in the Stocks, or putting more Irons upon him than is needful, or keepeth his Victual from him, whereby the Prisoner becometh decrepit, lamed, or otherwise diseased, he shall have an Action of the Case against the Gaoler; and if the Gaoler shall keep his Prisoner more straight than of Right he ought to do, so that the Prisoner dieth thereof, this is Felony in the Gaoler. *Co. ibid. P. Accom. 2. Fitz. 93. h.*

Also the Constable or such other Officer, that shall imprison in the Stocks any Offender for Felony or Suspicion thereof, may lock the Stocks, and if Need be, may also put Irons on him; and when he conveyeth him to the Gaol, or to the Justice, may pinion him, or otherwise make him sure, so that he cannot escape. *Irons.*

It seemeth by *Britton, fol. 17.* that by the Common Law (before the Statute of *Westm. 2.*) none should have Irons put on them but such Offenders as were taken for Felony, or Trespassers in Parks. But the Words of the Statute of *Westm. 2. cap. 11.* are general, *quod carceri mancipentur in ferris*; which Word *Carceri* seemeth to signify any Persons imprisoned for any Cause, (or any Persons worthy of the Prison) and is not to be restrained to Accountants only. See *Coke 3. 44.* *Kit. 69.*

Also by the Statute 7 *Jacobi Regis*, all Rogues, Vagabonds, sturdy Beggars, and other idle and disorderly Persons, sent to the House of Correction, may (by the Master of such a House) be punished by putting Fetters or Gives upon them. *7 Jac. 1. 4.*

(a) A Person under Arrest must not be carried to a Victualling-house without his Consent, so as to charge him with any Sum of Money for Meat or Drink, nor more to be taken for an Arrest than required by Law; nor any Reward exacted for keeping him out of Gaol till he find Bail or agree, or take more for a Night's Lodging, or other Expences, than what shall be allowed by the next Justice, or by the Sessions. *22 & 23 Car. 2. c. 20.*

See 2 Hawk. P. C. Chap. 12 & 13. of *Arrests by private Persons and publick Officers.*

C H A P. CLXXI.

Posse Comitatus.

WHERE the Justice of Peace, Sheriff, or other Officer, is enabled to take the Power of the County, it seemeth they may command, and ought to have the Aid and Attendance of all *Knights, Gentlemen, Yeomen, Husbandmen, Labourers, Tradesmen, Servants and Apprentices*, and of all other Persons being above the Age of fifteen Years, and able to travel. *W^{ho}. Lamb. 309.*

But Women, Ecclesiastical Persons, and such as be decrepit or diseased, shall not be compelled to attend them.

And in such Cases it is referred to the Discretion of the Justice of Peace (or Sheriff, &c.) what Number they will have to attend on them, and how and after what Manner they shall be armed, or otherwise furnished.

But it is not justifiable for the Justice of Peace, Sheriff, or other Officer, to assemble the *Posse Comitatus*, or raise a Power or Assembly of People (upon their own Heads) without just Cause. *Vide antea, Tit. Riots.*

C H A P. CLXXII.

*What Persons may take Posse Comitatus, and in what Cases.*And. Part 2.
p. 67.

ANY Justice of Peace or Sheriff, may take (of that County where he is a Justice or Sheriff) any Number that he shall think meet, to pursue, apprehend, arrest and imprison *Traitors, Murderers, Robbers and other Felons*; or such as do break, or go about to break, or disturb the King's Peace: And every Man (being required) ought to assist and aid them. *Vide antea, Tit. Forcible Entry and Felony.*

14 H. 7. 8.

The Justices of Peace (and Sheriff or Under-Sheriff) may take the *Posse Comitatus* for suppressing Riots; and all Sorts of Persons (being able and required) ought to assist them therein. *Vide antea, Tit. Riots.*

Yea, any Justice of Peace may take the Power and Aid of the County to suppress Rioters, and need not to stay for the coming of another Justice, or of the Sheriff.

In what Cases.

Also in Cases of *Forcible Entry*, any Justice of Peace may take *Posse Comitatus* to remove such Persons as by his View, or by Inquisition taken before him, shall be found to have made any Forcible Entry (into other Mens Possessions) or to detain them with Force. *Vide antea, Tit. Forcible Entry.*

P. Rec. 52.

Also the Sheriff, or other Officer, upon any lawful Warrant for the apprehending any Popish Recufants, &c. may take the *Posse Comitatus*, &c. See the Statute of 3 Jac. 1. 4.

3 H. 7. 1. 10.

Co. 5. 115.

P. Distr. 4.

P. Retor. 5.

Br. Fin. P. 37.

Br. Riots 2. 3.

The Sheriff, Under-Sheriff or Bailiff, &c. if Need be, may by the Common Law take the Power of the County (what Number they shall think good) to execute the King's Process or Writ, be it a Writ of *Execution, Replevin, Estreptment, Capias*, or other Writ, it being the King's Command. See also the Statute *Westm. 1. 17. Westm. 2. 39.*

And such as shall not assist them therein (being required) shall pay a Fine to the King. See *hic antea.*

3 H. 7. 1.

Br. Tref. 266.

& Riots 2.

The Sheriff's Bailiff, to execute a Replevy, took with him three Hundred Men armed (*modo guerrino, sc.*) with Guns; and it was holden lawful: For the Sheriff's Officer hath Power to take Assistance as well as the Sheriff himself, for that is all one Office, and one Authority.

A Man demands the Peace in the Chancery against a *great Lord*, and hath a *Supplicavit* directed to the Sheriff: There, if Need shall be, the Sheriff may take the *Posse Comitatus* to aid him to arrest such a Lord, &c. *Vide antea, Tit. Surety for the Peace.*

So if a *Supplicavit* be directed to a Justice of Peace, he or the Officer to whom the Justice of Peace shall make his Warrant in this Behalf, (upon Resistance made) may (if need be) take the *Posse Comitatus* to aid him to arrest the Party: *Quia quando aliquid mandatur, mandatur & omne per quod pervenitur ad illud.* Co. 5. 115.

But every Sheriff is inabled besides by his Writ of Assistance, whereby there is Command under the Great Seal, to all *Archbishops, Dukes, Earls, Barons*, and all other the King's Subjects within the same County, to be aiding to him in whatsoever belongeth to his Office, &c.

The Sheriff may take the *Posse Comitatus* to apprehend *Felons, &c.* or Disturbers of the Peace. *Vide antea, Tit. Forcible Entry.*

So he may take the *Posse Comitatus* to execute the *Precept of the Justice of Peace.* Ibid.

5 H. 7. 10.

13 H. 7. 10.

Br. Treip.

432.

The Constable (of a Town) upon a *Felony* committed, or upon any *Affray*, or the like, may take the Aid of his Neighbours, or other Persons being present, to apprehend the Felons, or to cause the Peace to be kept, and to carry the Offenders before the Justice, &c. See *Br. Riot 3.*

One that hurt another, whereby he is in Peril of Death, the Constable may take Power or Aid to arrest him, &c.

So may the Constable take the Aid of his Neighbours for executing the Justice's Warrant directed to him.

28 E. 3. 8.

(a) Yea all and every such Persons as are *Conservators of the Peace* by the Common Law, (*sc. every Petty Constable, High Constable, Coroner, Sheriff, Steward of a Leet, or of a Court of Piepowders, Steward of the Sheriff's Torn, and other Judge in any Court of Record*) may command and take the Help, Aid and Force of others, to arrest all such who

in their Presence, and within their Jurisdiction, shall go about to break the Peace by Word or Deed.

Every Man may assemble his Friends and Neighbours to defend his Person, &c. (being in his House) against Violence, &c. but not to go abroad with him to a Fair or Market, &c. *Vide antea*, Tit. *Forcible Entry*. Co. 11. 82. 21 H. 7. 39.

C H A P. CLXXIII.

Certain Advices to the Justices of Peace.

(a) THIS being such a Form of subordinate Government for the Quiet of the Realm, as no Part of the Christian World hath the like, as saith my Lord Coke, 4 *Inst.* 170. if the same be duly executed; much of the Happiness of this Nation depends on our Justices of the Peace well and faithful Discharge of their Duty; and their due or ill Administration of the Authority given them, must needs add to the Reputation of our Government, or the Defamation thereof, especially since their Authority is so much enlarged by several Statutes: It will concern them therefore for their Direction and Security, to peruse the Statute 4 *H.* 7. 12. where they may find their Duty to give just Relief, and the Danger of Neglect. And therefore (d) I thought it not amiss here shortly to admonish the Justices of Peace again of some few Things mentioned before, for their better Memory.

1. First, That they exercise not the Office of a Justice of Peace before they have taken the *Oath of their Office*, and the *Oath of Supremacy*. *Vide antea*, cap. 4.

2. That they execute not this their Office *in their own Case*, but cause the Offenders to be convened or carried before some other Justice, or desire the *Aid of some other Justice* being present; *quia iniquum est aliquem suæ rei esse judicem*. Coke 8. 118. And some late Statutes have taken special Care to prevent this, as you may see *hic* Tit. *Trespafs*, &c. Not to be Judges in their own Case. Crom. f. 68 Lit. 212. Co. L. 141.

(a) Besides, *idem non potest esse agens & patiens*. 14 *H.* 8. 13. And when a Man is a Party, he cannot be a Judge indifferent. 8 *H.* 6. 19. Also it has been often seen, that a Justice of Peace who had executed that Office in his own Case, has been punished for it in the Star-chamber. *Cromp.* 68. 9 H. 6. 21. 11 H. 6. 49.

(d) And yet if the Justice shall deal in his own Case, it seems good and justifiable in many Cases; as when a Justice of Peace shall be assaulted, or in the doing his Office especially, shall be abused to his Face, and no other Justice of Peace present with him; then it seems he may commit such an Offender, until he shall find Sureties for the Peace or the Good Behaviour, as the Case shall require: And the said Justice in such Case may himself bind the Offender, and take his Security; but if any other Justice be present, it were fitter to desire his Aid.

3. That they be careful for the Execution of the Statute of *Riots*. *Vide antea*, Tit. *Riots*. *Riots*.

(a) And that neither in the Case of *Riots*, or any Part of their Office they meddle, if they can avoid it, where any *Relation* is concerned; for it brings a Suspicion upon their Proceedings; but if they must needs meddle, as it is not always in their Choice, that they carry themselves uprightly herein: For one *Carew* (a Justice of Peace of *Devon*) was censured, he going to view a Riot, and the Rioters being escaped before his Coming, he refused to go to the Place where they were, although but a little Way off; and the Peace being required against them, he took Recognizances to keep the Peace against others that demanded it not, and granted *Superfideas*, and procured the Peace to be released the next Day. And all this in Favour of his Brother. Moor's Rep. p. 628.

(d) If upon their Inquiry of a Riot the Truth cannot be found, by Reason of any Maintenance, &c. that they certify the same within one Month. *Ibid.*

4. That upon *Forcible Entry* they make no *Restitution* without *Enquiry*. *Vide antea*, *Forcible Entry*. Tit. *Forcible Entry*.

5. That upon Notice of any *Treason*, or of any *Seminaries*, &c. or of any *Agnus Dei*, *Treason*, &c. offered, they discover the same to some of the Privy Council. *Vide* Tit. *Treason*.

6. That they be circumspect in bailing of Prisoners, *viz.* that they neither deny it to such as areailable, nor yield it where it is not grantable. *Vide hic* *Bailment*. Bail.

7. If any *Felony* be committed, and one is brought before a Justice of Peace upon Suspicion for the same, though it shall appear to the Justice that the Prisoner is not guilty of that Not to let suspected Persons go.

that Offence, or that it is not Felony of Death, yet he may not set him at Liberty, but so as he may come to his Trial. *Vide antea*, Tit. *Felony by the Statute, and Evidence against Felons*.

Recognizance.

8. That all Recognizances taken by them be in the King's Name.

9. That all Recognizances taken by them be certified at their next Quarter-Sessions, or Gaol-Delivery, according as the Case shall require.

Easter-Sessions.

10. That they meet at every *Easter* Sessions at the least. *Vide 5 Eliz. cap. 4. P. Just. 67.* And yet their Presence and Attendance at every general Sessions is very requisite.

*Mis-entring
Plaints in Sheriffs
Courts.*

11. That their *Examinations taken concerning the Mis-entring of Plaints in County Courts*, or the Defaults of gathering the Shire Amerciaments, be certified into the Exchequer, &c. *Vide antea*, Tit. *Sheriffs*.

Highways.

12. That such Offences as the *Surveyors of Highways* shall present to them, they again present at their next Quarter-Sessions. *Vide antea*, Tit. *Highways*.

Recufants.

13. That the *Oaths*, taken by them upon the *Submission of any Recufant*, be certified at their next Quarter-Sessions. *Vide antea*, Tit. *Recufants*.

To do Justice.

14. Also that they do Justice, and give Remedy to every Party grieved in any Thing that lieth within their Power to hear, determine, or execute, and that without Respect of Persons, and according to the Laws and Statutes of this Realm. *Vide antea, cap. 4.*

(a) 15. He must suffer the *Law to have its Course*, and not privately stay Proceedings, contrary to the Duty of his Place. *Latch 48.*

*To consider such
Statutes which
are in Force.*

16. Where they have *Jurisdiction by any Statute*, which at first was Temporary, they are to consider whether the same be continued or made perpetual, and so be not expired.

(d) *Note*, that all these former Matters are penal to the Justices of Peace, if they shall offend in any of them, and therefore it is likely they will be the more careful therein. But there are certain other Things principally tending to the publick good, and lately commended from his Majesty (by the Judges of Assize) to the Care of the Justices of Peace; in all which they are to imploy their special Care and Diligence: And they are shortly these ten Articles following.

Abuses.

1. *Abuses*; the Abuses there to be reformed, and such as be unlicensed to be suppressed.

Highways.

2. *Highways* and Bridges to be amended.

Hue and Cry.

3. *Hue and Cry* and fresh Suit to be duly made and pursued after Robbers and other Felons.

Labourers.

4. *Labourers, &c.* idle Persons meet to serve, to be compelled to go to Service.

Poor Apprentices.

5. *Poor*, their Children to be placed *Apprentices*; such as are able of Body, to be holden or set to Work.

6. *Recufants*: First, Popish Recufants, (especially such as have been reconciled to the Pope, or drawn to the Popish Religion since the Gunpowder-Treason, for these are by his Majesty accounted most dangerous) that these be certified into the King's Bench, and farther to be dealt withal (by the Justices of Peace) according to the several Statutes in that Behalf made.

Also negligent Recufants, which shall not resort every *Sunday* to Church, that such be punished according to the Statute. For the first and best Means to bring Men to God, is to bring them to Church.

*Rogues and
Vagabonds.*

7. *Rogues* and Vagabonds are to be duly punished.

*Houses of Cor-
rection.*

8. *Houses* of Correction to be maintained.

Watch.

9. *Watch* to be duly kept.

Weights.

10. *Weights* and *Measures*, the Abuses therein to be reformed.

Farther, the Justices of Peace are to be careful that they suffer not any Thing to the Disadvantage of the King, where it lieth lawfully in their Power to prevent it. *Vide Lamb. 521.*

Also that they remember not to exercise the Judgments of Men only, but of God himself, (whose Power they do participate, and who is always present with them) and therefore must take heed that in all their Actions they set God before their Eyes.

But since most of the Business of the Justices of Peace (out of Sessions) consisteth in the Execution of divers Statutes committed to their Charge, which Statutes cannot be sufficiently abridged, but that they will come short of the Substance and Body thereof; therefore it shall be safest for the Justice of Peace not to rely over much upon these

short

short Collections thereof, but to have an Eye to the *Abridgment of Statutes*, or rather to the *Book of Statutes at large*, and thereby to take their farther and better Directions for their whole Proceedings: For (as Sir *Ed. Coke* observeth) Abridgments are of good and necessary Use to serve as Tables, but not to ground any Opinion, much less to proceed judicially upon them. *Idco* (saith he) *tutius est petere fontes quam sectari rivulos.* *Coke* 10. 117.

And lastly, for the better Encouragement of Justices of Peace, Constables, and other Officers, and of all others who in their Aid or Assistance, or by their Command shall do any Thing touching his or their Office, who by causeless Suits commenced by contentious Persons against them for executing their Offices, have lately been discouraged from doing their Offices with that Courage, Care and Diligence which is required at their Hands; now for their Ease in pleading, they are by the Statute 7 & 21 *Jacobi* allowed to plead the general Issue of Not guilty, and give the special Matter in Evidence, and for their wrongful Vexation double Costs. (a) And for all Actions, &c. to be brought against any Justice of Peace, or other Officer, (or other Person which in their Aid, &c. shall do any Thing concerning their Office) the said Action, &c. shall be laid within the County where the Fact shall be done, and not elsewhere, &c. 21 *Jac. Reg. cap. 12.* 7 *Jac. 1. c. 5.*
21 *Jac. 1. 12.*
3 *Car. c. 1.*

Et nota, quicquid Justic. fecerit de Recordo ignoranter, & pro defectu scientiæ, non erit pro eo punitus: Nec pro re per ipsum facta judicialiter. 2 *R. 3. fol. 10.* But the Justices of Assise may hear and punish the Default of Justices of Peace, &c. their Contempts, Omissions, Negligences, Favours, Affections, Corruptions, and other Faults whatsoever.

And lastly, where a Justice makes a Conviction in a summary way, a Summons is necessary, and therefore upon Complaint made, the Justice must summon the Party to appear, and if he makes Default, then he may proceed. 1 *Salk. 181.*
Mod. Ca. 41.

C H A P. CLXXIV.

Warrants and Precedents.

THE Warrants of the Justice of Peace may be stiled and made after divers Manners:
As,

1. First in the Name of the King; and yet the *Teste* may be under the Name of the Justice (or Justices) of Peace, that grant them out.
2. Or they may be stiled and made only in the Names of the Justices.
3. Or they may be made without any such Style, and only under the *Teste* of the Justice of Peace, or only subscribed by the Justice, as followeth.

In the King's Majesty's Name.

GEORGE, by the Grace of God, King, &c. To our Sheriff of our County of Cambridge, the High Constables of the Hundred of *Redfield*, the petty Constables of the Town of *Balskam*, and to all and singular our Bailiffs and other Ministers in the said County, as well within Liberties as without, Greeting. Forasmuch as *A. B.* of, &c. hath come before Sir *E. P.* Knight and Baronet, one of our Justices of Peace within the said County, and hath, &c. (concluding it in the Justice's Name, as thus) Witness the said *E. P.* at *Istleham*, the Day of &c. *Cambridge.*
The Stile.
The Teste.

Note, That wheresoever the Warrant is made in the King's Name, (as before) there it ought to be directed to all Ministers as well within Liberties as without, for that the King is made a Party: And so it may be done in all other Warrants, (especially for Felony, or for the Peace, or the Good Behaviour, &c.) because it is the Service of the King; and no Liberty or Franchise shall be allowed, or hold Place against the King. *Br. Franch. 31.* Yet see before, that the Justices of Peace of the County may not intermeddle in any City, Town, or Liberty, which have their proper Justices. *Hic cap. 6.* *Direct 27.*

Or thus in the Name of the Justice himself.

Cambridge.

MILES Sandys, Knight and Baronet, one of the Justices of the Peace of our Sovereign Lord the King, within the said County; to the Sheriff of the said County, to the Bailiff or Constables of the Hundred of, &c. to the petty Constables of the Town of P. within the said Hundred, and to all other the Ministers and Officers of our Sovereign Lord within the said County, and to every of them, Greeting. Forasmuch as, &c. Given under my Hand and Seal, at the Day of &c.

Or they may be directed to any of these Officers (above named) particularly, or else to any other indifferent Person or Persons.

A Warrant for the Peace.

Cambridge.

A Warrant for the Peace.

** Any one of these Causes is sufficient.*

GEORGE by the Grace of God, &c. To our Sheriff, &c. Forasmuch as A. B. of, &c. Yeoman, hath personally come before Sir J. C. Baronet, one of our Justices of the Peace within the said County, and hath taken a corporal Oath, that he is afraid that one C. D. of in the said County, Yeoman, will * beat, (wound, maim, or kill him, or burn his Houses;) and hath prayed Surety of the Peace against the said C. D. therefore we command and charge you jointly and severally, that (immediately upon the Receipt hereof) you cause the said C. D. to come before the said Sir J. C. or some other of our Justices of the same County, to find sufficient Surety, as well for his Appearance at the next Quarter-Sessions of our Peace, to be holden at the Castle of Cambridge, or elsewhere, for or in the said County, as also for our Peace to be kept towards us and all our Liege People, and chiefly towards the said A. B. that is to say, that he the said C. D. shall not do, nor by any Means procure or Cause to be done, any of the said Evils to any of the said People, and especially to the said A. B. And if the said C. D. shall refuse thus to do, that then immediately (without expecting any farther Warrant) you him safely convey, or cause him to be conveyed safely, to our next Prison in the said County, there to remain until he shall willingly do the same: (So that he may be before our said Justices, at the said next general Sessions of the Peace to be holden at Cambridge aforesaid, then and there to answer unto us for his Contempt in this Behalf.) And see that you certify your Doings in the Premises to our said Justices at the said Sessions, bringing then thither this Precept with you. Witness the said J. C. at aforesaid, the Day of &c.

Or thus, in the Name of the Justice himself, mutatis mutandis.

Cambridge.
For the Peace.

Thomas Jermy Knight, one of the Justices of the Peace of our Sovereign Lord the King within the said County, to the Sheriff, &c. Greeting. Forasmuch as A. B. &c. hath personally come before me, and hath taken a corporal Oath, &c. *ut supra*. These shall be therefore on the Behalf, and in the Name of our Sovereign Lord, to command you jointly, &c. that you cause the said C. to come before me, or some other of his Majesty's said Justices of Peace, in the said County, &c. *ut supra*. Given under my Seal at aforesaid, &c.

Another for the Peace.

To the Constables of, &c. And to either of them.

Cambridge.

See before Tit. Arrest.

Whereas B. A. the Wife of W. A. of your said Town, Labourer, hath required Sureties of the Peace against T. B. of your said Town, Butcher, and withal hath taken her corporal Oath before me, that she required the same not for any private Malice, Hatred, or ill Will, but that she is afraid of her Life, (or the Hurting or Maiming of her Body, or the Burning of her Houses): These are therefore to require you, and in his Majesty's Name to charge and command you, that immediately upon Sight hereof, you, or any of you, require the said T. B. to come before me, or some other of his Majesty's Justices within the said County, to find sufficient Sureties, as well for his Appearance at the next general Quarter-Sessions of the Peace to be holden for this County, as also that the said T. B. shall in the mean Time keep his Majesty's Peace, as well towards his said Majesty, as towards all his Liege People, and especially towards the

the said *B. A.* and if he shall refuse so to do, that then immediately you do convey the said *T. B.* or cause him to be conveyed unto the Common Gaol at the Castle of *Cambridge*, there to remain until he shall willingly do the same. And see that you certify your Doings in the Premises to the Justices at the said Sessions; and have you there this Warrant, dated at, &c.

Or thus.

WHereas *B.* the Wife of *W. A.* of your said Town hath personally come before me (*I. C.* Knight, one of the Justices of the Peace for the said County of *C.*) and hath taken her corporal Oath, that one *T. B.* of your Town hath already assaulted, beaten and bruised her the said *B.* and farther hath *threatned her* in such Sort, that she is afraid that the said *T. B.* will beat, wound, maim or kill her, or do her some other bodily Harm; and thereupon she the said *B.* hath prayed Security of the Peace to be had or granted to her against the said *T. B.* These are therefore to will and require you, (&c. *ut supra*) to find sufficient Sureties (or to be bound with two sufficient Sureties) for his personal Appearance at the next general Quarter-Sessions of the Peace to be holden for this County, then and there to answer the Premises; and in the mean Time that he the said *T. B.* keep the Peace towards our said Sovereign Lord the King, and all other his Liege People, and especially towards the said *B.* And if he shall refuse thus to do, that then (*ut supra.*)

A Warrant for the Peace upon a Supplicavit.

Christophorus Hatton Knight, one of the Justices of the Peace within the County Cambridge. of *Cambridge*, to the Sheriff of the said County, the High Constables of the Hundred of *R.* the petty Constables of the Town of *B.* and to all and singular the King's Bailiffs and other Ministers, as well within Liberties as without in the said County, and to every of them, Greeting. Know ye, that I have received the Command (or Writ) of our said Sovereign Lord (in these Words, reciting the whole Writ of *Supplicavit*; or only reciting the Effect of the *Supplicavit*, thus, to compel *A. B.* of, &c. to find sufficient Surety for the Peace, by him to be kept towards, &c.) And therefore on the Behalf of our said Sovereign Lord, I command and charge you, jointly and severally, that immediately upon the Receipt hereof you cause the said *A. B.* to come before me at my House in *Chevely*, to find sufficient Surety for the Peace, to be kept towards our said Sovereign Lord, and all his Liege People, and especially towards the said *C. D.* and if the said *A. B.* shall refuse thus to do, that then you him safely convey, or cause to be safely conveyed to his Majesty's Gaol at the Castle of *Cambridge*, (or to the next Gaol of his Majesty in the said County) there to remain until that he shall willingly do the same; so that he may be before the Justices of the Peace of our said Sovereign Lord within the said County, at the next General Sessions of the Peace, to be holden for the said County, there to answer to our said Sovereign Lord for his Contempt in this Behalf. And see that you certify your Doings in the Premises to the said Justices at the said Sessions, bringing then thither this Precept with you. Given at asorefaid, under my Hand and Seal, the fourth Day of, &c.

The Return of this Writ, and Certificate of the Justices Doings herein, see here before in the Title of *Surety for the Peace.*

A Warrant for the Good Behaviour.

WHereas *A. B.* of your said Town is not of good Name or Fame, nor of honest Cambridge. Conversation, (but an Evil Doer, a Rioter, Barrator, and Disturber of the For the Good Behaviour. Peace, of our said Sovereign Lord) as we are given to understand by the Complaint of fundry credible Persons: Therefore on the Behalf of our sovereign Lord we command Any one of these is sufficient, or any other like Cause you, and every of you, that immediately, &c. you cause the said *A. B.* to come before us, or some other of our Fellow-Justices, to find sufficient Surety, as well for his good Behaviour towards our said Sovereign Lord and all his Liege People, until the next Quarter-Sessions of the Peace to be holden in the said County, as also for his Appearance then and there. And if he shall refuse so to do, that then, &c. (as in the Warrant for the Peace.)

Or thus,

Cambridge. **W**HEREAS we have been credibly informed that *S. W.* of your Town, &c. is a Man of evil Behaviour, one that daily moveth Discord, Strife, and Diffension among his Neighbours, and a common Disturber of his Majesty's Peace: These are therefore in the King's Name to command you, &c.

A general Warrant for a Misdemeanor.

Cambridge. **T** *Thomas Chicheley* Esq; one of the Justices, &c. to the Constables of, &c. and to every of them. These are to will and require you, and in his Majesty's Name to charge and command you, and either of you, that immediately upon the Sight hereof, (or upon *Monday* next by Eight of the Clock in the Forenoon) you bring *I. H.* of your said Town, Butcher, before me, to answer to such Matters of Misdemeanor as on his Majesty's Behalf shall be objected against him. And hereof fail you not at your Perils. Dated at, &c.

Another for Misdemeanor.

Cambridge. **T**HESE are to will and require you, &c. that immediately upon the Receipt hereof, you apprehend and take *A. B.* and *C. D.* &c. (or all and every the Persons here under-named) and to bring them forthwith before me, to answer unto such Matters of Misdemeanors as on his Majesty's Behalf shall be objected against them. And hereof fail you not at your Perils. Dated, &c.

To attach one for Felony.

Cambridge. **W**HEREAS Complaint hath been made unto me by *C. D.* of, &c. that of late he hath had certain Goods feloniously taken from him, and that he hath in Suspicion one *R. G.* of your said Town: These are therefore to will and require you, &c. presently upon the Receipt hereof, to apprehend the said *R. G.* and to bring him before me, to answer to the Premises. And hereof fail you not at your Perils. Dated, &c.

Another.

Cambridge. **T**HESE are to will and require you, &c. presently upon the Receipt hereof, to apprehend *A. B.* of, &c. and bring him before me, to answer unto such Matters of Suspicion of Felony as on his Majesty's Behalf shall be objected against him. And hereof fail you not at your Perils. Dated, &c.

Another.

THESE are to will and require you, &c. to apprehend, &c. to answer unto the felonious Taking of certain Goods, wherewith he is charged by *J. S.* And hereof fail you not, &c.

To search for stolen Goods.

Cambridge. **W**HEREAS Complaint hath been made unto me by *N. O.* that of late he hath had feloniously taken from him certain Goods, and that he hath in Suspicion divers lewd and evil-disposed Persons within your Parish: These are to will, &c. that immediately upon the Receipt hereof you make diligent Search in all and every such suspected Houses and Places within your Parish, as you and this Complainant shall think convenient: And if upon your Search you find any of the said Goods, or other just Cause of Suspicion, that then you bring all such suspected Persons as you shall find, before me, to answer unto the Premises. And hereof fail you not, &c.

To search for
stolen Goods.

Another.

WHereas Complaint hath been made unto me *Robert Hatton* Knight, one of the Cambridge. Justices, &c. by *J. S.* of, &c. that upon *Monday* Night last he had feloniously taken from him certain Goods [they should be named] and that he is informed, that there are divers Parcels of such Goods in the Hands or Houses of certain suspected Persons within your Town: These are to will, &c. that you be aiding to and assist the said *J. S.* (the Bearer hereof) whereby he may come to the Sight of the same Goods, that so he may the better know whether those Goods, or any Part of them, are his; and if he shall find the same Goods, or any of them, that were stolen from him; or if he shall claim any of the said Goods in the Possession of any of the said suspected Persons, that then you do presently apprehend all such suspected Persons within whose Custody, House or Possession, you or he the said *J. S.* shall so find the same, and them (together with the said Goods) forthwith bring before me, or some other of his Majesty's Justices of Peace for this County, to make Answer thereto. And hereof fail you not, &c. Dated, &c.

To bind Men to give in Evidence.

THESE are in his Majesty's Name to charge and command you, &c. that present- Cambridge. ly upon the Sight hereof, you, or some of you, do cause to come before me, (or To give Evi- some other of his Majesty's Justices of Peace of this County) the Persons here under dence. named, to the End that they and every of them may be bound to make their personal Appearance at the next general Gaol-Delivery, (or Quarter-Sessions) to be holden for this County, then and there to testify their and every of their Knowledges concerning certain felonious Acts committed by one *A. B.* now a Prisoner in the Castle of *C.* &c. And hereof fail you not, &c.

A Warrant for a Search after a Robbery committed, directed to the High Constables.

WHereas there have been many Robberies lately committed about, &c. Now for the better Discovery thereof, We whose Names are here underwritten being his Majesty's Justices of Peace (for the County of *Cambridge*) have thought good, and do hereby will and require you in his Majesty's Name, forthwith to direct your Precepts to every Petty Constable within your several Hundreds, (commanding them) to search in all Inns, Alehouses, and other suspected Houses within your Precincts, for all such Persons as are out of Service; as also for all idle, vagrant or wandering Rogues, Beggars, or other Persons: And farther, That they the said Petty Constables within your Precincts do take Examination and Account of all those, and such other Persons as are common Alehouse-haunters, or which spend their Money in *Riot*, or which do not labour for their Living, and have not whereon to maintain them: And that the same Searches be holden all over in your Hundreds in one Night, and at such other several Times as to your Discretion shall seem meet. And if any such Persons shall be found in the same Searches, and that upon your or the Petty Constable's Examination taken of them, or any of them, there shall be found any Cause of Suspicion in them, or any of them, that then they bring the same Persons so suspected before us, or some one of us, or some other of the Justices of Peace of this County, to be farther examined in the said Causes, and to be farther dealt withal according to Law and Justice. And for the better Doing hereof we require you to command in his Majesty's Name, that every Petty Constable within their Precinct do require (and charge) two chief discreet Headboroughs in every Parish to assist them the Petty Constables in this Service. And hereof fail you not.

A Hue and Cry after Robbery, &c.

To all Constables and other his Majesty's Officers, as well within the County of Cambridge, as elsewhere within the Realm of England.

WHereas Complaint hath been made unto me *M. D.* Vice-Chancellor of the Uni- Hue and Cry. versity of *Cambridge*, one of his Majesty's Justices of Peace within the said County of *Cambridge*, by *J. S.* of, &c. Husbandman, that upon *Tuesday* at Night last (being the 15th Day of this instant *November*) he was robbed of certain Linen taken out

They should be named.

out of his House, with some other Things, and that he hath manifest Cause of Suspicion of one *A. B.* a lewd Rogue, (here describe his Personage and Apparel): These are to require you, and every of you, to search within your several Precincts for the said *A. B.* and also to make Hue and Cry after him from Town to Town, and from County to County, and that as well by Horsemen as Footmen: And if you shall find him the said *A. B.* that then you carry him before some one of the Justices of Peace within the County where he shall be taken, by him to be dealt withal according to Law, &c.

A Warrant for one who hath dangerously hurt another.

Cambridge.
Hurting and Wounding.

WHereas I am credibly informed that *I. B.* of your Town, Blacksmith, hath lately and dangerously hurt one *T. G.* of your said Town, Husbandman, by a Blow which he hath given the said *T.* on the Face, and another on the Back, so as the said *T.* is in Danger of Death thereby: These are therefore in his Majesty's Name to charge and command you, that immediately upon the Sight hereof, you, or any of you, do bring the said *I. B.* before me, or some other of his Majesty's Justices of the Peace of this County, to find sufficient Sureties, as well for his Appearance before his Majesty's Justices at the next general Gaol-Delivery to be holden for this County, then and there to answer unto the Premises, and to do and receive that which by the Court shall be enjoined him: As also that the said *I. B.* shall in the mean Time keep the Peace towards his Majesty and all his Liege People, and especially towards the said *T. G.* And hereof fail you not at your Perils. Dated, &c.

For the reputed Father of a Bastard Child.

Cambridge.
Bastard Child.

WHereas Complaint hath been made unto me *H. B.* Serjeant at Law, one of his Majesty's Justices, &c. by *K. I.* of your said Town, single Woman, that she is gotten with Child by one *T. S.* also of your said Town, Butcher: These are therefore to will and require you, and in his Majesty's Name to charge and command you, and either of you, that presently upon the Receipt hereof you apprehend the said *T. S.* and bring him before me, or some other of his Majesty's Justices of the Peace for this County, to find sufficient Sureties, as well for his Appearance at the next General Sessions of the Peace to be holden for this County, as also for his Good Behaviour towards his Majesty and all his Liege People in the mean Time. And hereof fail you not, as you will answer the contrary at your Peril. Dated, &c.

(a) *An Order for a Bastard Child.*

Bulfr. Part 2.
P. 341.

IF the Justices make an Order, from which the reputed Father appeals, and gives Security to abide the Order of Sessions, and the Sessions make another Order, which he refusing to obey, they commit him; this is illegal, for they ought to prosecute him on his Security. *Hammond's Case, M. 3 Car.*

Ib. p. 342,
343.

And an Appeal being made to Sessions from the first Order, the Sessions ought to confirm or quash the first Order; and if the Sessions repeal the first Order, they may refer it back again to the Justices; but if they neither quash nor affirm it, they cannot refer it back. *Smith's Case.* And if the Justices at Sessions repeal the first Order, then it is *res integra*, and the Recognizance ought to be in the Disjunctive, to perform the Order, or to appear at Sessions; and for not obeying the Order one Justice of Peace may commit.

Ib. p. 348.

One hath a Bastard, and is not punished for it by 7 *Jac.* 1. 4. and she hath another Bastard, she shall not be punished for this last as for a second Offence by 7 *Jac.* 4. unless she had been punished for the first. *Jones Justice at Salop, Lent 7 Car.*

Ib. p. 349.

A Servant Maid is begot with Child at *T.* but by an Artifice she is conveyed to a Hovel upon the Confines of that Parish, but in Truth within another Parish where a Child is born. *Jones Justice of Assize* declared, that in case such Practice be proved, the Child shall not be kept by the Parish where it was born, but where she was got with Child.

Ib. p. 350.

One *B.* a Servant Maid was begot with Child by one *R.* at *D.* and the Child born there; *R.* takes it from the Mother, and puts it to nurse, and marries another Woman, and keeps the Child with him 10 or 11 Years together, and died, leaving a Wife and divers Children, which she was not able to maintain, but they were relieved by the Parish. The Mother of the Bastard for the most part lived in Service, and had 3 *l. per Annum* left her by her Friends, but was not in her own Hands: She was still able to do

some Work, but was a Woman of weak Understanding. *Jones and Whitlock at Salop Lent Assises 7 Car.* resolved, that the Child is to be sent to the Mother, if she be able to maintain it, if not, to the Place where it was settled ten Years with the Father.

The Order of Sir I. M. Knight, and M. D. Esquire, two of the Justices of Peace of the Wilts ff. County of C. and one of Us of the Quorum, and both residing within the Limits where the Parish Church of C. now stands in the said County, the 6th Day of August 1725, according to the Statute in that Case made and provided, concerning a male Bastard Child lately born in the said Parish, of the Body of A. B. single Woman, which Bastard Child, ever since its Birth, hath been, and is still chargeable to that Parish, and likely so to continue.

IMprimis, upon the Examination of the said *K.* duly by us taken, we do find that the said *T. S.* is charged to have had divers Times bodily and carnal Knowledge of her (between such Times) and to be the only Father of the said Bastard Child, &c. and therefore we do adjudge him to be the reputed Father of the said Child.

We do farther order as followeth: First, That the said *K.* shall keep her said Child until it come to eight Years of Age.

Secondly, That the said *T. S.* upon Notice of this Order, shall, after such Notice, pay into the Hands of one of the Overseers of the Poor of *W.* (for the Time being) after the Rate of 3 s. every Week, to be paid Monthly every Year, towards the Relief of the said Child, until it comes to eight Years of Age.

Thirdly, That after the said Child shall come to Eight, &c. that the said *T. S.* pay to the Overseers, &c. 5 l. toward the putting out of the same Child to be Apprenticed, &c.

Fourthly, That the said *T. S.* presently give good Security to one of the Overseers, &c. to perform this our Order.

Touching the Order of the Justices next the Place, according to 18 El. 3. observe:

1. **T**HAT if the Party appeal to the next Sessions, and the Justices there make an Order thereupon, it is final, and cannot be altered by any after Sessions. And this is expressly resolved in *Pridgion's Case, Jones 330. & Cro. Car. 1.*
 2. It must appear by the Order that the Justices of Peace making the Order, are the next Justices of Peace to the Parish Church where the Child was born, and that one of them is of the *Quorum.* *Style 154.*
 3. It must appear that the Child was a Bastard, and born in the Parish, towards whose Relief Provision is made thereby, and an Order for that Cause was quashed. *H. 1652. B. R. Style, p. 368.*
 4. The Payment must be made to continue so long Time as the Child shall be chargeable to the Parish, and if not so made it is void. *Style 154.* For the Party may take it and keep it himself: And where the Mother is able, the Justices have nothing to do in the Case.
 5. The Justices of Peace may adjudge a reasonable Sum in gross to be paid to the Parish for the Charge of the Woman's Lying in; and this I have known often ruled good.
 6. None else can be made chargeable to the Keeping of it, but the reputed Father or Mother, and the Master for suffering it to be begot in his House.
 7. It must be positively declared and adjudged who is the reputed Father, and not to repeat what Witnesses say, or what the Mother saith; but the Order must be positive and absolute; for it is a Judgment in the Case, and every Judgment must be positive and certain.
- By 3 *Car. 1.* the Justices of Peace in Sessions have the same Authority given them, as was given the two next Justices by 18 *El. 3.* and the same Rules are to be observed in Drawing their Order *mutatis mutandis.*

Where a Maid Servant is gotten with Child, and from thence sent to her Place of Birth.

WHEREAS *I. M.* single Woman, for the Space of _____ Years now last past hath dwelt in the Parish of *W.* (in the County of *E.*) and being there settled in Service with *T. B.* of *W.* aforesaid, was gotten with Child, and being so with Child is now sent

sent or conveyed to your Town of *B.* under Colour that she was there born, and contrary to Law: These are in his Majesty's Name to charge and command you safely to convey the said *I.* to *W.* aforesaid, there to be set on Work, or otherwise to be provided for according to Law. And that you deliver and leave, or offer to leave, the said *I.* to and with some one of the Church-wardens or Overseers for the Poor of the Parish of *W.* aforesaid. And hereof fail you not, &c.

Note, That such Maid Servant cannot be sent from the Place where she is (or was last) in Service to the Place of her Birth, but must set herself to labour where she last dwelt or served, being able of Body: Or being impotent, she is to be relieved by the Town where she last dwelt or served. See *hic antea*, Tit. *Poor*.

A Warrant for Overseers to give up their Accounts.

To the High Constables of the Hundred of, &c.

Cambridge.
Overseers to
account.

THESE are in his Majesty's Name to charge and command you, forthwith to give Warning to the Church-wardens, and other the Overseers of the Poor of every Parish within your Hundred, that they do personally appear before us at *New Market*, at the Sign of the Greyhound there, upon *Tuesday* the Tenth of *June* next coming, by Nine of the Clock in the Forenoon of the same Day, to yield up, and to make a true and perfect Account in Writing, subscribed with their Names or Marks, of all such Sums of Money as they have received, or rated and assessed and not received, for and towards the Relief of the Poor of their several Parishes, and also of such Stock (to set their Poor on Work) as is in their Hands, or in the Hands of any their said Poor to work, and of all * other Things concerning their said Office: And hereof that you fail not at your and every of your Perils. And farther we require you, that you give Warning to the Petty Constables of every Town within your said Hundred, that they or one of them be also then and there present before us, to inform and certify us of the Names of such other Persons as are meet and fitting to be Overseers of the Poor within their several Towns, for this Year next ensuing. And hereof fail you not, &c.

* See what
they be in the
Title *Poor*.

This Warrant must be under the Hands and Seals of two Justices at the least, the one of the *Quorum*. Vide *Tit. Poor*.

A Warrant to new Overseers to take their Charge.

New Over-
seers to take
the Charge.

BY virtue of the Statute made in the three and fortieth Year of the Reign of our late Sovereign Lady Queen *Elizabeth*, (intituled, *An Act for the Relief of the Poor*): These are to will and require you whose Names are here underwritten, that you, together with the Church-wardens of your Parish for the Time being, do (according to the same Statute) take order from Time to Time, for this Year to come, for the Setting to Work of the Poor within your Parish, and for the Raising of a convenient Stock of some Ware or Stuff in your Town to that Purpose; and for the Providing of necessary Relief for such as be lame and impotent amongst you; and for the Placing as Apprentices such Children whose Parents are not able to maintain them: And hereof see that you fail not at your Perils. Dated under the Hands and Seals of us *I. S.* and *I. D.* two of his Majesty's Justices of Peace within the said County of *Cambridge*.

This Warrant must be under the Hands and Seals of two Justices. Vide *antea*, Tit. *Poor*.

A Warrant to distrain such as refuse to pay their Rates for the Poor.

(a) But first the Justices shall do well to send their Warrant for the Offenders to make Answer to the Complaint, and after to grant their Warrant, if they find Cause. See *hic cap. 2. § 7.*

Or else the Justices may make their Warrant after this Manner.

(a) *To the Church-wardens, and other the Overseers for the Poor within the Parish of W. and every of them.*

WHEREAS we are credibly informed, that the Persons here under named do refuse to pay the Sums of Money here under mentioned, being assessed and rated upon them severally, for and towards the necessary Relief of the Poor of your said Town, according to the Form of the Statute in that Behalf provided: These are therefore in his Majesty's Name to charge and command you, and every of you, forthwith to require and cause the said Persons (so refusing) to be before us, to shew Cause of their said Refusal: And if they or any of them shall refuse to come before us, that then immediately you do levy all and every the said several Sums of Money unpaid, and all the Arrearages thereof, of all and every the said Persons so refusing, by Distress and Sale of the Offender's Goods, you rendring unto the Parties the Overplus that shall remain upon the Sale of the said Goods. And this shall be your sufficient Warrant therein. Dated, &c. *Vide antea, Tit. Poor.*

Cambridge.
To distress for
the Poores Rate.

Another.

To the Church-wardens, &c.

THESE are in his Majesty's Name to charge and command you, and every of you, to demand of all and every the Persons here under named, all and every the several Sums of Money here under severally written, being assessed and rated upon them for and towards the necessary Relief of the Poor of your said Town, according to the Form of the Statute in that Behalf provided: And if they or any of them shall refuse to pay the said several Sums of Money so rated upon them, that then you levy the same by Distress and Sale of the Offender's Goods, rendring to the Parties the Overplus that shall remain upon the Sale of their said Goods. And this shall be your sufficient Warrant therein. Dated, &c.

Cambridge.
Another to di-
stress, &c.

These two last Warrants must also be under the Hands and Seals of two Justices, &c.

(a) And in all Cases of Distraining and Sale of an Offender's Goods, and rendring the Party the Overplus, the Appraisement of such Goods should be made by four of the honest Inhabitants of the Parish where such Goods remain and be, according to the Statute of 3 Jac. 1. cap. 10. in like Case.

(d) *A Warrant for a general Search for Rogues.*

To the High Constable of the Hundred of, &c.

THESE are in the King's Majesty's Name to charge and command you, that together with the petty Constables of the several Towns, Parishes and Hamlets within your Hundred, (taking sufficient Assistance out of the said Towns) you make a general Privy Search within every of the said several Towns, Parishes and Hamlets, upon Tuesday at Night next coming, for the finding out and apprehending all Rogues, Vagabonds, and wandering and idle Persons, in or about your said several Towns, Parishes or Hamlets, and that such as shall be found and apprehended, you do cause them to be brought before us the next Day unto L. by nine of the Clock. At which Time and Place we farther require you, together with the said Petty Constables to appear before us, and there to give an Account upon Oath, in writing, and under the Hands of the Minister of every several Parish within your Hundred, what Rogues, Vagabonds, wandering and disordered Persons have been there apprehended, as well in the same Search, as also since the last Meeting that was made for this Purpose, being upon or about the 20 Day of July last past. And hereof fail you not, &c.

Cambridge.
Search for
Rogues.

What the Ju-
stice shall do
with them see
infra.

Note, That all Rogues which shall be brought before the Justices upon such Search (after Examination of their idle Life taken by the Justices) are either to be whipped by the Constables of the Town where the Justices sit, or rather the Constables of the Town where the Justices sit may procure some other to inflict the Punishment of Whipping on all such Rogues as are brought thither; and the Constables that brought those Rogues from other Towns are to satisfy such Persons as shall whip them; or else such Rogues are from thence to be sent to the House of Correction, and to be conveyed thither by the

See the Title of
Rogues.

the Constables that brought them, and yet at the Charge of the Hundred: Which Services imposed upon the Constables are some Cause of their Neglect; and therefore I have set down another Method and Precedent, perhaps no less serviceable, which also may be performed and done every Month, or at every Meeting of the Justices: Or if the Justices cannot, or shall not meet, yet such Warrant may be granted by any Justice of Peace, as followeth.

Cambridge.
To search for
Rogues.

THESSE are in the King's Majesty's Name to charge and command you, that, together with the Petty Constables of the several Towns, Parishes and Hamlets within your Hundred, (taking sufficient Assistance out of the said Towns) you do make a general privy Search within every of the said several Towns, Parishes and Hamlets, upon *Thursday* at Night next coming, for the finding out and apprehending all Rogues, Vagabonds, and wandering and idle Persons, in or about your said several Towns; and that such as shall be found and apprehended, you do cause them to be punished in every several Town or Parish where they shall be so apprehended, by the petty Constables of every several Parish respectively, and by them also farther to be conveyed according to the Statute: And if any of the said Rogues shall appear to be dangerous or incorrigible, that then you cause such to be brought before me, or any other of his Majesty's Justices of the Peace of this Division, to be farther dealt withal according to the Statute in such Cases provided. Dated, &c.

38 El. 8.
1 Jac. 1. 7.
P. Vag. 4.

Afterwards any one of these Justices may take the Examination of, or Proof against such dangerous Rogue, and finding that he hath offered any Violence, or used any threatening Speeches, or other like Misdemeanor towards any Person; or that he hath been formerly punished, and sent home; or that he affirms untruly where he was born, or will not be known, or knows not where he was born or last dwelt; (for then it is apparent that he hath been and continued a Rogue of a long Time) in every such Case the Justice may then join with any other Justice of Peace of that Limit, being of the *Quorum*, and commit such Rogue to the House of Correction or Gaol, as an incorrigible Rogue, although the said two Justices shall not meet together about it.

See the Statute 13 Geo. 2. cap. 24. infra Chap. 196.

A Warrant for a fugitive Servant.

To the Sheriff of, &c.

Servant departing from
his Master.

WHEREAS *I. E.* being lawfully retained in Service with *N. A.* of, &c. is departed from his said Master's Service before the End of his Term, without his Master's Leave, (or without any reasonable Cause) contrary to the Laws and Statutes of this Realm in this Behalf provided: These are therefore to command you, and every of you, that you, or some one of you, do apprehend the said *I. E.* and bring him before me, or some other Justice of Peace, &c.) to find sufficient Sureties, well and faithfully to serve his said Master, according to the Covenant between them made: And if he shall refuse thus to do, that then you cause him to be conveyed safely to the common Gaol, &c. as before, in a Warrant for the Peace). Given under the Hand of me *T. S.* one of his Majesty's Justices of Peace within the said County.

Or thus; That the said *I. E.* to his said Master to serve him again you do cause to be delivered: And if that to do he shall refuse, that then you cause him to be conveyed to the Gaol, &c.

A Warrant for one refusing to serve.

Cambridge.
Servant refusing to serve.
Crompt. 238.

Michael Dalton Esquire, one of the Masters of the Court of Chancery, and one of the Justices, &c. to *R. L.* Bailiff of *S.* in the County aforesaid, Greeting: On the Behalf of our said Lord the King, I command you that you attach *R. A.* of *S.* aforesaid, Labourer; so that you have him before me, or my Companions Justices of our said Lord the King, assigned to keep the Peace in the said County, and also to hear and determine divers Felonies, Trespases, and other Misdemeanors committed in the said County, at the next General Sessions of the Peace to be held in the County aforesaid, to answer as well to our said Lord the King, as to *B. C.* of *A.* &c. Yeoman, wherefore he the said *R. A.* altho' he was often by the aforesaid *B. C.* requested to serve him in Service fit for his Station, yet hath altogether refused

fused to serve him the said *B. C.* in Contempt of our said Lord the King, and to the grievous Damage of him the said *B. C.* and against the Form of the Statute of Servants lately made and provided: And have you there this Warrant. Witness, &c.

And yet see the Statute 5 *El. cap. 4.* whereby the Departure of a Servant, and refusing to serve, &c. are referred to two Justices of Peace, by them to be first examined, and then the Offenders to be committed if they be faulty therein. See *antea*, Tit. *Labourers and Warrants.*

For Alehouse-keepers to renew their Recognizances.

JOHN *St. George* Esquire, one of his Majesty's Justices, &c.

These are in his Majesty's Name to require you, to direct your Precepts to every petty Constable within your Hundred, requiring them, that they warn all Alehouse-keepers and Victuallers in their several Towns within your said Hundred, to be and personally appear before us at *Linton upon Thursday*, &c. then and thither bringing with them their former Licences: And farther, that every of them bring with them a Certificate of their Fitness and honest Behaviour, to keep their Alehouses and Victualling-houses, under the Hands of four, at the least, of the most substantial Inhabitants of the Parishes where they so keep or dwell. And hereof fail you not, &c.

Cambridge.
Alehouse-keepers to renew their Recognizances.

A Warrant for the suppressing of an Alehouse.

TALBOT *Pepis* and *Isaac Barrow* Esquires, two of his Majesty's Justices of Peace for the said County of *Cambridge*, to the Constables of *B.* and either of them, Greeting. Whereas we are credibly informed, that *R. D.* of your Town, Victualler, is himself a Man of evil Behaviour, and besides doth suffer Disorders to be kept in his House, contrary to the Laws and Statutes of this Realm: These are therefore to will and command you forthwith to go to the House of the said *R. D.* and to charge him to surcease from keeping any longer any Alehouse, or Tippling-House, and from selling of Ale or Beer at his Peril; and withal that you cause his Sign to be pulled down. Hereof fail you not, as you and either of you will answer to the contrary at your Peril. Given under our Hands and Seals at *B.* the 20th Day of *August*, and in the Year of our Lord *George*, &c.

Alehouse to suppress.

A Warrant to levy Money forfeited by Alehouse-keepers.

JOHNS *Gill* Esq; one of his Majesty's Justices of the Peace for the said County of *Cambridge*, to the Constables and Church-wardens of the Parish of *W.* and to every of them, Greeting. Whereas it hath been duly proved before me, according to the Statute in that Behalf provided, that all and every the Persons hereunder named, being Inhabitants within your Parish of *W.* upon the twelfth Day of this instant Month of *November*, have been and continued drinking and tippling in the House of *G. W.* of your said Town (Inn-keeper) contrary to the Form of the said Statute: These are therefore in his Majesty's Name to charge and command you, and every of you, forthwith to levy by Distress and Sale of the Goods of every the said Persons hereunder named, the Sum of three Shillings and four Pence a-piece, if they shall refuse or neglect forthwith to pay the same; (which several Forfeitures shall be bestowed and employed by you to the Use of the Poor of your said Parish) and that you render to every of the said Offenders the Overplus that shall remain upon your Sale of their said Goods: And if the said Offenders, or any of them, shall refuse or neglect to pay their said several Forfeitures, and that you can find no sufficient Distress whereon to levy the same, that then you the Constables, or one of you, shall commit every such Offender or Offenders (refusing or neglecting to pay the said Sum or Forfeiture, and not having sufficient whereon to be distrained for the same) to the Stocks, there to remain by the Space of four Hours. And this shall be your sufficient Warrant herein. Dated, &c.

Cambridge.
Alehouse
Keepers.

* Or Alehouse-keeper.

But before the Justice of Peace shall grant these two last Warrants, or the like, he shall do well first to send for the Offenders, and to examine them of the Offence, &c. See *hic antea.*

Against Alehouse-keepers.

ALSO a Warrant, (like unto the last) may be made to levy the Forfeiture of Inn-keepers or Alehouse-keepers, for suffering Townsmen or others to continue drinking in their House, saving that the Distress taken of such Inn-keepers and Alehouse-keepers is not to be sold till after six Days; and then for Default of Satisfaction, the same are presently to be apprifed and sold, and therefore such Warrant must herein be made accordingly. See 1 *Jac.* 1. *cap.* 9. *P.* 7, 8.

A Warrant for the Removing of a Petty Constable, and for the Swearing of another.

To remove a
Petty Con-
stable.

GEORGE, by the Grace of God, &c. to the Sheriff of Cambridge, and to the Chief Constable of the Hundred of R. and to each of them, Greeting: Whereas for certain Causes us thereunto moving, we have caused *W. P.* and *R. S.* Under-Constables of the Towns *C.* and *K.* to be removed and discharged: We therefore injoin and command you, and each of you, jointly and severally, that you cause *J. F.* and *R. M.* to swear well and truly to exercise and execute all and every Thing and Things incumbent on the said Office, as they will thereof answer unto us; in like Manner injoining the said *W. P.* and *R. S.* that they noways intermeddle in the further exercising and executing of the said Office, until they have another Command from us. And that whatever you shall do therein, you certify to our Justices assigned to keep our Peace, at the next General Sessions of the Peace, to be held at *C.* for the said County, then and there returning this our Precept. Witness *Robert Lawrence*, Esq; one of our Justices of the Peace aforesaid. Dated, &c.

Lam. yy. 3.
'Tis a very
unusual Pre-
cedent to begin
in the Name
of the King,
and the Telle
to be in the
Name of a
Justice, &c.

You shall find this former Precedent in *M. Lamb.* But upon such Warrant, *quære* who shall give the Oath to the new Constables, whether the High Sheriff, or High Constable that shall execute such Warrant, or the Justice of Peace that granted out such Warrant.

But for this Authority of removing Petty Constables, and of chusing and swearing new, it is reputed properly to belong to the Leet, (it being one of the ancientest Courts in the Realm. *Br. Leet* 14). And if the new Elect be not present at the Leet to take his Oath accordingly, then upon Certificate or Notice thereof to any Justice of Peace of that County, the Justice doth use to send his Warrant for the Parties so chosen, and to give them their Oath.

Also in Default of the Leet, or otherwise, where there shall be just Cause to remove a Petty Constable for his Insufficiency, or for any Misdemeanor, or other, every Justice of Peace, *ex Officio*, may remove the old Constables, and may chuse and swear new: Which also we see warranted by common Experience. See *Lamb.* of the Duties of Constables, *Page* 19.

And I have seen some Precedents to such Purpose, as followeth.

To our loving Friend A. B. of W. Yeoman.

* If they were
not chosen at
the Leet, this
Clause is to be
left out.

THESE are in his Majesty's Name to charge and command you to come before us, or some other Justice of Peace of this County, to take the Oath of a Constable, to serve his Majesty within the Town of *W.* (* according to the Choice made of you by the Jury at the last Leet holden in your Town): And hereof fail you not. Dated under the Hands of *M. N.* and *N. O.* Esquires, two of his Majesty's Justices of Peace, &c.

The Form of the Oath concerning the Office of a Constable.

YOU shall swear, that you shall well and truly serve our Sovereign Lord the King in the Office of a Constable. You shall see and cause his Majesty's Peace to be well and duly kept and preserved, according to your Power. You shall arrest all such Persons as in your Sight and Prefence shall ride or go armed offensively, or shall commit or make any Riot, Affray, or other Breach of his Majesty's Peace. You shall do your best Endeavour, upon Complaint to you made, to apprehend all Felons, Barrators and Rioters, or Persons riotously assembled: And if any such Offenders shall make Resistance with Force, you shall levy Hue and Cry, and shall pursue them until they be taken. You shall do your best Endeavour that the Watch in and about your Town be duly kept for the

the apprehending of Rogues, Vagabonds, Night-Walkers, Eves-Droppers, and other suspected Persons, and of such as go armed, and the like: And that Hue and Cry be duly raised and pursued, according to the Statute of *Winchester*, against Murderers, Thieves, and other Felons: And that the Statutes made for the Punishment of Rogues and Vagabonds, and such other idle Persons, coming within your Bounds and Limits, be duly put in Execution. You shall have a watchful Eye to such Persons as shall maintain or keep any common House or Place where any unlawful Crime is or shall be used: As also to such as shall frequent or use such Places, or shall use or exercise any unlawful Games there or elsewhere, contrary to the Statutes. At your Assizes, Sessions of the Peace, or Leet, you shall present all and every the Offences done contrary to the Statutes made (1 *Jac.* 1. 4. and 21 *Jac.* 1.) to restrain the inordinate Haunting and Tippling in Inns, Alehouses, and other Victualling Houses, and for repressing of Drunkenness. You shall there likewise true Presentment make of all Blood-sheddings, Affrays, Out-cries, Rescous, and other Offences committed or done against the King's Majesty's Peace within your Limits. You shall once every Day during your Office present at the Quarter-Sessions, all Popish Recusants within your Parish, and their Children above nine, and their Servants, (*ſc.* their monthly Absence from the Church) 3 *Jac.* 1. 4: And you shall have a Care for the Maintenance of Archery according to the Statute. You shall well and duly execute all Precepts and Warrants to you directed from the Justices of Peace of this County, or higher Officers. You shall be aiding to your Neighbours against unlawful Purveyances. In the Time of Hay or Corn Harvest (upon Request) you shall cause all Persons meet to serve by the Day for the Mowing, Reaping, or getting in of Corn or Hay. You shall in *Easter* Week cause your Parishioners to chuse Surveyors for the Mending of the Highways in your Parish. You shall have a Care that the Malt made or put to Sale in your Town, be well and sufficiently made, trodden, formed and dressed. And you shall well and duly according to your Knowledge, Power and Ability, do and execute all other Things belonging to the Office of a Constable, so long as you shall continue in this Office. *So help you God.*

This Oath I have set down the more largely, whereby to shew the principal Matters whereof the Constables are chiefly to have Care.

C H A P. CLXXV.

The Form of a Superfedeas by a Justice of Peace.

Richard Love Doctor of Divinity, and Vice-chancellor of the University of *Cambridge*, Cambridge. one of the Justices of Peace of our Sovereign Lord the King's Majesty within the County of *Cambridge*, to the Sheriff, Bailiffs, Constables, and other the faithful Ministers of our Sovereign Lord within the said County, and to every of them, sendeth Greeting. Forasmuch as *A. B.* of, &c. Yeoman, hath personally come before me at *W.* &c. and found sufficient Surety, that * is to say, *C. D.* and *E. F.* &c. Yeomen, either of the which hath undertaken for the said *A. B.* under the Pain of 20 *l.* and he the said *A. B.* hath undertaken for himself under the Pain of 40 *l.* that he the said *A. B.* shall well and truly keep the Peace towards our Sovereign Lord and all his liege People, and especially towards *G. H.* of, &c. Yeoman, and also that he shall personally appear before the Justices of the Peace of our said Sovereign Lord, at the next general Sessions of the Peace to be holden for this County of *Cambridge*. Therefore on the Behalf of our Sovereign Lord I command you and every of you, that you utterly forbear and surcease to arrest, take, imprison, or otherwise by any Means (for the said Occasion) to molest the said *A. B.* and if you have (for the said Occasion, and none other) taken or imprisoned him, that then you do cause him to be delivered and set at Liberty without further Delay. Given at *Cambridge* aforesaid, under my Seal, this last Day of *July*, &c.

* *The Superfedeas is good, though it name neither the Sureties nor the Sum.*

Otherwise.

Henry Bing Serjeant at Law, one of the Justices of our Lord the King, &c. to the Sheriff, and all and singular the Bailiffs, Ministers, and Lieges of the said Lord the King in the same County, and to every of them, Greeting: Whereas *J. S.* hath found before me sufficient Surety of the Peace, and of his good Behaviour, toward our said Lord the

the King, and especially towards *W. T.* Therefore on the Behalf of our said Lord the King, I order and command you and every of you, firmly injoining, that you altogether surcease to take or arrest the said *J. S.* for the finding such Security of the Peace: And if you have taken or imprisoned the said *J. S.* on the said Occasion, then you do cause him to be delivered, if he be detained on that Occasion, and none other. Witness, &c.

If the Prisoner be in the Gaol, see another Form, *hic postea*, Tit. *Liberate*.

Note, that such *Superfedeas* is good, though it name neither the Sureties nor the Sums wherein they are bound: But yet it is the better Form to express them both, for then if it shall appear that the Sureties are not sufficient Men, or not bound in sufficient Sums, better Sureties may be taken. And accordingly all the *Superfedeas's* issuing out of the Chancery, King's Bench, and Court of Common Pleas, do rehearse the Names of the Sureties and the Sums: And those Things which the higher Courts do use, are the Rules and Orders for others to follow, &c. 2 *H. 7. f. 1. Fitz. Superfedeas 4.*

The Form of a Superfedeas (by a Justice of Peace) upon a Writ of Supplicavit against an Infant.

Cambridge.
Superfedeas
upon a Suppli-
cavit.

* Manucep-
runt.

† Manuceptor.

S. C. Doctor of Divinity, one of the Justices of our Lord the King assigned to keep the Peace in the said County, to the Sheriff of the said County, and to all and singular the Bailiffs, Constables and other Ministers of our said Lord the King, as well within Liberties as without, in the said County, Greeting. Know ye, that I have received a Writ of our said Lord the King, in these Words, *George, &c. (reciting here all the Writ verbatim)* and because *J. B.* of, &c. *J. S.* of, &c. and the aforesaid *C. A.* have personally appeared before me the said *S. C.* and the said *J. B.* and *J. S.* have undertaken for * the said *C. A.* who is within the Age of twenty-one Years, to wit, each Surety † aforesaid, in 20 *l.* which they have acknowledged themselves to owe to our said Lord the King, and have granted to be levied of their Lands and Tenements, Goods and Chattels, to the Use of our said Lord the King, to wit, that the said *C. A.* shall not do, nor cause to be done any Damage or Evil to any of the People of our said Lord the King, in their Bodies, or in burning of their Houses: Therefore on the Behalf of our said Lord the King, I command you and every of you, that you altogether surcease or cause to be surceased from the restraining or attaching the said *C. A.* for the finding Security of the Peace by him to be kept toward our said Lord the King, and all his People, or any of his said People. And if you have taken, or commanded to be taken before you or any of you, him the said *C. A.* on the said Occasion, and have detained him in the Prison of our said Lord the King under your Custody, that then you or one of you cause him to be delivered from the Prison in which he is detained, without Delay. Witness me the said *S. C.* &c.

Otherwise.

Cambridge.

H. S. Doctor of Divinity, &c. one of the Justices, &c. to the Sheriff, &c. Greeting. Be it known unto you, that I have received a Command (or Writ) of our Lord the King, in these Words, *George, &c. (reciting all the Writ)* And because *J. B.* of, &c. and *J. S.* of, &c. and the said *T. C.* have appeared personally before me the said *H. S.* and the said *J. B.* and *J. S.* have undertaken for the said *T. C.* each Surety under the Penalty of 20 *l.* and the said *T. C.* hath undertaken for himself, under the Penalty of 40 *l.* to be levied on their Lands and Chattels, to the Use of our said Lord the King, that the said *C. A.* shall not, &c. as before.

A Superfedeas for the Good Behaviour.

Superfedeas
for the Good
Behaviour.
Crom. 237.

NOTE, that upon good Sureties taken for the Good Behaviour, a *Superfedeas* of the Good Behaviour may be granted as for the Peace, *mutatis mutandis*.

Note also, that a *Superfedeas de Capias indictatum de Transgression*, and so of an *Exigent*, may be granted by the Justice of Peace out of Sessions: For otherwise it were mischievous for the Party, as well by Reason of his Imprisonment, as also for that he may be out-lawed before the Sessions, if the Justice of Peace might not take Sureties of him for his Appearance; and all is but to appear to answer to the Indictment.

Crom. 235.
Hic 275.
Lab Intr. 601.
Lam. 508.

And Mr. *Crompton* is of Opinion, that these may be granted by any one Justice of Peace; with whom agreeth the *Book of Entries*. But Mr. *Lambard* thinketh it not in the Power of any one Justice of Peace to grant such *Superfedeas* at this Day, but that it must

must be done by two Justices at the least, and the one being of the *Quorum*; nevertheless for that I find the old Precedents to run in the Name of one Justice of Peace alone, I have drawn these accordingly, persuading notwithstanding the Joining of two Justices herein, and the one of the *Quorum*, if they may conveniently.

A Superfedeas of one indicted of Trespass.

T. *B. &c.* one of the Justices, *&c.* to the Sheriff, *&c.* Greeting. Forasmuch as Cambridge.
T. *C. D.* of *A.* Yeoman, hath come before me, and hath found sufficient Sureties Superfedeas to
 to be before the Justices of our said Lord the King assigned to keep the Peace in the said a Capias upon
 County, as also to hear and determine divers Felonies, *&c.* at the next General Sessions of an Indictment
 the Peace to be held at *C.* in the said County, to answer to our said Lord the King of cer- for a Trespass.
 tain Trespasses, Contempts, and Offences of which he is indicted. Therefore on the Be-
 half of our said Lord the King I command you, that you altogether forbear to take or
 imprison, or otherwise to molest the said *C. D.* and if you have taken him for this Cause
 and none other, that then you cause him to be delivered without further Delay. Wit-
 nefs, *&c.*

Otherwise; for him who hath found Pledges for a Fine.

T. *W.* one of the Justices, *&c.* to the Sheriff, and all and singular the Bailiffs, Con- Cambridge.
 stables, *&c.* Greeting. Altho' lately by a Writ (or Precept) of our said Lord the A Superfedeas
 King, it was commanded you or one of you, that you should take, or that one of you upon putting in
 should take *A. B.* of *S.* in the said County Yeoman, if he was found within the same, Security to pay
 and him safely keep, so that you or one of you should have his Body before the Keepers a Fine.
 of the Peace, and Justices of our said Lord the King assigned to keep the Peace, as also to Crom. 233.
 hear and determine divers Felonies, *&c.* in the said County, at *Cambridge* (on such a Day)
 to answer to our said Lord the King, of a Contempt and Trespass of which he is indicted
 before the said Justices. Which said *A. B.* hath come before me, and hath found sufficient
 Pledges for making his Fine with our said Lord the King for the Premises: Therefore on
 the Behalf of our said Lord the King, I command you jointly and severally, that you al-
 together surcease from any farther executing of the said Writ. And if you have taken
 the said *A. B.* on the said Occasion and none other, and have detained him in the Per-
 son of our said Lord the King, that then without Delay you or one of you cause him to
 be delivered from the same. And you or one of you have this Precept at the Sessions
 aforesaid. Given, *&c.*

A Superfedeas of a Capias for a Fine.

J. *St. G.* Esq; one of the Justices, *&c.* to the Sheriff, *&c.* Greeting. Forasmuch as Cambridge.
J. *C. D.* of *A.* in the said County Yeoman, hath come before me, and hath found Crom. 234.
 sufficient Sureties to be at the next General Sessions of the Peace to be holden in the said
 County, to make Fine with our said Lord the King, for certain Trespasses, Contempts
 and Offences, of which he is indicted: Therefore I command you, that you altogether
 surcease to take, imprison, or otherwise molest the said *C. D.* on the said Occasion. And
 have you there this Precept. Witnifs, *&c.*

Superfedeas of a Capias of one indicted for Felony.

T. *P.* Esq; one of the Justices of our Lord the King, *&c.* To the Sheriff, and all Cambridge.
 and singular the Bailiffs, Constables, *&c.* Greeting: Forasmuch as *A. B.* of *C.* in Crom. 234.
 the said County, Husbandman, hath come before me, and hath found sufficient Security
 to be before the Justices, *&c.* assigned to keep the Peace, *&c.* as also to hear and deter-
 mine divers Felonies, *&c.* at the next general Sessions of the Peace to be held in the
 said County to answer to our said Lord the King, of divers Felonies and Trespasses of
 which he is indicted before them. Therefore on the Behalf of our said Lord the King,
 I command you and every of you, that you altogether surcease to take the said *A. B.* for
 that Cause, and if you have taken or imprisoned him on that occasion and no other,
 that then you cause him to be delivered without delay. Given, *&c.*

*A Superfedeas of an Exigent of Felony.*Cambridge.
Crompt. 234.

GEORGE, &c. To the Sheriff, &c. Greeting: Forasmuch as C. D. of A. in your County, Yeoman, hath come before E. F. and hath found sufficient Sureties to be before the Keepers of our Peace, and our Justices assigned, &c. at the general Sessions of our Peace, &c. to be held (such a Day) to answer to us of certain Felonies of which he is indicted. Therefore we command you that you altogether surcease from demanding the aforesaid C. D. at any your County Court or imprisoning him, or otherwise molesting him on that occasion. And have you there this Writ. Witness William Marche at H. &c.

A Superfedeas to deliver a Prisoner taken for a Trespass or the like.

M. D. Esq; one of the Justices, &c. To the Constables of the Town of B. and also to the Keeper of the Gaol of our said Lord the King in the said County, Greeting: Forasmuch as W. C. of B. Labourer, hath come before me, and found sufficient Surety to be before the Justices of our said Lord the King, at the next general Sessions of the Peace to be held in the said County, to answer as well to our Lord the King as to B. C. of certain Trespasses or Contempts, &c. by him the said W. C. perpetrated. Therefore I command you and every of you that you cause the said W. C. to be delivered out of your Custody, and that without delay in the mean Time you supersede from my Mandate thereupon directed. And this my Mandate shall be to you and every of you a sufficient Warrant. Given, &c.

C H A P. CLXXVI.

*Recognizance.**A single Recognizance taken before Justices of the Peace.*Cambridge.
Single Recognizance.

BE it remembered, that upon the _____ Day of February in the _____ Year of the Reign of our Sovereign Lord, &c. J. S. of B. in the County of C. Yeoman, W. S. of the same Place, Weaver, and R. D. of S. in the said County, Taylor, came before M. D. and J. B. Esquires, Justices of our said Lord the King, assigned to keep the Peace in the said County of C. and acknowledged themselves to owe to our said Lord the King, to wit, each of the said Sureties five Pounds, and the said J. S. ten Pounds of good and lawful Money of Great Britain, to be paid to our said Lord the King on the Feast of the Purification of the blessed Virgin Mary next ensuing after the Date of these Presents, and unless they shall so do, they have granted for themselves, their Heirs, Executors and Administrators by these Presents, that the said several Sums shall be levied and recovered of the Manors, Lands, Tenements, Goods, Chattels and Hereditaments of the said J. S. W. S. and R. D. their Heirs, Executors and Assigns, wherever they shall be found. Given, &c.

Another single Recognizance.

Another single Recognizance, and the most usual.

BE it remembered, That on the twentieth Day of January in the _____ Year of the Reign, &c. D. E. of B. in the said County, Yeoman, personally came before me M. D. Esq; one of the Justices of the said Lord the King, assigned to keep the Peace in the said County, and acknowledged himself to be owing to the said Lord the King, ten Pounds of good and lawful Money of Great Britain, to be made and levied of his Goods and Chattels, Lands and Tenements, to the Use of the said Lord the King, his Heirs and Successors, if he fail in the Condition indorsed.

Otherwise.

BE it remembered, That on the tenth Day of *December* of the Year of the Cambridge. Reign, &c. *T. H. of W.* in the said County, Yeoman, and *J. S.* of the same *Another with two Sureties, and this is the usual Form.* Town and County, Husbandman, came before me *M. C.* one of the Justices assigned, &c. and did undertake and each of them severally did undertake under the Penalty of five Pounds of lawful Money of *Great Britain*, for *W. St. of W.* aforesaid, † and the said *W. St.* did undertake for himself under the Penalty of ten Pounds of the like Money; which several Sums they and each of them did acknowledge himself to owe to the said Lord the King, to be made and levied of their Lands Tenements, Goods and Chattels, if the said *W. St.* shall fail in performing the * Condition within written.

* See the Condition on the other Side, and this is now the Common Practice.

If the Party to be bound be within Age, then he shall be bound by Sureties only, *Infant* (but he himself shall not be bound) and then shall the Recognizance be *ut supra* to this Mark, † and then as followeth:

Who is under the Age of 21 Years, which several Sums they did acknowledge, and each of them as aforesaid, did acknowledge himself to owe, &c. as above.

A Recognizance for the Peace.

BE it remembered, That on the Day of in the Year of the *Recognizance for the Peace with the Condition in it.* Reign, &c. *R. P.* of *E.* in the said County, Yeoman, did come personally before me *T. T.* Esq; one of the Justices assigned, &c. and did undertake for himself, under the Penalty of twenty Pounds, and *H. J.* of *L.* in the said County, Yeoman, and *N. A.* of, &c. and *P. Q.* of &c. Husbandman, then and there likewise did personally come and did undertake for the said *R. P.* to wit, each of them severally under the Penalty of one hundred Shillings, that the said *R. P.* shall personally appear before the Justices of the Peace of the said Lord the King, at the next general Sessions of the Peace to be held for the said County, to do and receive that which by the Court shall be then and there enjoined him, and that he in the mean Time shall keep the Peace of our said Lord the King towards our Lord the King himself and all his People, and especially towards *M. N.* of *A.* aforesaid, Yeoman, that he shall not do nor procure to be done, any corporal Damage or Evil or any Grievance to the said *M. N.* or to any of the People of our said Lord the King, which may any way be to the Hurt or Disturbance of the Peace of our said Lord the King or of the aforesaid *M.* Which Sum of twenty Pounds *Lib. Intr. 453.* the aforesaid *R. P.* and each and every of the said Sureties the said several Sums of one hundred Shillings, have acknowledged themselves to owe to the said Lord the King, to be made and levied of the Lands and Tenements, Goods and Chattels of each and every of them into whose Hands soever they shall come, to the Use of our said Lord the King, if it shall happen that the said *R. P.* shall break the Premises in any Thing, and be thereof lawfully convicted. In Witness whereof I the said *T. T.* have set my Seal. Given, &c.

And if the Justice shall only subscribe his Name to the Recognizance without his Seal, it is well enough; and so is the usual Course and Form with us, and that in either of these Sorts, *sc. acknowledged before me T. T.* or only to subscribe the Justice's Name thus, *T. T.*

Or thus for the Peace.

BE it remembered, That the Day of, &c. *A. B.* of &c. and *W. D.* of &c. did Cambridge. come before me *J. L.* Esq; one of the Justices, &c. and did undertake for *J. S.* *For the Peace. Lamb. 106.* late of *L.* &c. that he shall personally appear before me the said *J. L.* and my Companions Justices of the Peace of our Lord the King at the next general Sessions, &c. and that he the said *J. S.* in the mean Time shall keep the Peace towards all the People of our Lord the King, and especially towards *R. B.* &c. to wit, each of the said Sureties under the Penalty of twenty Pounds, and the said *J. S.* did undertake for himself under the Penalty of forty Pounds, which Sum of forty Pounds the said *J. S.* and each

each of the said Sureties the said Sum of twenty Pounds did acknowledge themselves to owe to, &c.

And this may be well done also by a single Recognizance *ut supra*, with a Condition added or indorsed for the Keeping of the Peace, and for the Day and Place in the Party's Appearance at the Quarter-Sessions, as followeth.

A Condition to keep the Peace.

The Condition of a Recognizance for the Peace.

THE Condition of this Recognizance is such, That if the within bounden *I. S.* shall personally appear before the Justices of our said Sovereign Lord the King at the next general Sessions of the Peace, to be holden in the said County of *Cambridge*, to answer to such Matters as shall be objected against him by *R. B.* within named, to do and receive that which by the Court shall be then and there enjoined him, and that he in the mean Time do keep the Peace of our Sovereign Lord the King, towards the King's Majesty and all his Liege People, and especially towards the said *R. B.* of *C.* afore said, Yeoman : That then, &c.

A Recognizance for the Good Behaviour.

Recognizance for the good Behaviour.

** See the Recognizance for the Peace.*

Lib. Intr. 463.

BE it remembered, That on the Day, &c. in the Year of the Reign, &c. *R. L.* of, &c. and *H. C.* and *J. S.* of the same, &c. in their proper Persons did come before us *J. B.* and *R. H.* Esquires, Justices, &c. And the said *H. C.* and *J. S.* did undertake for the said *R. G.* and the said *R. G.* then did undertake for himself, that the said *R. G.* shall personally appear before the Justices of the said Lord the King, assigned, &c. at the next general * Sessions, &c. And that he in the mean Time shall bear himself well towards our Lord the King and all his People, and especially towards *J. B.* of *C.* &c. to wit, That he shall not do nor cause to be done by himself nor by others, any Damage or Grievance to the said *J. B.* or to any of the King's People in their Bodies, by Waylaying, Assaults, or in any other Manner, which may be to the Hurt or Disturbance of the Peace of our said Lord the King in any wise ; to wit, each of the said *H. C.* and *J. S.* under the Penalty of one hundred Pounds, and the said *R. G.* under the Penalty of two hundred Pounds, which several Sums of one hundred Pounds each of them the said *H. C.* and *J. S.* by themselves as afore said, and the said *R. C.* the said Sum of two hundred Pounds for himself, did acknowledge themselves to owe to the said Lord the King, to be made and levied of their and each of their Lands and Tenements, Goods and Chattels, to the Use of the said Lord the King, if it happens that the said *R. G.* shall make Default in any of the Premises, and shall be thereof lawfully convicted. Given, &c.

Or thus for the Good Behaviour.

Cambridge. Another for the Good Behaviour.

BE it remembered, That on the Day of in the Year of the Reign, &c. *N. G.* of, &c. did personally come before us *J. B.* and *R. H.* Esqs, Justices of our said Lord the King, assigned, &c. and did undertake for himself under the Penalty of two hundred Pounds, and *H. C.* and *J. S.* of the same, &c. likewise did personally come and undertake for the said *N. G.* to wit, each of them severally, under the Penalty of one hundred Pounds, that the said *N. G.* shall personally appear before the Justices, &c. at the next general Sessions of the Peace to be held in the said County, to do and receive what shall be then and there enjoined him by the Court : And that in the mean Time he shall well bear himself (or be of good Behaviour) towards our Lord the King and all his People, and especially towards *J. B.* of *C.* &c. to wit, that he shall not do nor cause to be done, by himself nor by others, any Damage or Grievance to the said *J. B.* or to any of the People of the Lord the King unto their Bodies, by Waylaying, Assaults, or any other Means, which may be to the Breach or Disturbance of the Peace of the said Lord the King ; which several Sums, &c. as above.

Or by a Recognizance, with this Condition subscribed or indorsed.

THE Condition of this Recognizance is such, That if the above bounden R. G. shall personally appear before the Justices of our Sovereign Lord the King at the next General Sessions of the Peace to be holden in the County of C. to do and receive that which by the Court shall be then and there enjoined him, and that in the mean Time he be of Good Behaviour, and do keep the Peace of our said Sovereign Lord the King, towards his Majesty and all his Liege People, that then, &c. Condition of a Recognizance.

Or thus :

THE Condition of the said Recognizance is, That if the said N. G. shall for the Future be of Good Behaviour, and shall keep the Peace toward our said Lord the King, and all his People, that then the said Recognizance shall be void, or else remain in its Force. Another Condition.

Or thus :

THE Condition of the aforesaid Recognizance is, that if the said N. G. shall for the Future well bear himself, and shall keep the Peace of our Lord the King, and all his People, and especially towards J. B. of, &c. and shall no way do any corporal Damage, nor any Thing that may be to the Breach of the King's Peace to the said J. B. or to any of the King's People, then the aforesaid Recognizance shall be held void, otherwise it shall remain in its force. Another Condition.
Lamb. 125.
Lib. Int. 454.

Note, That all Bonds, Obligations and Recognizances, that shall be taken by any Justice of Peace (or any other Person) for any Cause touching the King, must be made and taken in his Name, and by these Words, *Domino Reg'*, &c. See hereof *antea*, Tit. *Surety for the Peace, and Recognizances.* 33 H.8. c.39.

Also note, That the Recognizance runneth, *Of Lands, Tenements, Goods and Chattels, &c. to be made and levied, &c.* and yet the King may be at his Election, to take the Execution of the Bodies of the Recognisors (as well of the Principal as of the Sureties) or of their Lands and Chattels, (for the Sum in the Recognizance contained.) *Per Curiam* 7 Hen. 4. 34. a. *Vide antea*, Tit. *Surety for the Peace.*

And it seemeth by the Common Law, before the Statute of 33 H. 8. 39. in all Cafes where a Man is a Debtor to the King, as well his Body as his Lands and Goods are liable to the King's Execution: For *Thesaurus Regis est Pacis vinculum, & Bellorum nervi*: And therefore the Law doth give to the King full Remedy for it. See *Coke* 3. 12. b. & *Coke* 11. 93. a.

A Recognizance to give in Evidence against a Prisoner.

THAT the Day of in the Year of the Reign, &c. R. T. of C. in Cambridge. the said County Yeoman, did come before me M. D. Esq; one of the Justices of the said Lord the King, assigned to keep the Peace in the said County, and did acknowledge himself to owe to the said Lord the King five Pounds of lawful Money of Great Britain, under Condition, that if he should personally appear before the Justices of our said Lord the King at the next general Gaol-Delivery to be holden in the said County, then and there to give Evidence according to the Form of the Statute against D. F. late of W. in the said County, who being attached, and suspected of Felony, is now committed to the Gaol of our said Lord the King in the said County; That then, &c. otherwise, &c. Recognizance to appear and give Evidence.

Or this may be done by a single Recognizance, with a Condition indorsed, as followeth, which is the most usual Course,

A Condition to prefer a Bill of Indiċtment, and to give in Evidence against a Piſoner.

Condition of a Recognizance to appear and give Evidence against a Felon.

THE Condition of this Recognizance is ſuch; That whereas one *A. B.* of *G.* Labourer, was this preſent Day brought before the Juſtice by the within bounden *D. E.* and was by him charged with the felonious Taking of twenty Sheep of the Goods of him the ſaid *D.* and thereupon was committed by the ſaid Juſtice to the Common Gaol: If therefore he the ſaid *D. E.* ſhall and do at the next general Gaol-delivery (to be holden in the ſaid County) prefer, or cauſe to be preferred, one Bill of Indiċtment of the ſaid Felony againſt the ſaid *A. B.* and ſhall then alſo give Evidence there concerning the ſame, as well to the Jurors that ſhall then inquire of the ſaid Felony, as alſo to them that ſhall paſs upon the Trial of the ſaid *A. B.* that then, &c. or elſe to ſtand in full Force for the King.

Or thus, to give in Evidence.

Another.

THE Condition of, &c. That if the above-bounden *D. E.* do at the next general Seſſions, &c. purſue and give ſuch Evidence as he knoweth, againſt *A. B.* now Priſoner in the Caſtle of *C.* concerning certain felonious Acts by him committed: Then, &c.

A Condition to appear before the Juſtices of Peace at their next Seſſions.

Condition of a Recognizance to appear at next Seſſions.

THE Condition of this Obligation is ſuch, That if *A. W.* of, &c. Spinſter, ſhall perſonally appear before the Juſtices of our Lord the King, aſſigned to keep the Peace in the County of *C.* (as alſo to, &c.) at the next general Seſſions of the Peace of our ſaid Lord the King, to be holden in the ſaid County, to anſwer as well to our ſaid Lord the King, as to *G. S.* of a Plea of Treſpaſs and Contempt, againſt the Form of the Statute, that then this preſent Obligation be holden for void and null; and if the ſaid *A.* ſhall for the Future do any Thing againſt the Premiſſes, that then this preſent Obligation ſhall ſtand in all its Force and Effect.

Or thus:

Another Condition to appear at the Seſſions.

THE Condition of this Recognizance is ſuch, That if the within bounden *A. W.* ſhall make his perſonal Appearance before his Maſtey's Juſtices of the Peace at the next Quarter-Seſſions of the Peace to be holden for the ſaid County of *Cambridge*, then and there to anſwer unto ſuch Matters as on his Maſtey's Behalf ſhall be objected againſt him (by *A. B.* of, &c. or concerning, &c.) and ſhall alſo ſtand to and abide ſuch farther Orders as the ſaid Court ſhall award therein; that then, and from thenceforth this preſent Recognizance ſhall be void, or elſe to remain in full Force and Virtue.

Another for him that hath dangerously hurt one.

Condition for one to appear who hath wounded another.

THE Condition of this Recognizance is ſuch; That whereas the within bound *R. W.* hath now lately dangerously hurt one *J. T.* of *F.* within the ſaid County of *Cambridge*, Yeoman, giving him divers Blows on the Head, Face, and left Side, with a Bill, ſo as the ſaid *J. T.* is in Danger thereby: If therefore the ſaid *R. W.* ſhall perſonally appear before his Maſtey's Juſtices at the next general Gaol-Delivery to be holden in the ſaid County of, &c. then and there to anſwer unto the Premiſſes, and to do and receive that which by the Court ſhall be then and there injoined him, and that he the ſaid *R. W.* in the mean Time do keep the Peace of our ſaid Sovereign Lord the King, towards the King's Maſtey, and all his Liege People, that then, &c.

A Condition for Alehouſe-keepers.

This or the like Form hath heretofore been allowable for Keeping a common Alehouſe.

THE Condition of this Recognizance is ſuch; Whereas the within bounden *A. B.* is admitted and allowed by the within named *I. Reynolds* and *Michael Dalton* Eſquires, (two of his Maſtey's Juſtices of Peace within the County of *Cambridge* within written) to keep a common Alehouſe or Tipplinghouſe, and to uſe common Selling of Ale

Ale or Beer, only within the now House of him the said *A. B.* (and not elsewhere) situate in the High Street of the Town of *M.* within written, and called *The Sign of the Hart*: If therefore he the said *A. B.* during such Time as he shall keep such common Alehouse there, shall not suffer any unlawful Play at Tables, Dice, Cards, Tennis, Bowls, Quoits, Loggets, or other unlawful Games to be used in his said House, or in his Garden, Orchard, or other his Ground or Place (especially by Men Servants, Apprentices, common Labourers, or idle Persons;) nor willingly admit or receive into his said House, or any Part thereof, any Person notoriously defamed of or for Theft, Incontinency or Drunkenness, or that shall be beforehand notified to him the said *A. B.* by the Constable of *M.* aforesaid, for the Time being, or by his Deputy, to be an unmeet Person to be received into a common Alehouse; nor shall keep or lodge there any strange Person above the Space of one Day and one Night together, without Notice thereof first given to the Constable or his Deputy there; and finally, if he the said *A. B.* during all the Time that he shall keep common Selling of Ale or Beer in the said House, shall and do there use and maintain good Order or Rule: Then this present Recognizance to be void, &c. or else, &c.

Or where the Justices of Peace at their Meeting take divers such Recognizances, they were made shortly, as followeth:

THAT on the Day of in Year of the Reign, &c. before us *E. P.* This is now the most usual Form. *Knt.* and *Baronet,* and *H. V. Esquire,* two of the Justices, &c. did come *A. B.* of *N.* in the said County Victualler, and did acknowledge himself to owe to our said Lord the King 10 *l.* and *C. D.* of, &c. and *E. F.* of, &c. and each of them, did acknowledge themselves to owe to our said Lord the King 5 *l.* of good and lawful Money of *Great Britain,* to be made and levied of their Goods and Chattels, Lands and Tenements, to the Use, &c. if he (the said *A. B.*) shall make Default in the following Condition.

The Condition of this Recognizance is such; That if, &c. (and write the Condition at large.)

G. H. of *N.* in the said County Victualler, also did acknowledge himself to owe to our said Lord the King 10 *l.* and *J. K.* of, &c. and *L. M.* of, &c. and each of them did acknowledge themselves to owe to our said Lord the King, 5 *l.* &c.

With Condition as above.

N. O. of *N.* in the said County Victualler, also did acknowledge himself to owe to our said Lord the King 10 *l.* and *P. Q.* of, &c. and *R. S.* &c. and each of them, did acknowledge himself to owe to our said Lord the King 5 *l.* &c.

With Condition as above.

T. F. of *S.* in the said County Victualler, also did acknowledge himself to owe to our said Lord the King 10 *l.* and *W. W.* of, &c. and *J. S.* of, &c. and each of them acknowledged themselves to owe to our said Lord the King 5 *l.* &c.

With Condition as above.

And so of the rest.

For the Matter of this Condition for Alehouse-keepers, it is (by the Statute) partly referred to the Discretions of such Justices of Peace as take such Recognizance or Bond, as you may see before in *Tit. Alehouses.*

And in some Shires the Justices of Peace did condescend, and agree upon certain Articles framed by their Discretions, and generally to be propounded to all common Alefellers, taking their Bond for the Performance of the same Articles; a Copy whereof they did use to deliver to every of them: Which Manner was also allowed.

Amongst Articles of this Kind I should commend to the Justice's Care these Three especially.

First, That no Alehouse-keeper upon the Sabbath-day should receive or suffer to remain any Person whatsoever (as their Guests) in any their Houses, or other Places, to tittle, eat or drink; other than Travellers, and such as come upon necessary Business.

Secondly, That they suffer no Person whatsoever, resorting to their Houses only to eat or drink, to remain there after Nine of the Clock in the Evening, from *Michaelmas* till *Lady-day*; or from *Lady-day* till *Michaelmas*, after Ten of the Clock at Night.

Thirdly,

Thirdly, That they suffer no Person, resorting to their Houses only to eat and drink, to remain Tippling there above one Hour, other than Travellers.

(a) But note, That now there be divers Articles of far better Directions, published (touching Alehouses) by Proclamation given by the King's Majesty at *New-Market*, the 19th Day of *January* in the 16th Year of his Majesty's Reign of *Great Britain, France and Ireland, Anno Dom. 1618.* in Manner and Form following:

I. That the Justices of Peace of every County, City, or Town Corporate within this Kingdom, and the Dominion of *Wales*, do once every Year, in the Months of *April* and *May*, assemble themselves, either at a special Sessions, or such other Meeting as they shall appoint for that Purpose, (respecting the Ease and Convenience of the People of the County) and there call before them, or any Two of them, (whereof one to be of the *Quorum*) all such Persons as do sell Ale or Beer by Retail in any Place (as well within Liberties as without) within such County, City or Town Corporate; and then and there to take true Certificate and Information from Men of Trust, who be Persons of honest Conversation, and who not; and to give License to such Persons as they in their Discretions shall think meet to keep common Alehouses or Victualling-houses, within the Places where such Persons shall dwell.

II. That in the Licensing of the said Victuallers and Alehouse-keepers, the Form of the Recognizance hereafter following, and the Condition thereunto annexed, be used, and none other.

This is likewise an usual Form for a Recognizance of an Alehouse-keeper, with the Condition as followeth:

BE it remembered, That on the Day of in the Year of the Reign, &c. before *T. P.* and *H. D.* Esquires, Justices of our said Lord the King, assigned, &c. *A. B.* of, &c. and *C. D.* of, &c. did undertake for *W. St.* of, &c. Victualler, to wit, each of the said Sureties, under the Penalty of *5 l.* and the said *W. St.* undertook for himself under the Penalty of *10 l.* which they did acknowledge themselves to owe to our said Lord the King under the following Condition.

The Condition.

THE Condition of this Recognizance is such: That whereas the above (or within) bounden *A. B.* is allowed by the said Justices to keep a common Alehouse and Victualling-house for the Space of one whole Year next ensuing the Date hereof, and no longer, in the House where he now dwelleth, at *C.* in the County of *S.* and not elsewhere in the said County: If therefore the said *A. B.* shall not, during the Time aforesaid, permit or suffer, or have any Playing at Dice, Cards, Tables, Quoits, Loggets, Bowls, or any other unlawful Game or Games, in his House, Yard, Garden or Backside; nor shall suffer to be or remain in his House any Person or Persons (not being his ordinary household Servants) upon any Sabbath-day or Holy-day, during the Time of Divine Service or Sermon; nor shall suffer any Person to lodge or stay in his House above one Day and one Night, but such whose true Name and Surname he shall deliver to some one of the Constables, or in his Absence to some one of the Officers of the same Parish the next Day following (unless they be such Person and Persons as he or she well knoweth, and will answer for his or their forth-coming); nor suffer any Person to remain in his or her House tippling or drinking contrary to Law, nor yet to be there tippling or drinking after Nine of the Clock in the Night-time; nor buy or take to pawn any stolen Goods, nor willingly harbour in his said House, or in his Barns, Stables, or elsewhere, any Rogues, Vagabonds, sturdy Beggars, masterless Men, or other notorious Offenders whatsoever; nor suffer any Person or Persons to sell or utter any Beer or Ale, or other Victual, by Deputation, or by Colour of his or her License: And also, if he shall keep the true Assise and Measure in his Pots, Bread, and otherwise, in his Uttering his Ale, Beer and Bread, and the same Beer and Ale sell by sealed Measure, and according to the Assise, and not otherwise; and shall not utter or sell any strong Beer or strong Ale above a Penny the Quart, and small Beer or small Ale above a Halfpenny the Quart, and so after the same Rates; and also shall not utter, nor willingly suffer to be uttered, drunk, taken or tippled, any Tobacco within his said House, Shop, Cellar, or other Place thereunto belonging; That then, &c.

All this is now omitted.

Note, That the whole Sabbath-day being holy, Tippling at the Alehouse at any Time of the Day must needs be a Prophanation of the Day, and therefore meet to be inserted into this Condition.

III. That every Alehouse-keeper and Victualler, so to be licensed, do enter into Recognizance with two able Sureties, to be bound in 5 *l.* a-piece, and the Principal 10 *l.* at the least, for the Performance of the Condition of the said Recognizance, which shall endure but for one whole Year, and then determine, unless it shall seem fit to the Justice of Peace to renew the same again, by Taking a new Recognizance of the same Condition: And whatever Date the Recognizance shall have, it is to endure but until the said Months of *April* and *May*, or one of them.

IV. That the Clerks of the Peace, Town-Clerks, or other Deputies respectively, be called to attend the Justices of Peace at such their Meetings or Assemblies; and that they do there take the Recognizance aforesaid of every Victualler or Alehouse-keeper licensed, and do duly enter them amongst the Records of the Sessions of the Peace in their Charge, whereby his Majesty may be duly answered of the Forfeitures that shall be made of the Parties so bound.

V. That the Clerks of the Peace, and Town-Clerks aforesaid, or their Deputies, shall, within some convenient Time after the Taking of the said Recognizance, fairly ingross the Recognizance and Condition in Parchment, which they shall keep as the Original, and send a true Copy of the said Recognizance, examined with the said Original, to every Alehouse-keeper allowed, whereby he may the better inform himself what he and his Sureties are bound to observe.

VI. That the Clerks of the Peace, and Town-Clerks, or their Deputies, do write out, and bring with them to every Sessions of the Peace or other Meeting of the Justices, a Register-book containing the true Names, Surnames and Places where every Alehouse-keeper or Victualler that is licensed, doth dwell, to the End it may appear to the Justices of the Peace who be licensed, and by whom, and who be not, and what other Alterations have been from Time to Time, for the Placing of Men of honest and good Conversation, and Displacing of others of ill Behaviour.

VII. That the Clerks of the Peace, and Town-Clerks, and their Deputies, may take of every Alehouse-keeper for their Fee, for performing of the Services aforesaid, at the Time of the Acknowledgment of the said Recognizance, the Fee of 18 *d.* and no more, over and above the Fee of 12 *d.* allowed for the Justices Clerks by the Statute, which shall be paid to the said Justices Clerks.

VIII. That in Case the Alehouse-keeper, not knowing of the Justices Meeting, or being hindred by Sicknes, or other such like Impediment, shall fail of Admittance at the general or publick Assemblies, and shall notwithstanding be admitted or licensed by two Justices of the Peace, (whereof one to be of the *Quorum*) the Recognizance with the Condition fair ingrossed in Parchment in the Form prescribed, as aforesaid, shall forthwith, or at the next Sessions at the farthest, be returned to the Clerks of the Peace, or the Town-Clerks respectively, under the Hands of the Justices before whom such Recognizance was taken, together also with the said Fee of eighteen Pence for the Entering, Registering, Making and Delivering a Copy under his Hand to the Alehouse-keeper, as aforesaid.

IX. That none be licensed or allowed to keep an Alehouse that hath not one convenient Lodging at least in his or their Houses, for the Lodging of any Passenger or Traveller, and hath not always in his or their House good and wholesome small Beer or Ale, for the Relief of the Labourer, Traveller, or others that call for the same.

X. That the Justices of Peace within their several Precincts do not permit or suffer any unlicensed Alehouse-keeper or Victualler to sell Beer or Ale, but that they proceed against them by all due and lawful Means whatsoever; and that they be very careful, from Time to Time, to cause the Brewers to be proceeded against in their General and Quarter-Sessions, for delivering Beer or Ale to such unlicensed Persons, according to the Statute in that Case provided.

XI. That the Clerks of the Peace, or Town-Clerks respectively, do once every Year, in *Trinity Term*, make and bring in a Brief of all such Recognizances as shall be taken within every County, City and Town Corporate, into the Office of the * Patentees, (appointed by them for that Purpose) to the End all Concealments of Recognizances taken in that Behalf may be discovered, and the Benefit accruing to his Majesty, by such as wilfully break the same, may be more duly prosecuted; of which that his Highness be not defrauded, order is given to the Patentees, that with the Allowance of the Chief Justice of the King's Bench there be appointed Committees in every County for the Recovery thereof from Time to Time.

* *This is now disused.*

XII. That the Justices of Assize in their Circuits, and Justices of Peace at their general Sessions of the Peace, do from Time to Time, inquire of the due Execution of these Presents, and of all other Abuses, Disorders, and Misdemeanors whatsoever, committed or suffered against the Provisions aforesaid, and the true Meaning of them.

And yet the Means (as I conceive) to reduce them both to a more competent Number, and to better Order, would be by a Law to be made, that none should be licensed to keep any Alehouse, unless they did find two good sufficient Sureties (one of them at least to be a Subsidy-man) to be bound for Performance of the Condition of their said Recognizance.

But no Licences are now to be granted but at a General Meeting of the Justices. *Vide supra*, Chap. 7.

C H A P. CLXXVII.

A Licence to keep an Alehouse.

Cambridge.
*Licence to keep
an Alehouse.*

JOHN Cutts Knight, and Michael Dalton Esq; two Justices of the Peace of our Sovereign Lord the King for the County of C. send Greeting. Know ye, that we the said Justices, of good and credible Report to us made by divers credible and honest Persons, &c. that *J. W.* of, &c. is a Man fit to keep a common Alehouse in the House where he now dwelleth, have licensed, allowed, and admitted, and by these Presents do licence, allow and admit the said *J. W.* to keep a common Alehouse or Tippling-house at *L.* for one whole Year next ensuing the Date hereof, so that the said *J. W.* suffer not any unlawful Games to be used in his said House, nor any Disorder to be kept within the same, during the Time of his said Licence: For the using of which Licence accordingly, we have bound the said *J. W.* in 10 *l.* and two other sufficient Sureties in an Hundred Shillings apiece by Recognizance to the King's Majesty's Use. In Witness whereof we have hereunto set our Hands and Seals. Dated, &c.

Or thus.

Cambridge.
Another.

J. C. and M. D. two Justices of the Peace of our Sovereign Lord, &c. to all Bailiffs Constables, and other the King's Majesty's Officers, Greeting. Know ye, that we the said Justices have licensed, and by these Presents do licence *J. W.* of, &c. to keep a common Alehouse in *L.* aforesaid for one whole Year next ensuing the Date hereof; and have bound the said *J. W.* by Recognizance with Sureties to his Majesty's Use, that he shall maintain good Order, and farther to do and behave himself therein in all Things according to the Laws and Statutes of this Realm, &c.

Or thus.

Cambridge.
*Another, and
the most com-
mon and usual
Form.*

WE whose Names are here underwritten, Justices of the Peace of our Sovereign Lord the King within the County of Cambridge, do licence and allow *J. W.* of *L.* in the said County to keep a common Alehouse or Tippling-house in *L.* aforesaid, for and during one whole Year next ensuing the Date hereof, so as he doth not suffer any unlawful Games to be used in his House, nor any evil Rule to be kept there, but doth behave himself therein according to the Laws and Statutes of this Realm in that Behalf made and provided. In Witness, &c.

A Licence to brew and keep an Alehouse.

Cambridge.
Another.
West. 554.

WHEREAS *A. M.* of *W.* in the County of C. Husbandman, hath come before us, *John Cutts* Knight, and *Tho. Chicheley* Esq; two of his Majesty's Justices of Peace for the said County, and bound himself in a Recognizance with sufficient Sureties, to brew and sell, and keep a common Alehouse, according to the Statute made in the fifth Year of the Reign of our late Sovereign Lord King *Edward 6.* Now know ye, that we the said *John Cutts* and *T. Chicheley*, have licensed the said *A. M.* to brew, sell, and keep a common Alehouse according to the said Statute. Given under our Hands the 13th of July in the, &c.

A Licence for a Recufant to travel.

WHereas *R. C.* of *L.* in the County of *C.* being a Recufant (convicted) hath con- Cambridge.
 fined himfelf to *L.* aforefaid, being the ufual Place of his Abode, according to *Licence for a*
 the Statute made in the 35th Year of the Reign of our late Sovereign Lady Queen *Eliz.* *Papift to tra-*
 know ye, that we, &c. four of the King's Majesty's Juftices of the Peace within the faid *vel above five*
 County, do, by the Conſent of the Right Reverend Father in God, *Nicholas* Lord Biſhop *Miles from*
 of *Ely*, at the Request of the faid *R. C.* for the Diſpatch of his urgent and neceſſary Buſi- *homi.*
 neſs, grant and give Licence to the faid *R. C.* to travel out of the Precincts or Compaſs
 of five Miles limited by the ſame Statute, at all Times until the firſt Day of *November*
 next coming; and at the firſt Day of *November* to return again to *L.* aforefaid. In Wit-
 neſs, &c. See *hic antea*, Tit. *Recufants*.

A Teſtimonial or Paſs-port to travel.

SIR *Roger Millifent* Knight, and Sir *James Reynolds* Knight, two of the King's Ma- Cambridge.
 jeſty's Juftices of Peace within the ſaid County, to all Juftices of Peace, Mayors, *The Form of a*
 Bailiffs, Conſtables, and all other his Majesty's Officers and Miniſters whatſoever, ſend *Paſſi.*
 Greeting. Forasmuch as the Bearer hereof *E. P.* (*here ſhew the Cauſe of his Travel*) hath
 deſired our Teſtimonial, or Licence, for his ſafe Travel unto the City of *B.* where (*here ſhew*
whither he is to go): In Conſideration thereof, know ye, we the ſaid Sir *Roger Millifent*
 and Sir *James Reynolds*, ſo far as in us lieth, have licenſed the ſaid *E. P.* to paſs and tra-
 vel the direct Way from *H.* within the ſaid County of *C.* where he lately dwelt, unto the
 ſaid City of *B.* ſo as his Journey be not of longer or farther Continuance than twenty Days
 next after the Date hereof; deſiring you and every of you not to moleſt or trouble the
 ſaid poor Man in his Travel, but to permit and ſuffer him peaceably to paſs, ſo as he ſhew
 himſelf in no Reſpect offenſive to his Majesty's Laws. In Witneſs, &c.

But upon ſuch Licence, the Perſons thus licenſed to travel may neither beg, nor wander *Directions con-*
 idly, out of their direct Way. Beſides, the Juftices muſt be ſparing to grant ſuch Li- *cerning ſuch*
 cences, except in Caſes of Neceſſity. (*a*) For except the Perſon ſo licenſed be one that *Paſſes.*
 hath ſuffered Shipwreck, or a Soldier, or a Mariner coming from the Seas, &c. or be
 a Labourer, and only for Hay or Harveſt Time, or elſe be a Servant departing from his
 Maſter, the Juftices of Peace are to make no ſuch Licence or Teſtimonial. And as
 for the Manner of ſuch Teſtimonial or Licence for the Perſons ſuffering Shipwreck,
 and Soldiers coming from Sea, and in what Manner ſuch Perſons may travel, ſee *hic*
antea, Tit. *Rogues*.

But in other Caſes where any Perſons ſhall become poor, lame, blind, or otherwiſe
 diſeaſed, or decayed, and ſhall have juſt Cauſe to travel, they muſt be provided of Mo-
 ney or Maintenance for their Travel: Otherwiſe the Juftices ought to forbear to grant
 any ſuch Licence, and muſt rather cauſe them to be ſent to, and ſettled in the Town
 where they laſt dwelt.

Alſo it is fit that ſuch Perſon do get the Allowance of ſuch his Paſſport under the Hand
 of a Juſtice of Peace in every County where he is to paſs.

(*d*) *The Form of a Teſtimonial for the conveying of a Rogue that hath been puniſhed accord-*
ing to the Statute of Vagrants.

JOHN *a-Stile*, a ſturdy vagrant Beggar, (of low Perſonage, red-haired, having the Cambridge.
 Nail of his right Thumb cloven) aged about 25 Years, was the ſixth Day of *April* *Teſtimonial for*
 in the tenth Year of the Reign of our Sovereign Lord, &c. openly whipped at *W.* in the *conveying a*
 ſaid County (according to the Law) for a wandring Rogue, and is ordered to paſs forth- *Rogue who*
 with from Pariſh to Pariſh by the Officers thereof, the next ſtraight Way to *P.* in the *hath been*
 County of *W.* where (as he confeſſeth) he was born, (*or dwelled laſt by one whole Year,* *puniſhed*
 &c. *if the Caſe be ſuch*) and he is limited to be at *P.* aforefaid within ten Days now
 next enſuing, at his Peril. Given at *Weſt-Wrattin*, under the Hand and Seal of *M. D.*
 Eſquire, one of his Majesty's Juftices of Peace in the ſaid County of *Cambridge*.

Note, by the Words of the Statute 39 *El.* 4. ſuch Teſtimonial muſt be under the Hand *Directions*
 and Seal of the Juſtice of Peace, Conſtable, Headborough, and of the Miniſter of the *therein.*
 Pariſh,

See the Stat. 13 Geo. 2. c. 24. infra Chap. 196. Parish, or any one of them; and yet it is taken that the Justice of Peace alone under his Hand and Seal may make such Testimonial. *Lamb.* 206.

Note also, that it is needful both in this and in all other Testimonials, Certificates, and Pass-ports whatsoever, to note and specify expressly some *assured Marks of the Party*, as his Stature, Colour of Hair, Complexion, (if it may be) some apparent Scar, or other Note, by which he may be infallibly distinguished and known from others; lest (as is often found) both himself take the Benefit thereof, and he also communicate the Use of the same to others, in Abuse of him that made it, and of the Law in that Behalf provided.

A Testimonial for such as have suffered Shipwreck.

Norfolk.
Testimonial for
Shipwreck.

A. B. of C. in the County of *Norfolk*. Esquire, one of his Majesty's Justices, &c. to all, &c. Forasmuch as the Bearer hereof *J. S.* aged about, &c. having lately been at Sea, in a Ship called, &c. hath suffered Shipwreck, and got to Land at *Y.* in the said County of *Norfolk*. upon the 20th Day of *July* last past, as I am credibly informed, as well by the Report of the said *J. S.* as also by the Testimony of divers the Inhabitants of *Y.* aforesaid, and for that the said *J. S.* hath not wherewith to relieve himself in his Travel homeward to *D.* in the County of *H.* where he saith he was born, (or hath a Dwelling, &c.) These are therefore to desire you, and every of you, to whom these Presents shall come, not to molest or trouble the said *J. S.* in his Travel to *D.* aforesaid, where he is limited to be within 20 Days next after the Date hereof; but to desire you rather to relieve him in his Necessity, as to you shall seem meet: And withal, you the Constables of every Town where he shall come, to help him with Lodging in convenient Time, so that he travelleth the direct Way to *D.* aforesaid, not doing any Thing contrary to the Laws and Statutes of this Realm. In Witness whereof, &c.

Mariner or
Soldier.

The like (with very little Alteration) may be for a poor Mariner, or a poor Soldier, coming from the Seas, or from beyond the Sea. *Vide antea*, Tit. *Rogues*.

But these two last Testimonials must be made by some Justice of Peace dwelling near where such Persons do land.

C H A P. CLXXVIII.

Warrants.

A Warrant to the Keeper of a Gaol to receive a Prisoner for Felony.

Cambridge.
To a Gaoler to
receive a Pri-
soner.

E. P. Knight and Baronet, one of the Justices, &c. to the Keeper of the Gaol of our said Lord the King in the said County, or to his Deputy, and to each of them Greeting. Whereas *R. T.* late of *F.* in the said County Labourer, has been arrested by the Constable of the Vill of *R.* in the said County, for Suspicion of a Felony by him, as it is said, committed: Therefore on the Behalf of our said Lord the King, I command you and each of you, that you or one of you receive the said *R.* into your Custody, there to remain till he be delivered from your Custody by the Law and Custom of *England*. Given, &c.

Otherwise.

Cambridge.

J. D. &c. to the Keeper of the Common Gaol at the Castle of *Cambridge*, or to his Deputy there: These are in his Majesty's Name to charge and command you, that you receive into your said Gaol the Body of *R. S.* late of, &c. taken by *F. C.* and *J. S.* Constables of the Town of *W.* and by them brought before me for Suspicion of Felony, &c. and that you safely keep the said *R. S.* in your said Gaol until the next General Gaol-delivery for the said County, [if he be notailable; or ifailable, then thus] until he shall thence be delivered by due Course of Law. And hereof fail you not, &c.

A Mittimus of a Felon after his Examination taken.

JOHN Cotton Knight, one of the Justices, &c. to the Keeper of the common Gaol at the Castle of Cambridge in the said County, &c. I send you herewithal the Body of *A. B.* late of *C.* Labourer, brought before me this present Day, and charged with the felonious taking of twenty Sheep, (*which also he hath * confessed upon his Examination before me:*) And therefore these are, on the Behalf of our Sovereign Lord to command you, that immediately you receive the said *A. B.* and him safely keep in your said Gaol, until that he shall be thence delivered by the due Order of Law. Hereof fail you not, as you will answer for your Contempt at your Peril. Given at *Cheveley* the first Day of *December* in the Year of the Reign, &c.

Mittimus of a Felon.

** This Clause maketh the Prisoner not to be bailable.*

Otherwise.

Or these Warrants or *Mittimus*, whereby a Prisoner shall be sent to the Gaol, may be made in the King's Name, and the *Teste* may be made under the Name of the Justice of Peace as followeth.

GEORGE, by the Grace of God, &c. to the Keeper of our Gaol of Cambridge, or to his Deputy, Greeting. Whereas *R. S.* late of *B.* in the County of *E.* Labourer, is now arrested for Suspicion of Felony by him, as it is said, committed: We therefore command you, and each of you, that you receive him the said *R.* into your Custody of our said Gaol, or that one of you receive him, there to remain till he be delivered from your Custody, according to the Law of our Kingdom of *England*. Witness *E. P.* &c.

This is now adjusted.

A Mittimus to send to the Gaol an Alehouse-keeper that victualleth contrary to the Command, &c.

H. *E.* and *R. T.* Esquires, two of his Majesty's Justices of the Peace within the said County of Cambridge, to the Keeper of the common Gaol at *C.* Whereas *R. D.* of *B.* in the County of *Camb.* (upon Complaint lately made unto us of the evil Rule kept and suffered by him in his House, and other Misdemeanors) by Warrant under both our Hands and Seals was discharged of his Alehouse-keeping, and was commanded from us that he should thenceforth use no more common Selling of Ale or Beer; and whereas we are credibly informed that the said *R. D.* (notwithstanding our said Warrant and Command given him to the contrary, as aforesaid) hath ever since obstinately, and upon his own Authority, taken upon him to * keep a common Alehouse or Tippling-house, and still continues the same: We do therefore send you herewithal the Body of him the said *R. D.* commanding you in his said Majesty's Name to receive him into your said Gaol, and there safely to keep him, until such Time as he shall be from thence delivered by due Order of Law. And hereof fail you not at your Peril. Dated at, &c.

Cambridge. Commitment of an Alehouse-keeper for keeping an Alehouse after he was prohibited.

** Or to use commonly selling Ale or Beer.*

Or thus.

WHereas by Warrant from divers Justices of the Peace of this County *J. S.* of, &c. hath been suppressed for keeping an Alehouse, &c. and forasmuch as Complaint hath notwithstanding been made to us (this present Day) that the said *J. S.* hath and doth, contrary to the said Warrant, and contrary to the Statute in that Behalf provided, still keep a common Alehouse: Therefore we do send you herewithal the Body of the said *J. S.* commanding you, &c. to receive the said *J. S.* into the common Gaol, and there safely to keep him for three Days without Bail or Mainprife; and afterwards until he shall with two Sureties enter into Recognizance, that he shall not keep any common Alehouse, or use common Selling of Ale or Beer, and pay his Fine of 20 s. according to the Statute in that Case made and provided. Hereof fail you not, &c.

Another Form for the like Commitment of a suppressed Alehouse-keeper.

A Mittimus (to the Gaol) of the reputed Father of a Bastard-child, &c.

Cambridge. **I** Send you herewithal the Body of *R. C.* of *B.* in the County of *C.* Labourer, brought before me this present Day, and charged by *F. S.* of the same Town to have gotten her with Child: And for that the said *R.* refuseth to put in Security for his Appearance at the next Quarter-Sessions, to the End he may be forthcoming when an Order shall be taken for the Relief and Discharging of the said Town of *B.* and for the keeping of the said Child (when it shall happen to be born) according to the Statute in that Case provided: These are therefore on his Majesty's Behalf to charge and command you, that immediately you receive the said *R. C.* and him safely keep in your said Gaol, until such Time as he shall be from thence delivered by due Order of Law. And hereof fail you not as you will answer your Contempt at your Peril. Dated, &c.

Commitment of the reputed Father of a Bastard.

Directions about Mittimus. In every *Mittimus* the Cause of the Commitment is to be set down, to the End it may appear whether the Prisoner beailable or not. See hereof before in the Title *Bailment*, &c.

Also where the Justice of Peace out of their Sessions may hear and determine, and so may commit Offenders for the Offence or Fine, it is necessary that in their *Mittimus* there be contained the Manner of the Offence, and how long Time the Offender is to be kept in Prison for it. See the *Mittimus* for Guns afterwards.

A Mittimus to the House of Correction of a dangerous Rogue.

Cambridge. **I** *R. Knight*, and *Michael Dalton*, Esquire, two of his Majesty's Justices of Peace within the said County of *Cambridge*, to the Master or Governor of the House of Correction at *Bottiskam*, (for the East-side of the said County) or to his Deputy there. Whereas *I. S.* a sturdy vagrant Beggar, was the 20th Day of *September* in the Year, &c. brought before us, and charged as well with Begging and idle wandring abroad, as also with other lewd and disorderly Behaviour, so as he appeareth to us to be dangerous to the inferior Sort of People, (*or such an one as will not be reformed of his roguish Life*) contrary to his Majesty's Laws in such Behalf provided: These are therefore to will and require you to receive the said *I. S.* and him safely keep in your said House, until the next Quarter-Sessions, to be holden in the said County; and during all that Time (that he shall continue with you) that you hold him to Work and Labour, and to punish him by putting Fetters and Gyves upon him, and by moderate Whipping him, as in good Discretion you shall find Cause, yielding him for his Maintenance only so much as he shall deserve or earn by his Labour and Work; and that at the said next Quarter-Sessions you have the said *I. S.* there, together with this our Warrant. And hereof see that you fail not, &c. Dated, &c.

Commitment of a Rogue to the House of Correction. Or such Rogue may be sent to the Gaol. See before Tit. Rogues.

See Stat. 7 Jac. 1. c. 4. 13 G. 2. 24.

A Mittimus to the House of Correction of a disorderly Servant, or other disorderly Person.

Cambridge. **I** Have sent you herewithal the Body of *E. C.* of *W.* in the said County of *C.* being an idle and dissolute and disorderly Fellow: (Or one that will not keep his Service, nor follow any honest Course of Life.) These are therefore to will and require you to receive the said *E. C.* and him safely to keep, (* until he shall be thence delivered by Warrant from my self, or some other of his Majesty's Justices of Peace for this County of *Cambridge*) and in the mean Time to hold him to Work, and to punish him by moderate Whipping, or otherwise, according to the Law in such Cases provided. And hereof fail not at your Peril. Dated, &c. See the Statute 7 *Jac.* 1. cap. 4.

Commitment of a disorderly Servant.

* Or by the Space of three Days next after the Date of this Warrant.

Another for one that runneth away, leaving her Charge to the Town.

Cambridge. **W**E have sent you herewithal the Body of *I. R.* of *W.* single Woman, being lately delivered of a Child, and one that is able to labour, and thereby to relieve her self and her Child, and hath notwithstanding lately run away, and left her Child upon the Parish, to the Charge of the same Parish, contrary to the Statute in that Behalf provided: These are therefore to will and require you to receive the said *I. R.* and her safely to keep, until the next Quarter-Sessions to be holden for this County; and in the mean Time to hold her to such Work, and to give her such due Correction, by moderate Whip-

Commitment of a Mother that runneth away, and leaves a Charge to the Parish.

Whipping or otherwise, as shall be fitting in your Discretion, and according to the Law in that Behalf provided; yielding her for her Maintenance, &c. *ut supra.* And hereof fail not at your Peril. Dated, &c. See the Statute 7 Jac. 1. cap. 4. & *vide antea*, Tit. Rogues.

Or else such Party must be delivered at the Meeting of the Justices upon priory Search made for Rogues, and not otherwise. Directions.

Note; If any mean Persons shall but threaten to run away, and leave their Family (as aforesaid) any two Justices of Peace of that Division may send them to the House of Correction, as aforesaid, but such their Threatning must be proved by two sufficient Witnesses upon Oath before the said Justice of Peace. *Vide antea*, Tit. Rogues.

A Mittimus to the House of Correction of the Mother of a Bastard Child.

WE have sent you herewithal the Body of *I. C.* of *W.* in the said County, single Woman, being lately delivered of a Bastard-child, like to be chargeable to the Parish of *W.* aforesaid: And for that the said *I. C.* is able to labour, and that thereby she may the better relieve her self and her said Child; these are therefore to will and require you to receive the said *I.* into your said House, there to be punished, and set on Work during the Term of one whole Year, according to the Statute in that Behalf provided. And hereof fail you not, &c.

Commitment of the Mother of a Bastard.

(a) Rogues and Vagabonds, sturdy Beggars, and other idle and disorderly Persons sent to the House of Correction, are there to be punished by putting Fetters and Gyves upon them, and by moderate Whipping. 7 Jac. 1. cap. 4.

House of Correction. Directions about the Punishment.

So Persons running, or threatening to run away, and leave their Family to the Parish. *Ibid.*

The Mother of a Bastard-child, &c. shall be set on work, and punished. *Ibid.*

But where by the plain Letter of the Law there is not Authority given to whip or punish Offenders, (sent to the House of Correction,) there let the Justices of Peace forbear to appoint or order any Whipping, except it be in open Sessions, or by the Order of the Quarter-Sessions.

Note, That the greater Part of the Justices of Peace assembled at the Quarter-Sessions may set down Orders for the Correction and Punishment of Offenders committed to the House of Correction.

And the Houses of Correction are to be used and employed for the keeping, correcting and setting to work of such Persons as shall be sent thither. See Statute 13 Geo. 2. cap. 24. *infra*, Chap. 196. generally for Rogues, Vagabonds, sturdy Beggars, and other disorderly Persons.

C H A P. CLXXIX.

A Mittimus to send to the Gaol such as shoot, &c. in Guns.

To the Keeper of his Majesty's Gaol at the Castle of Cambridge, and to his Deputy or Deputies there, and to every of them.

WHEREAS this present Day *A. B.* and *C. B.* of *B.* in the same County, Yeoman, did arrest and bring before me at *C.* aforesaid one *I. S.* in the said County *Canterbury.* *Commitment of those who shoot in Guns, not being qualified.* *Mariner,* whom they had seen and found the same Day shooting in a Hand-gun, charged with Powder and Pellet, at a Coney in a certain Place in *C.* within the said County called the *Churchfield,* contrary to the Laws of the Realm, and thereupon prayed that Justice may be done in that Behalf; I *John Cutts,* Knight, being the next Justice of the Peace in the said County to the Place aforesaid, did then at *C.* aforesaid, upon the said Request, take the Examination of the said *I. S.* and did also then and there hear the Proofs of them the said *A. B.* and *C. D.* touching the said Offence; And for that it did manifestly appear unto me, as well by the Testimonies of them the said *A. B.* and *C. D.* as also by the plain Confession of him the said *I. S.* that he had not *then Lands, Tenements, Fees, Annuities or Offices, to the clear yearly Value of 100 l.* and that he had shot in the said Hand-gun in Manner and Form as aforesaid; I do send you herewithal the Body of him the said *I. S.* as lawfully convicted of the said Offence before me, requiring *Qualification.*

quiring you in his Majesty's Name to receive him into your said Gaol, and him there safely to keep, until he shall have truly paid the Pain and Forfeiture of 10 *l.* of lawful Money of *Great Britain*, laid upon him for his said Offence by the Statute made in the three and thirtieth Year of the Reign of the late King *Henry* the Eighth, that is to say, the one Moiety thereof to our said Sovereign Lord, and the other Moiety to them the said *A. B.* and *C. D.* the first Bringers of him before me. And this shall be your sufficient Warrant in this Behalf. Hereof fail not, as you will answer for your Contempt at your own Peril. Given at *C.* afore said, the third Day of *March* in the tenth Year of the Reign of our said Sovereign Lord, &c.

By me the said *John Cutts.*

The Justice's Record thereof.

Canterbury. **B**E it remembered, That on the _____ Day of _____ in the _____ Year of the Reign, &c. *A. B.* and *C. D.* of *E.* in the said County, Yeoman, found one *I. S.* of *E.* in the said County, Mariner, and saw him at *D.* in the said County, the Day and Year afore said, with a Hand-gun charged with Gun-powder and a Leaden Bullet, shooting and discharging the said Gun at a Coney then being in a certain Place there called *Churchfield*, against the Form of a Statute in a Parliament held the thirty-third Year of the Reign of our Lord *Henry* the Eighth, late King of *England*, made and provided, and therefore they did arrest the said *I. S.* the Day and Year afore said, and brought him with them to *D.* to the said *J. C.* one of the Justices (being next to the said Place) of our said Lord the King, assigned to keep the Peace in the said County, as also to hear and determine divers Trespases and other Misdemeanours in the said County committed, requesting Justice thereof to be done, which request being heard, I the said *J. C.* at *D.* afore said, the Day and Year afore said, have thereupon duly examined the said *I. S.* and taken the Proofs of the said *A. B.* and *C. D.* in this Behalf. And because as well by the said Proofs as by the Confession of the said *I. S.* it hath then and there manifestly appeared to me, that the said *I. S.* (not having in his own Right, nor in the Right of his Wife, to his own Use, nor any other having to the Use of the said *I. S.* Lands, Tenements, Fees, Annuities, or Offices to the clear yearly Value of one hundred Pounds) did shoot with the said Hand-gun in the Manner and Form afore said, against the Form of the said Statute: I the said *J. C.* have committed the above named *I. S.* convicted of the said Trespass before me, the Day and Year afore said, to the nearest Gaol of our said Lord the King at *Cambridge* in the said County, there to remain until he shall truly pay the Penalty and forfeiture of ten Pounds of lawful Money of *Great Britain*, to wit, one Half to our said Lord the King, the other Half to the said *A. B.* and *C. D.* who first brought the said *I. S.* before me. In Witness of all which, I the said *John Cutts*, have to these Presents put my Seal. Given at *D.* afore said, the Day and Year above written.

By me the said *J. C.*

C H A P. CLXXX.

Bailment.

Canterbury. **B**E it remembered, That on the _____ Day of _____ in the _____ Year of the Reign, &c. before us *J. C.* Knt. and *R. C.* Esq; two of the Justices, &c. at *H.* in the said County, did come *A. B.* and *C. D.* of *E.* in the said County, Yeoman, and took in Bail until the next Gaol-delivery to be held for the said County, one *F. G.* &c. Labourer, taken and detained in Prison for Suspicion of a certain Felony, &c. and took upon themselves each of the said *A. B.* and *C. D.* under the Penalty of twenty Pounds of good and lawful Money of *Great Britain*, and the said *F. G.* undertook for himself, under the Penalty of forty Pounds of the like Money, of the Goods and Chattels, Lands and Tenements of them and each and every of them, to the Use of our said Lord the King, his Heirs and Successors, to be levied, if the said *F. G.* shall not personally appear at the said next Gaol-delivery, before the Justices of the said Lord the King, assigned to deliver the said Gaol, to stand to right concerning the Felony afore-

aforefaid, and then and there to answer to our faid Lord the King, of and upon all that shall be objected to him. Given, &c.

Otherwise, sc. if the Gaoler can conveniently bring the Prisoner before the Justices.

BE it remembered, That upon the Day of &c. *A. B.* of *D.* &c. and *E. F.* of *G.* &c. did come before Us *M. D.* and *J. B.* Esqrs; two of the Justices, &c. and did become Bail for *J. S.* of, &c. each of them under the Penalty of twenty Pounds, &c. and the said *J. S.* then and there likewise did undertake for himself under the Penalty of forty Pounds of the like Money, of their and each and every of their Goods and Chattels, Lands and Tenements, to the Use of our faid Lord the King, his Heirs and Successors, to be made and levied, if the said *J. S.* shall make Default in the Condition indorsed. Another Form of Bail.

THE Condition of this Recognizance is such, That if the within-bounden *A. B.* shall make his personal Appearance before the King's Majesty's Justices of the Peace at the next General Sessions to be holden for this County, then and there to make Answer to our Sovereign Lord the King, for and concerning the Suspicion of stealing certain Corn, where withal he standeth charged, that then, &c. For Suspicion of stealing, &c.

Otherwise.

BE it remembered, that upon the Day, &c. before us, &c. did come *A. B.* of, *C. D. E.* of, &c. and *F. G.* of, &c. and did become Bail for *R. B.* of *L.* in the said County, &c. to wit, each of them Body for Body, that the said *R. B.* shall personally appear before the said Justices, and their Companions, Justices of the said Lord the King, at the next General Sessions of the Peace to be held in the said County, to stand to Right in the Court (if any one against him will implead) of divers Felonies and Trespases whereof the same *R. B.* is indicted (as is said) and to answer to the said King of the said Things, as he ought, &c. *Vide antea*, Tit. *Bailment*, that it must be upon a certain Sum of Money. Cambridge. Another Form of Bail. Crompt. 235. 21 H. 7. 20. Br. Main. 44.

And here *Stare recte in Curia* is, when he that standeth at the Bar hath no Man to object against him.

Yet Note, upon this last Manner the Bail shall be only fined if the Prisoner maketh Default. Crompt. 153. 21 H. 7. 20.

Before the Statute of *Marl. cap. 27.* if one arrested or in Prison for Felony had been bailed, and at the Day the Prisoner would not at answer, but betook himself to his Clergy, &c. then his Mainpernors, were amerced, &c. But now by the Statute, if they have the Body at the Day, they shall not be amerced; although the Prisoner will not answer, &c. Neither shall they forfeit their Recognizance, if they have the Body of the Prisoner there, although the Prisoner shall not answer, &c. and yet the Words of the Recognizance or Bailment are usually, to answer to our faid Lord the King, &c. as before. But these Words seem to be of Course.

Otherwise, to bail a Prisoner for the Peace.

BE it remembered, &c. *A. B.* of, &c. *D. E.* of, and *E. F.* of, &c. have come before me *M. D.* of, &c. and become Bail for *R. B.* of, &c. that he shall keep the Peace towards all the People of our Lord the King, and especially towards *J. S.* under the Penalty for each Surety of twenty Pounds, and the said *R. B.* under the Penalty of forty Pounds, that the said *R. B.* shall appear before the Justices of our Lord the King at the next General Sessions of the Peace to be held for the said County, &c.

The Liberate to deliver a Prisoner committed for Felony.

E*F.* and *D. E.* Esquires, two of the Justices, &c. to the Keeper of his Majesty's Gaol in *C.* &c. Forasmuch as *F. G.* &c. Labourer, hath before us found sufficient Bail to appear before the Justices of Gaol-delivery, at the next General Gaol-delivery to be holden in the said County, there to answer to such Things as shall be then on the Behalf of our faid Sovereign Lord objected against him, and namely to the felonious Taking of two Sheep, (for the Suspicion whereof he was taken and committed to Canterbury. A Liberate to deliver one committed for Felony. Lamb. 342.

your said Gaol :) We command you on the Behalf of our Sovereign Lord, that if the said *F. G.* do remain in your said Gaol for the said Cause, and for none other, then you forbear to detain him any longer, but that you deliver him thence, and suffer him to go at large, and that upon the Pain which will fall thereon. Given under our Seal this, &c.

A Warrant to deliver a Servant out of Gaol.

Cambridge.
Crompt. 238.

F. *B.* Esq; one of the Justices, &c. to the Keeper of the Gaol of the said Lord the King, in the said County, Greeting: Forasmuch as *W. K.* of *N.* Labourer, before me, hath found sufficient Surety to be before the Justices of our said Lord the King, &c. at the next General Sessions, &c. to answer as well to our said Lord the King, as to *E. F.* of, &c. of his Trespasses and Contempts, contrary to the Form of the Statute of *Labourers*, lately made and provided, I therefore command you on the Behalf of our said Lord the King, that without delay you cause the said *W. K.* to be delivered from his said Prison, if he be detained on that Occasion, and none other. Given, &c.

Wherefoever a Justice of Peace upon his own Motion and Discretion hath committed one to the Gaol or House of Correction, for want of Sureties for the Peace or Good Behaviour, or for being a Vagrant or idle Person, or the like, it seemeth the same Justice of Peace may in like Discretion afterwards discharge him again, and make his *Liberate* or Warrant to deliver such Prisoner. See 14 *H. 6. fol. 8. Br. Impr. 27.*

(a) To deliver a Prisoner committed for the Peace or Good Behaviour.

Liberate to discharge one committed for Breach of Peace, or Good Behaviour.

F. *B.* Esq; one of the Justices, &c. to the Sheriff (or Keeper of the Gaol) &c. Forasmuch as *I. S.* in the Prison of our Lord the King, in your Custody, at the Suit of one *A. S.* for his good Abearing (or for keeping the Peace towards the King and all his People, and especially towards the said *A. S.*) hath found sufficient Surety (or four Sureties) to wit, *A. B. D. E. F. G.* and *H. I.* who have undertaken for the said *I. S.* that the said *I. S.* shall not do nor cause to be done, neither by himself nor by others, any Damage or Grievance to the said *A. S.* or to any of the People of our said Lord the King, in their Bodies by Menaces, Waylaying, Assaults or any other Manner that may any way be to the Breach or Disturbance of the Peace of our said Lord the King, to wit, each of the said Sureties under the Penalty of twenty Pounds. I therefore command you on the Behalf of our said Lord the King, that you without Delay, cause to be delivered, the said *I. S.* being in the Prison of our said Lord the King in your Custody on that Occasion and no other. Given, &c.

C H A P. CLXXXI.

Releases of the Peace.

The Release of the Justice of Peace.

Release of the Peace.

I the said *H. M.* who of my Discretion have compelled the above-named *A. B.* to find the said Security of the Peace, have of my Discretion (as much as in me lies) remised and released the said Security of the Peace. In Witness whereof I have to this present Release set my Seal. Given, &c.

The Release of the Party before the same Justice that took it.

Cambridge.
Another Form.

BE it remembered, that on the Day of, &c. the said *E. F.* hath come before me *R. T.* and freely remised and released (as much as in him lies) the said Security of the Peace, by him prayed before me against the above named *A. B.* In Witness whereof, I the said *R. T.* have hereunto set my Seal. Given, &c.

These two former Releases are to be written under the Recognizance it self: And if the Justice shall only subscribe his Name to the Release without his Seal, it is well enough, especially where the Recognizance is without Seal).

Or the Release of the Party may be by itself in this Form, scil.

BE it remembred, that *E. F.* of *S.* in the said County Yeoman, on the Day of Cambridge. in the Year of the Reign, &c. came before me *I. B.* Esq; one of the *Another Court.* Justices, &c. at *W.* in the said County, and there remised and freely released to *R. W.* of *S.* in the said County, Labourer, the Security of the Peace by him the said *E. F.* before me prayed against the said *R. W.* Given, &c.

And if the Release be made before another Justice which took not, or hath not the Recognizance, it may be thus :

BE it remembred, that *A. B.* of *E.* in the said County, Yeoman, on the Day of, Cambridge. &c. came before me *R. H.* Esq; one of the Justices, &c. at *W.* in the said County, and wholly remised and released the Security of the Peace which he has against *I. S.* of, &c. Given, &c.

(a) But note, that none of these Releases will discharge the Recognizance, or the Appearance of the Party bound thereby, but that he must appear according to the Condition of the Recognizance for the Safeguard of the Recognizance.

Release for the Good Abearing.

MR. *Lambard* seemeth to doubt whether the Surety of Good Abearing may be re- *Release of the* leased by the Party, (because it seemeth more popular than the Surety of the Peace.) *Good Behav-* But others do hold that it may be released; and then may the Form of such Release be *viour.* easily made by those which are before concerning the Peace, using the Words *Security of* *Good Abearing,* or *of the Good Behaviour,* instead of the Words *Security of the Peace.* *Lamb. 125.* But notwithstanding such Release, it shall be safe also for the Party bound to appear ac- *P. R. 22.* cording to the Recognizance.

(a) *Indentures for Apprentices.*

THIS Indenture made the 20th Day of *February,* &c. witnesseth that *A. B. C. D.* *Indentures of* and *E. F.* Overseers for the Poor in the Town of *H.* in the County of *C.* and *J. S.* Church-warden of the same Town, by and with the Consent of Sir *J. M.* Knight *Poor Appren-* and *M. D.* Esquire, two of his Majesty's Justices of the Peace for the County of *Cam-* *tices.* *bridge,* have by these Presents put, placed and bound *J. H.* (being a poor fatherless and motherless Child) as an Apprentice with *R. W.* of *H.* aforefaid, Baker, &c. and as an Apprentice with him the said *R. W.* to dwell, from the Day of the Date of these Presents, until the said *J. H.* shall come to be of the Age of 24 Years (if it be a Woman, then until her Age of 21 Years; or the Time of her Marriage,) according to the Statute in that Behalf provided. By and during all which Time and Term the said *J. H.* shall the said *R. W.* his Master, well and faithfully serve in all such lawful Business as the said *J. H.* shall be put unto, according to his Power, Wit, and Ability; and honestly and obediently in all Things shall behave himself towards his said Master, his Wife and Children, and orderly and honestly towards all the rest of the Family of the said *R. W.* And the said *R. W.* for his Part promiseth, &c. the said *J. H.* in the Craft, Mystery and Occupation the which he useth, after the best Manner that he can or may, to teach and inform, or cause to be taught and informed, as much as thereunto belongeth, or in any ways appertaineth: And also during all the said Term to find unto the said Apprentice Meat, Drink, Linen, Woollen, Hose, Shoes, and other Things needful or meet for an Apprentice, &c. In Witnesses whereof, &c.

In this Indenture may also be added the other usual Covenants for Apprentices, which see *Lib. Intr. verbo Covenant,* in *Apprentices,* and *West. 581.*

C H A P. CLXXXII.

*Forcible Entry.**The Form of the Record of a Forcible Entry by the Justice upon his View.*

Cambridge.

BE it remembred, that *A. B. of W. &c.* on the _____ Day of _____ in the _____ Year of the Reign, &c. complained to me *J. C. &c.* one of the Justices of our said Lord the King assigned to keep the Peace in the said County, that *C. D. of W.* aforesaid Yeoman and others unknown Disturbers of the Peace of our said Lord the King with a strong Hand entered into the Dwelling-house of the said *A. B. at W.* aforesaid, and disceised the said *J. B.* thereof, and with strong Hand and armed Power do yet hold, and therefore he requested of me to appoint a Remedy on this Behalf. Which Complaint and Request being heard, I the said *J. C.* did immediately go in Person to the said Dwelling-house, and then found the said *C. D.* and others *E. F. G. H. &c.* holding the said House with Force and Arms, a strong Hand and armed Power, that is to say, Swords, Staves and Guns, &c. against the Form of the Statute made and provided in a Parliament held in the fifteenth Year of the Reign of our Lord *Richard* the second late King of *England*, and against the Form of divers other Statutes: And therefore I the said *J. C.* did then and there arrest the said *C. D. E. F.* and *G. H.* and caused them to be carried to the next Gaol of our said Lord the King at the Castle of *Cambridge* in the said County, as of the said holding with strong Hand and Detainer upon my View and Record convicted, there to abide until they shall make Fines to our said Lord the King for their Trespasses aforesaid. Given at *W.* aforesaid, under my Seal the Day and Year aforesaid.

The Form of the Mittimus (to the Gaol) of such as hold Land by Force.

Cambridge.

JOH^N Cotton Knight, one of the Justices of the Peace of our Sovereign Lord the King within his said County of *Cambridge*, to the Keeper of the Common Gaol at, &c. in the said County, and to his Deputy and Deputies there, and to every of them. Whereas upon Complaint made unto me this present Day by *A. B. of Weston* in the said County Yeoman, I went immediately to the Dwelling-house of the said *J. B. of Weston* aforesaid, and there found *C. D. E. F.* and *G. H. of D.* aforesaid, Labourers, forcibly and with strong Hand and armed Power holding the said House, against the Peace of our Sovereign Lord, and against the Form of the Statute of Parliament thereof made in the fifteenth Year of the late King *Richard* the second: Therefore I send you (by the Bringers hereof) the said *C. D. E. F.* and *G. H.* convicted of the said forcible Holding by mine own View, Testimony and Record; commanding you in his Majesty's Name to receive them into your said Gaol, and there safely to keep them, until such Time as they shall make their Fines to our said Sovereign Lord for their said Trespasses, and shall be thence delivered by the Order of Law. Hereof fail you not, upon the Peril that may follow thereof. Given at *Weston* aforesaid, under my Seal, the Day and Year aforesaid.

The Form of a Precept (to the Sheriff) to return a Jury for an Inquiry.

Cambridge.

J. C. one of the Justices, &c. to the Sheriff of the said County, Greeting: On the Behalf of our said Lord the King, I command you that you cause to come before me at *B.* in the said County, on the _____ Day of _____ twenty-four honest, sufficient and lawful Men of the Neighbourhood of *W.* in the said County, each of whom shall have at least 40 s. of Lands, Tenements or Rents by the Year above Reprises, to inquire upon their Oath for our said Lord the King of a certain Entry with strong Hand made into a Messuage of one *A. B. at W.* aforesaid, against the Form of the Statute made in a Parliament holden in the eighth Year of the Reign of *Henry* the Sixth late King of *England*; and see that you return at the said Day 20 s. of Issues upon every one of the Jurors by you to be impanelled on this Behalf; And that you no ways omit this, under the Penalty of twenty Pounds, which you know you will incur, if in the Execution of the Premises you be remiss. And then have you there this Precept. Witness me the said *J. C. &c.*

Note; When the Justices of Peace are to inquire upon the Statute of 8 H. 6. (or any other Statute) they make their Precept to the Sheriff, to return before them Panels to inquire for the King (generally) of such Things as shall be enjoined them on the King's Majesty's Behalf, without saying, to inquire of a Forcible Entry, or of a Riot, &c. *Crompt. 123.*

The Form of the Inquiry, Presentment, or Verdict of the Jury.

AN Inquisition for our Lord the King taken at *B.* in the County aforesaid, on the *Cambridge* the Day of _____ in the Year of the Reign, &c. by the Oath of *A. B. C. D. E. F. &c.* before *I. C.* one of the Justices of our Lord the King assigned, &c. who say upon their Oath aforesaid, that *A. B. of W.* aforesaid, Yeoman, for a long Time was lawfully and peaceably seised in his Demesne as of Fee, of and in one Messuage, &c. with the Appurtenants in *W.* aforesaid, and so continued his Possession and Seisin aforesaid, until *C. D. of, &c.* and other Malefactors unknown, did on the Day of _____ last past, with Force and Arms *, that is, with Swords, Staves, Clubs, and other Weapons defensive and offensive, enter into the said Messuage, and him the said *A. B.* thereof did disseise, and with a strong Hand put out, and the same *A. B.* thus disseised and put out of the said Messuage, &c. from the aforesaid Day of _____ until the Day of taking this Inquisition, by the same Force and armed Power have kept out, and at this Time do keep out, to the great Disturbance of the Peace of our said Lord the King, and against the Form of the Statute in such Case made and provided in a Parliament of our Lord *Henry the Sixth, King of England,* held in the eighth Year of his Reign, † where none of them nor any other, whose Estate they or any of them had, any Thing in the said Messuage or any Parcel thereof had, within three Years next before their Entry aforesaid, nor at any Time preceding, to the Knowledge of the Jurors aforesaid.

** Yet these Words, With Force and Arms, here seem to be needless, being necessarily implied in the Words, With a strong Hand. Vide antea Tit. Forcible Entry.*
 † *This last Clause may be omitted.*

Otherwise upon the Statute 8 Henry 6.

THE Jurors for our Lord the King present *, That whereas in a Statute made in a Parliament of our Lord *Henry the Sixth late King of England,* held at *Westminster* in the eighth Year of his Reign, it is among other Things contained, that if any Person or Persons be expelled or disseised of any Lands or Tenements with a strong Hand, or peaceably put out, and afterwards kept out with a strong Hand, or that after such Entry any Feoffment or Discontinuance be any way made to defraud and take away the Right of the Possessor, the Party grieved shall on this Behalf have an Assise or Action of Trespass against such Disseisor; and if the Party grieved shall recover by Assise or by Action of Trespass, or it be found by Verdict, or any other way in due Form of Law, that the Party defending thus entered into the Lands and Tenements, or held them by Force after such his Entry, the Plaintiff shall recover his treble Damages against such Defendant; and farther, that the same Defendant shall make Fine and Ransom to our said Lord the King, as in the said Statute it is more fully contained: Yet one *W. W.* late of *W.* in the County aforesaid Husbandman, and *G. D.* of the same, Labourer, no ways regarding the Statute aforesaid, nor any way fearing the Penalty in the same Statute contained, on the Day of _____ in the Year of the Reign, &c. in the said County, into one Barn, being the Freehold of *R. W.* Dean of the Cathedral Church of *W.* with strong Hand, and Force and Arms, that is, Swords, &c. did enter, and make Entry, and the said Dean of the Church aforesaid of his Freehold, with a strong Hand and Force and Arms, did put out and disseise without Judgment, and then and there did put out and eject *Sir L. P.* Knight, Farmer of the said Dean, of the Barn aforesaid; and the Dean aforesaid being thus expelled and disseised, from the Day of _____ until the Day of taking this Inquisition, they with Force and Arms aforesaid, and with a strong Hand kept out, and at this Time do keep out, in Contempt of our Lord the King that now is, and to the grievous Damage of him *R.* and against the Peace of our Lord the King, and against the Form of the Statute aforesaid, &c.

** And yet it seems not best to recite the Stat. but shew the Forcible Entry, &c. and to conclude against the Form of the Statute, &c. Vide post Tit. Indictments.*

Another, wherein the Statute is not recited.

LET it be inquired for our Lord the King, if *A. B.* and *C. D.* late of, &c. having taken with them other Malefactors and Disturbers of the Peace of our Lord the King, and being arrayed in a warlike Manner to the Number of twelve Persons, whose

Names the Jurors at present do not know, on the Day of, &c. at D. &c. with Force and Arms, that is, &c. into one Messuage with the Appurtenants, on the peaceable Possession of M. L. did enter, and the said M. from his said Possession did expel and disseise; and the same M. being thus expelled and disseised from the said Messuage with the Appurtenants, with Force and Arms, and a strong Hand, did keep out, and yet keep out, against the Peace of our said Lord the King, and against the Form of the Statute of our Lord Henry the Sixth, late King of England, in the eighth Year of his Reign, thereof made and provided.

Otherwise upon the Statute 5 R. 2.

• For such Recital of the Stat. see after in the Title Indictments.

BE it inquired for our Lord the King, &c. * That whereas in a Statute in a Parliament of our Lord Richard the second after the Conquest, late King of England, made at Westminster in the fifth Year of his Reign, it is among other Things ordained thus, that none should make Entry into any Lands or Tenements, but in the Case where Entry is given by Law, and in that Case not with a strong Hand, nor with a Multitude of People, but in a lawful and quiet Manner only; and if any shall do to the contrary, and shall be thereof duly convicted, he shall be punished by Imprisonment of his Body, and shall make Fine at the Will of our Lord the King, as in the same Statute among other Things is more fully contained: Nevertheless a certain T. H. of Y. in the County aforesaid Yeoman, and others, &c. no ways regarding the Statute aforesaid, on the Day of in the Year of the Reign, &c. with Force and Arms, that is, with Swords, Staves, &c. into one Close of Sir J. C. Knight, lying at, &c. in the County aforesaid, in a Place there called H. on the Possession of the said Sir J. C. where Entry is not given to them, or to any of them by Law, did make Entry, and root up, pluck up, and spoil one hundred Poles of the Quick-hedges of him the said Sir J. C. then and there growing, in Contempt of our said Lord the King that now is, and to the grievous Damage of him Sir J. C. and against the Form of the Statute aforesaid, &c.

(a) The Lord Cromwel was indicted for a Forcible Entry upon Andrews, and in the later End they conclude thus, *Et si domus pred' non fuit in possessione Domine Regine*, they find it *billa vera*: This was adjudged a void Indictment, for it is *quasi a Conditione pred'*. Yelv. p. 15.

Fenton and others indicted, *quod unum messuag'*, &c. *existens solum & liberum tenem'* I. S. *ingressum fecerunt*, and adjudged good. 1. *Ingressum fecer.* without saying *in messuag.* is good. 2. *Existens* without *ad tunc* relates to the Time of the Entry. Yelv. p. 27. Yet Latch 109. is contrary.

Ford was indicted for a Forcible Entry and Detainer, and the Jury found as to the Forcible Entry *Ignoramus*, and as to the Forcible Detainer *Billa vera*, the Indictment being removed by *Certiorari*, and adjudged naught. Hill. 4 Jac. B. R. Yelv. p. 99.

Shillet and seven others were indicted for a Forcible Entry upon the Possession of B. Farmer de C. and disseising C. but lay no Expulsion of B. and adjudged naught: But if it had not been alledged that B. was Farmer de C. but generally that they entred *super possessionem B.* and disseised C. it had been good enough. M. 7 Jac. B. R. Yelv. p. 195.

An Indictment was endeavoured to be quashed, because it is not said that he entred *manu forti*; but the Court said it was good, if it be said, *quod extratenuit manu forti*. 2. Exception, because a Forcible Entry cannot be *in medietat. manerii*; but the Court held it good. Latch p. 224.

Indictment.

Note, That upon Indictments, &c. the Jury are only charged with the Effect of the Bill, *sc.* whether the Parties be guilty of the Forcible Entry, (or other Fact) or not; and not whether they be guilty in or under such Manner and Form as the Indictment or Bill specifieth, or not, (*sc.* not whether it were with Staves and Swords, &c. which is but Matter of Form, and must be kept in every Indictment, though the Parties had neither Staff, Sword, nor other Weapon). And so when the Jury say *Billa vera*, they say True, as they take the Effect of the Bill to be. And if there be false Latin in the Bill of Indictment, and the Jury find it *Billa vera*, yet their Verdict is True, *sc.* as to the Fact; and their Verdict doth not go to the Form of Words, but to the Effect of the Matter, and to the Fact, *sc.* they are to inquire whether there were any such Fact done by the Parties, or not. And so though the Bill vary from the Day, from the Year, and from the Place, and the Jury find *Billa vera*, yet they have given a true Verdict. Doctor and Student 162, 163.

And therefore the Justices of Peace, before whom such Indictments of Forcible Entry or of Riots, &c. shall be taken, shall do well to inform the Jury, that they are bound to regard the Effect of the Bill of Indictment, or the Fact, and not the Form.

(d) *The Warrant to the Sheriff for making of Restitution, (if the Justice himself will not make it.)*

SIR J. C. Knight, one of the Justices, &c. to the Sheriff of the said County, Greet-
 ing: Whereas by a certain Inquisition of the Country before me, at B. in the Coun-
 ty aforesaid, on the Day of &c. upon the Oath of A. B. C. D. E. F. &c. and *Restitution.*
 by the Form of the Statute of Entries made with a strong Hand in such Case provided, it
 was found, That C. D. &c. and others, &c. on the Day of &c. in a certain Mes-
 suage of A. B. &c. in W. aforesaid, did enter, and him A. B. thereof then with a strong
 Hand did disseise and drive out, and A. B. aforesaid thus driven out of the said Messuage,
 &c. from the Day of , &c. aforesaid, to the Day of the Taking of the said Inquisi-
 tion, with a strong Hand, and with Force did keep out, as by the Inquisition aforesaid
 more fully appears of Record; therefore on the Behalf of our said Lord the King I com-
 mand you, that (being hereunto duly required) you go with the Power of your County
 (if it be needful) to the said Messuage, and the other Premises, and that you cause the
 same, with the Appurtenants, to be reseised, and that you cause the said A. B. to be re-
 stored and put to and in his full Possession thereof, according as he, before the Entry
 aforesaid, was seised, according to the Form of the said Statute. And this you shall no
 ways omit, on the Penalty thereon incumbent. Witnesses, &c.

This Warrant to the Sheriff to make Restitution shall be under the *Teste* of one of the Justices only, as it seemeth. *Dyer 182.*

A Certificate of the Presentment or Verdict of the Jury in the King's Bench, whereof *vide antea*, Tit. *Forcible Entry*.

A Certificate into the King's Bench of the Record of a Force viewed by the Justice, whereof *vide antea*, Tit. *Forcible Entry*.

These two former Certificates (and the like) may be done and made by the Justices of Peace by Way of a Letter (as it seemeth) inclosing therein the said Presentment of the Jury, or the said Record of the Justices; except the same be removed thither by a *Certiorari*, and then may the Justices return them in such Manner as appeareth hereafter, Tit. *Certiorari*, with some little Alteration.

Or the Justice of Peace may himself deliver into the King's Bench such Presentment ^{8 El. 4. 18.} found before him, or such Record made by him, and the like, and that without any ^{Br. Cor. 152.} *Certiorari*, for that he is a Judge of Record. ^{Cor. 133.}

The Form of a Certificate (or the Manner of the Return) of the Writ upon the Statute of The Return: Northampton into the Chancery.

Upon the Writ itself these Words may be indorsed, The Execution of this Writ appears by a Schedule to the same Writ annexed. *And the Schedule may be thus.*

I Sir J. C. Knt. one of the Keepers of the Peace of our Lord the King in the County of *The Certificate.*
 Cambridge, do certify into the Chancery of our said Lord the King, that by virtue of
 the Writ first delivered to me, on the Day of in the Year, &c. I did (on the
 Behalf of our said Lord the King) publickly cause to be proclaimed at B. of which in the
 said Writ mention is made, according as it is commanded in the said Writ: And because
 certain A. B. and D. E. of F. in the County aforesaid, Labourers, little regarding the
 Proclamation aforesaid, after the said Proclamation there so made, did go armed, and an
 armed Force there did lead; that is, two Helmets, one Bow and ten Arrows, two Swords,
 and as many Daggers, to the Disturbance of the Peace of our said Lord the King, and
 Terror of his People, as also to the manifest Contempt of the Statute in the said Writ
 specified; and therefore I did arrest the said A. B. and D. E. together with their Armor
 aforesaid, and did cause their Bodies to be carried to the next Prison of our said Lord
 the King in the County aforesaid, there to remain until I shall have some other Command of
 our said Lord the King for their Delivery. I also caused their said Armor to be appraised by
 A. B. D. E. and F. G. of B. aforesaid, Yeomen, hereunto sworn, who say, upon their Oath
 aforesaid, that the two Helmets are worth 10 s. and that the said Bow and ten Arrows are
 worth

worth 6 s. and that the Swords aforesaid are worth 20 s. and that the said Daggers are worth 5 s. and so the Armors aforesaid are upon the Whole worth 41 s. of the which I am ready to answer according to the Tenor of the said Writ. In Witness whereof I have to this present Certificate set my Seal. Given, &c.

J. C.

(a) *The Form of a Certificate to be made by him which shall take the Oaths of a Justice of Peace by Commission or Dedimus Potestatem.*

Upon the Commission (or Dedimus Potestatem) indorse these or the like Words, The Execution of this Writ appears by a Schedule to this Writ annexed. And the Certificate may be thus.

I M. D. do certify into the Chancery of our Lord the King, that by virtue of a Writ of our Lord the King to this Schedule annexed, I did, on the Day of in the Year of the Reign, &c. at W. W. in the County of C. receive the Oaths of J. M. Knight, in the Writ aforesaid named, as well of the Office of Keeper of the Peace, to be well and truly performed, according to the Forms in the Schedule annexed to the Writ aforesaid, as the Oaths specified in an Act of Parliament made in the first Year of the Reign of our Lord George the first, late King of, &c. according to the Tenor of the Writ, and Schedule to the Writ aforesaid likewise annexed, and in all Things as in the said Writ is commanded. In Witness whereof, &c.

M. D.

C H A P. CLXXXIII.

Riot.

(a) **A**N unlawful Assembly, and an unlawful Act make a Riot; but if the Assembly was lawful, without an ill Intent, and an Affray happen, the Actors only are guilty: But if the Assembly was unlawful originally, then the Fact will be imputed to all who were present. 2 Salk. 594. 6 Mod. 43. 141.

(d) *The Form of a Record of a Riot viewed by the Justices and Sheriff, or Under Sheriff.*

Cambridge.

BE it remembred, That on the Day of in the Year of the Reign, &c. We J. C. and J. K. two of the Justices assigned, &c. And W. W. then Sheriff of the said County, upon the grievous Complaint and humble Petition of A. B. of D. in the said County, Yeoman, have in our proper Persons come to the Dwelling-house of him A. B. in D. aforesaid, and then and there found D. E. F. G. and H. J. of D. Labourers, and other unknown Malefactors and Disturbers of the Peace of our said Lord the King, to the Number of ten Persons, arrayed in a warlike Manner, that is, with Swords, &c. unlawfully and riotously assembled, and besetting the same House, many Evils to him A. B. threatening, to the great Disturbance of the Peace of our said Lord the King, and Terror of his People, and against the Form of a Statute in a Parliament of our Lord Henry the Fourth, late King of England, holden in the thirteenth Year of his Reign, made and provided. And therefore we J. C. J. K. and W. W. aforesaid, have caused the said D. E. F. G. H. J. &c. then and there to be arrested, and carried to the next Gaol of our said Lord the King in the County aforesaid, being convicted by our View and Record of the unlawful Assembly and Riot aforesaid, there to remain until they shall make Fine thereof to our said Lord the King. In Witness whereof we have to this present Record set our Seals. Given at D. aforesaid, &c.

13 H. 4.

Lamb. 312.

And if a Man be slain or maimed, or a Rescous be done to the Officer by the Rioters, then the Record ought to be *they did riotously kill*, or *riotously maim*, or *riotously rescue*, but not *feloniously*, nor simply *rescue*, because their Authority is in this Case restrained to the Riot only; so as notwithstanding that Record the Parties may plead Not guilty to the Felony or the Rescous, howsoever for the Riot they are estopped.

The *Mittimus* for conveying the Rioters to the Gaol may (with some few Words of *Mittimus*. Change) be made out of that which is here before for such as hold by Force. See hereof before amongst the Precedents in *Forcible Entry*.

The Precept to the Sheriff to return a Jury for an Inquiry upon a Riot.

J. C. &c. and J. K. &c. Two of the Justices assigned, &c. to the Sheriff of the same Cambridge. County, Greeting: On the Behalf of our said Lord the King we require you, that you cause to come before us at J. in the County aforesaid, on the Day of next, twenty-four honest, sufficient and lawful Men, of the County aforesaid, whereof every of them have Lands and Tenements within the said County of Freehold, by Charter, of the yearly Value of *twenty* Shillings, or by Copy of Roll of Court to the yearly Value of *twenty-six* Shillings and *eight* Pence, or by both, beyond all Reprises, to inquire upon their Oath for our said Lord the King, and for our Indemnity in this Behalf, of certain unlawful Assemblies and Riots, lately committed at D. in the County aforesaid, as it is said. And this you are no ways to omit under the Penalty of *twenty* Pounds, which you will incur, if you make Default in the Execution of the Premises. And have you there the Names of the Jurors aforesaid, and this Precept. Given, &c.

The Form of the Inquiry, Indictment or Presentment of the Jury.

AN Inquisition for our Lord the King, &c. (as before in *Forcible Entry*) before J. C. &c. and J. K. &c. two of the Justices, &c. who say upon their Oaths aforesaid, that D. E. F. G. and H. J. of, &c. Labourers, together with other Malefactors and Disturbers of the Peace of our said Lord the King, unknown, to the Number of Persons, arrayed in a warlike Manner with Force and Arms, that is, with Swords, &c. did on the Day of at D. in the County aforesaid, between the Hours of eight and nine after Noon of the same Day, riotously break and enter the Dwelling-house of A. B. of D. aforesaid, Yeoman, situated in D. aforesaid, and did then and there assault him A. B. and then and there him did beat, wound, and ill (*unworthily*) treat, so Indignis mo-
dis- that his Life was despaired of, to the great Disturbance of the Peace of our said Lord the King, and Terror of his People, and against the Form of the Statute of Riots, Routs, and unlawful Assemblies of People, in a Parliament of our Lord *Henry* the fourth, late King of *England*, held in the thirteenth Year of his Reign, made and provided.

Note, That all Indictments of Riots or Forcible Entries, &c. taken before Justices of the Peace must be after this Form, *sc.* An Inquisition, &c. taken, &c. before J. C. and R. T. &c. (if out of the Sessions; or if at the Sessions, then before J. C. and his Companions) Justices of our Lord the King, to keep the Peace in the said County, as also to hear and determine divers Felonies, &c. as here before in *Forcible Entry*. *Directions.*

Otherwise.

AN Inquisition, &c. who say, &c. that A. B. C. D. and E. F. of, &c. having gathered to themselves many other unknown Malefactors and Disturbers of the Peace of our Lord the King, to the Number of Persons, arrayed in a warlike Manner, by the Instigation and Procuration of J. S. did, on the Day of with Force and Arms, that is, Swords, Clubs, &c. and other Arms, as well offensive as defensive, at A. in the County of *Cambridge*, unlawfully, riotously, and routously assemble, and the Cloie of W. H. &c. at A. aforesaid, then and there unjustly break and enter, and ten Parcels of quick Hedges of him W. H. then and there growing did root out, pluck up and spoil, to the grievous Damage of him W. H. and against the Peace of our said Lord, and against the Form of divers Statutes in such Case made and provided. *Another Form of the Inquiry*

As for the Certificate (which ought to be made to the King and the Council, in case that by this Inquiry the Truth of the Fault and Riot be not found) such Certificate may be done in *English* by way of a Letter, comprehending the Truth of the whole Matter, with the Certainty of the Time, Place, and other Circumstances of the Fact or Riot, together with the Certainty of the Names of the Rioters; as also of the Names of such who by Maintenance, Embracery, or otherwise, were any Impediment to the Finding thereof, with their several Misdemeanors: Which Certificate or Letter is to be directed *Certificate*

and sent by the said Justices of Peace and Sheriff, or Under Sheriff; into the King's Bench, &c. within one Month. See *antea*, Tit. *Riot*.

A Traverse to an Indictment of a Riot, and the Record thereupon.

Cambridge.
The Style of the Sessions.

The Indictment.

Routose.

Procefs.
Traverse.
Jury.

Not guilty.

Day given.

The Verdict.

The Judgment.

Fine assessed.

HERetofore, to wit, at the Sessions of the Peace held at the Castle of *Cambridge* in the County aforesaid, on the *Tuesday* next before the Feast of *St. Matthew the Apostle* in the fourteenth Year of the Reign of our Lord *George* the Second, by the Grace of God, of *Great Britain, France and Ireland* King, Defender of the Faith, and so forth, before *A. B. C. D.* and others their Companions (or Brethren) Justices of our said Lord the King, assigned to keep the Peace in the County aforesaid, as also to hear and determine divers Felonies, Trespaffes, and other Offences (Misdeeds) in the same County committed, by the Oath of twelve Jurors it is presented, that *J. L.* of *R. M.* of _____ and *T. L.* of _____ with divers others unknown, Malefactors and Disturbers of the Peace of our said Lord the King, in a warlike Manner arrayed, joined and assembled, on the _____ Day of _____ in the Night of the same Day, in the Year, &c. with Force and Arms, that is, Swords, Staves, Clubs, Guns, and other Arms, as well offensive as defensive at *C. &c.* riotously and routously broke and enter'd, and then and there unjustly and unlawfully took and carried off eight Waggons of Hay, to the Value of _____ then and there being, of the Goods and Chattels of the said _____ against the Peace of our said Lord the King, and against the Force of the Statute thereof made and provided; whereby the Sheriff was commanded that he should not omit, &c. And afterwards, that is to say, on *Tuesday* next before the Feast of *Saint Matthew the Apostle* aforesaid in the fourteenth Year aforesaid, before the Justices aforesaid came the said *J. L. R. M.* and *T. L.* in their proper Persons, and having had the Hearing of the Indictment aforesaid, severally say, that they are not thereof Guilty, and of this they put themselves upon the Country; and *A. M.* who prosecutes for our Lord the King in this Behalf likewise, &c. Therefore let a Jury thereof come before the Justices of the said Lord the King, assigned to keep the Peace in the County aforesaid, &c. at the Sessions of the Peace at *G. &c.* to be holden upon *Tuesday* next after the Epiphany of our Lord then next to be, and who, &c. to recognize, &c. because as well, &c. The same Day is given as well to *A. M.* aforesaid who prosecutes, &c. as to *J. L. R. M.* and *L. T. &c.* to which Sessions holden at *G.* aforesaid in the County aforesaid, on the Day, &c. before Sir *T. P.* Knight, and his Companions, Justices of our said Lord the King, assigned to keep the Peace in the County aforesaid, and also to hear and determine divers Felonies, Trespaffes, and other Offences in the said County committed, as well the said *A. M.* who prosecutes, &c. as the said *J. L. R. M.* and *T. L.* in their proper Persons did come, and the Jurors aforesaid, being by the Sheriff aforesaid for this impanelled, and demanded, to wit, *J. P. J. G. &c.* did also come; who being tried and sworn, to say the Truth of the Premises, say upon their Oath, that the aforesaid *J. L. R. M.* and *T. L.* are Guilty, and every of them is guilty of the Trespafs, Contempt and Riot aforesaid, specified in the Indictment aforesaid, in the Manner and Form as against them it is above supposed. It is therefore considered by the Court, that the aforesaid *J. L. R. M.* and *T. L.* be taken to satisfy our said Lord the King of their Fines, by occasion of the Trespafs, Contempt and Riot aforesaid. Which *J. L. R. M.* and *T. L.* then and there present in Court prayed to be admitted to a Fine with our said Lord the King on the said Occasion; and thereof they severally put themselves in the Mercy of our Lord the King. And the Fine of the same *J. L.* is by the Justices aforesaid assessed, at three Pounds six Shillings and eight Pence; and the Fine of the same *R. M.* is assessed at twenty Shillings; and the Fine of the same *T. L.* is assessed at five Pounds of good and lawful Money of *Great Britain*, to the Use and Behoof of our said Lord the King.

I have inserted this former Precedent, for that it discovereth much Matter worthy the Justices Observation.

to be no
then withdrew.
House adjourned till Monday
NDAY the 13th of December, 1779.
in the committee to whom the bill "For establishing several new ferries,
purposes." was committed, reported, that the committee had accord-
er, had the said bill under their consideration, and made an amendment there-
which he read in his
then delivered in at the clerk's table, wt

C H A P. CLXXXIV.

Indictments.

FOR the Form of Indictments in Cases of Forcible Entry and Riots, I have here before set down certain Precedents; nevertheless for that these Indictments are the chief Foundation whereupon the whole Trial is after to be grounded, I thought it not amiss to observe here these few general Rules, as well concerning the Matter as the Form of these and all other Indictments or Presentments to be taken before the Justices of Peace.

First, In these Indictments of Forcibly Entry and Riots (as also in all other Indictments of Felony or Trespass) it is good to say, *Against the Peace*, or other Words to that Effect. *Forcible Entry.*

These Words, *With Force and Arms*, (viz.) *with Swords, &c.* are not of Necessity, yet it is good to use them, especially if the Circumstances of the Fact do require them; for these Circumstances do either aggravate or diminish the Offence. *Stamf. 94.* *Lamb. 484. 18 H. 8. c. 8.*

But these Words [*with Force and Arms*] are needless in an Indictment of *Forcible Entry*, because they are implied in the Word *Force*.

Yet Note, That in all the Indictments of *Treason, Murder, Felony, or Treppasses*, these Words *with Force and Arms* are necessary to be put in: (Otherwise it seemeth of Offences which are against the Peace only, as Conspiracies, Deceits, Slanders, Escapes for Debt, and the like). *Finch.* *Treason, Murder, and Felony.*

Also in Indictments found upon Statutes it is not needful, nay, it is not safe to recite the Statute at all: For as the Recital is not necessary, so the Misrecital thereof in the Matter, or in the Year, Day or Place, is fatal to the Indictment, and maketh it void. But it is safe and sure to draw the Indictment with this Conclusion. *Indictments on Statutes.*

Against the Form of the Statute in such Case made and provided, (if the Indictment be founded upon the Statute:) Or *against the Form of several Statutes in such Case made and provided*, (without naming any special Statute, where many Statutes do concern one Offence). *Crompt. 104.* *Co. 4. 48. Dyer 363.*

Yet the Offence against the Statute must be certainly described in the Indictment, and the Substance and material Words in such Statute must be fully set down therein. *Plov. 1 & 79. Lamb. 485. Co. L. 98. b.* *Plo. 1. & 79.*

Also all Indictments and Presentments (being in the Nature of Declarations for the King against the Offenders) ought to contain Certainty, and shall not be supplied or maintained by Implication, Intendment or Argument, *Co. 5. 120. Plov. 84. 122.* and therefore six principal Things are requisite in all Presentments before the Justices of Peace, viz. *Lamb. 463, &c. Br. Indict. 6, 24, 34, 46, & 47. Stamf. 96.*

1. The Names and Surnames, as well of the Parties indicted, as of the Parties offended; with the Addition of the Degree, Mystery, and the Dwelling-place of the Party indicted, (*sc.* both the Town and County.)

Yet in some Cases an Indictment, that he did procure unknown Persons, or that he did take the Goods of an unknown Person, &c. or the like, may be good. See *plus Lamb. 470, 476. Br. Indictment 6, 10, 11. Dyer 99. & Plov. fol. 85. b.*

2. The Time, *sc.* the Day and Year when the Offence was done.

3. The Place, *sc.* the Town and Country where it was done, as at *B.* in the County of *C.* *Br. Indict. 24, 41, 42. Lamb. 471.*

4. The Name or Quality of the Thing in which the Offence is committed, viz. of dead Things, it may be the Goods and Chattels, expressing them certainly; of live Things, Horse, Ox, Sheep, &c. but not Goods and Chattels. So of *Entry*, &c. to express certainly whether it be House, Land, Meadow, Pasture, Wood, &c.

5. Also the Value or Price of the Thing is commonly to be set down to aggravate the Fault.

6. The Manner of the Fact, *sc.* the Manner and Nature of the Offence; as whether it be Felony, or Trespass. See *Lamb. 480. Br. Indict. 7. 36.* *Lamb. 480.*

And yet for the Form of Indictments the Jury are not strictly tied thereunto, (*sc.* to the Day, Year or Place, &c.) but chiefly to the Manner of Fact. *Vide hic antea.*

Verity.

Also Indictments ought to be framed so near the Truth as may be, and the rather, for that they are to be found by the Jury upon their Oaths. *Co.* 9. 119. *Plo.* 84.

Yea, an Indictment being *veredictum, id est, dictum veritatis*, and a Matter of Record, ought to set forth all the Truth that by Law is requisite; for *de non apparentibus & non existentibus eadem est ratio*: And every Part of the Indictment material ought to be found by the Oath of the Jurors, and it is not to be supplied by Averment; otherwise the Indictment will be insufficient.

(a) All Law Proceedings are to be in *English*, by 4 *Geo.* 2. *cap.* 26.

See 2 *Hawk.* P. C. Chap. 25. Of Indictment.

C H A P. CLXXXV. (a)

Sessions.

Description.

THE Sessions of the Peace are a Court of Record holden before two or more Justices of the Peace, whereof one is of the *Quorum*, for Execution of the Authority given them by Commission of the Peace, and certain Statutes and Acts of Parliament.

Time.

2. The Sessions of the Peace were anciently uncertain and undetermined as to the Times, for that so few Persons being in Commission, as 4 or 6, and those for the most part Men of Law, they thought it burthensome to attend; and therefore 36 *E.* 3. 12. a Law was made, that in the Commission of the Peace express Mention should be made, that the said Justices make their Sessions four Times in the Year, *viz.* one Sessions within one Week after the *Epiphany*; the second within the second Week of Lent, the third between the Feasts of *Pentecost* and *St. John Baptist*; the fourth within eight Days of *St. Michael*. But that Course proving inconvenient, by the Statute of 12 *R.* 2. *cap.* 10. it is ordained,

3. The Justices shall hold their Sessions in every Quarter of the Year at least, and that by three Days at the least, upon Pain to be punished by the Discretion of the King's Counsel. And because those Times were uncertain, it is ordained,

Four Sessions in the Year.

4. By the Statute of 2 *H.* 5. 4. the Justices of Peace shall make their Sessions four Times in the Year, *viz.* in the *first Week after the Feast of St. Michael, the first Week after the Epiphany, the first Week after the Close of Easter, and the first Week after the Translation of St. Thomas the Martyr*; and more often if need be. And because the Penalty and Danger of every Justice in Commission for not appearing there was by the said Statute of 12 *R.* 2. *cap.* 10. to be punished at the Discretion of the King's Council, the Justices of the one Bench and the other, and Serjeants, were exempted herefrom by the said Statute, as also by the said Statute of 2 *H.* 5. 4.

Justices of Middlesex.

5. But in as much as the King's Court sitting in the Term-Time, did frequently call before them the Inhabitants of the County of *Middlesex*, and thereby most of the Business in that County was dispatched, and the Justices of Peace were compelled to hold their Sessions four Times in the Year, to avoid Penalties of former Statutes; by the Statute of 14 *H.* 6. *cap.* 4. it is provided, That the Justices of Peace in *Middlesex* be discharged of these Penalties, provided they hold their Sessions twice a Year, and oftner if need be, for Forcible Entries or Riots. But the Justices of Peace may yet hold their Sessions four Times in the Year if they see Cause, as formerly they might have done; and if they do hold them but twice a Year, yet those Times must be some of the Times mentioned in the Statute of 2 *H.* 5. 4. for they are such Times as were judged most convenient for the Ease of the Subject.

See more touching the Times of these Sessions before, *cap.* 4.

Place

As to the Place, there is no Determination thereof by any Statute Law: But certain it is, they must be holden in some Place within the County for which they are holden, for that the Justices of Peace their Authority is so circumscribed. And therefore if the King shall make a Place within a County of it self, and give them all Privileges of Jurisdiction, it will not be safe for the Justices of the ancient County to hold their Sessions there, unless the King by his Letters Patent reserve such Power. But if a Place within the County be incorporated by the King, and Justices be there appointed; yet the same remains still Parcel of the County, and the Justices of the Peace of the County may hold their Sessions there,

there, but may not intermeddle with Matters arising there, saving such as happen in their Sessions, or with Relation thereunto; for the making such Corporation, and giving them such Power, carries with it an Exclusion of other Commissioners to be appointed by the King, as to Matters arising in such Corporation, so long as such Corporation execute their Authority duly and justly. But in Case of any great Miscarriage in, or Default of, the Execution of Justice there by such Incorporation, as their Liberties may be seized, and restored to the Crown by a *Quo Warranto*; so notwithstanding such Grant there is a Construction of Law left in the King, a Power to provide for the Execution of Law and Justice there, and he may grant a concurrent Commission to worthy and able Persons, who shall see Justice there done. And such Power, as it is honourable for the King, so it is safe for the Subject.

And although the Place be not otherwise determined than as aforesaid by any Statute Law, yet may the Common Law have some Influence on such Authorities and delegated Powers, to confine them to what is reasonable and safe: And therefore could it be supposed that Justices of Peace would appoint their Sessions at a Place known publickly, and to them too, to be infected with the Plague, or on the Confines of a County, or near some publick Dangers by Enemies or otherwise, and their so doing be accompanied with other Circumstances of Wilfulness or worse; such Justices would for the same be punishable by Information and Fine in the King's Bench.

Mr. *Lambard* puts a Case from Mr. *Marrow*, that if two or more Justices appoint the Sessions to be holden in one Town, and so many more appoint a Sessions in another Town the same Day, and holds they may be so held, and that the Presentments in both are good; but that Appearance at one is a Discharge of Service at the other. But with his Favour it may be well questioned whether they are not both void; for they make two Courts of that which ought to be intire and but one: For I do not find the Justices are required or enabled to hold more than one Sessions at a Time; and so their Authority being equal, and seeing no Preference can be made by the Priority of Time, or Nature of the Service, they may be taken to be both void. However certainly the Justices, by whose Frowardness such Division happens, or on whom such Miscarriage is chargeable, on Consideration of their Circumstances of the Matter, are punishable for the same by Information and Fine, or putting out of Commission, as the Cause shall require.

So also (which is another Case put by Mr. *Lambard*) if the Justices appoint a Sessions in one Town, and hold it then in another, without timely Notice of their Alteration of such Appointment, it is punishable in them, for it tends to the Hindrance of the Service, and Trouble and Charge for the Subject.

These Sessions may be, and are usually warned by a Warrant under the Hands and Seals of two or more Justices of the Peace, *Quorum unus*, which may be thus.

G. *H. and R. C. &c.* two of the Justices assigned, &c. to the Sheriff of the same County, Greeting: On the Behalf of our Lord the King, we require and command you, that you do not omit by Reason of any Liberty in your Bailiwick, but that you enter therein, and cause to come before us, or our Companions Justices of the Peace, &c. on the Day next, at *E.* in the County aforesaid, as well twenty-four honest and lawful Men of each Hundred in your Bailiwick, as twenty-four Knights, and other honest and lawful Men of the Body of your County, as well within Liberties as without, each of which shall have at least 40 *s.* by the Year, of Lands and Tenements of Freehold, to inquire then and there of such Things as on the Behalf of our said Lord the King shall be enjoined them: Make it known also to all Coroners of your County, to the Stewards, Constables, Petty Constables, Bailiffs of Liberties within the Hundreds and Liberties aforesaid, that they then be there to do and fulfil such Things as by Reason of their Offices are to be done. Cause you therefore to be proclaimed in proper Places throughout your whole Bailiwick, that the Sessions of the Peace aforesaid are to be holden on the Day, and at the Place aforesaid; and you your self be you there, to do and exercise those Things which unto your Office belong. And have you there as well the Names of the Jurors, Coroners, Stewards, Constables, Petty Constables, and Bailiffs aforesaid, as this Precept. Given, &c.

The Persons that ought to appear at these Sessions are as follow.

First, The *Justices of Peace*. For as a Sessions cannot be held without a competent Number; so the Business of the Sessions cannot be well done without their Appearance, not only in the returning thither such Recognizances and Examinations as they have taken, and

and seeing the Parties prosecuted and convicted, or acquitted of the Crimes charged on them; but also for deciding and determining such Difficulties as shall arise, and also to give Information touching Persons and Things that fall within their Knowledge respectively; for *In the Multitude of Counsellors there is Safety.*

Clerk of the Peace.

2. The *Custos Rotularum*, who by Virtue of his Place hath the Custody of the Rolls of Sessions, ought to be there by himself or his Deputy, who is the Clerk of the Peace.

The Sheriff.

3. The *Sheriff* by himself or his Deputy, to receive the *Fines*, to return *Jurors*, to execute *Process*, and what else to his Office doth appertain: For by Virtue of the Commission he is commanded to be attendant on the Justices of Peace at all Times, especially in Sessions.

Constables of Hundreds.

4. The Constables of Hundreds ought there to be, and all other Officers to whom any Warrant hath been directed in Order to make Return thereof.

The Gaoler.

5. *The Gaoler*, to bring thither such as have been sent by *Mittimus* to him, there to remain until Sessions; and such as are sent thither for *Larcenies* and such Offences of like Nature, of which the Sessions do usually deliver the Gaol; and to give a Kalendar of such as are in Prison, and to receive such as may be there committed for any Contempt or Offence.

The Keeper of the House of Correction.

6. The *Governor of the House of Correction*, to give in a Kalendar of such Rogues and disorderly Persons as have been committed to his Custody, and an Account of them; or in Default thereof he is finable by 7 *Jac.* 1. 4.

The Jury.

7. All *Jurors* returned by the Sheriff by Virtue of the said Precept.

8. All Persons bound by *Recognizance* to answer, or to prosecute and give Evidence.

Bailiffs of Hundreds.

9. All Bailiffs of Hundreds and Liberties, in Respect they are bound to give an Account of all Sessions Process.

Coroners.

10. All Coroners, &c.

That the Justices of Peace are compellable to appear at the Sessions is out of Doubt; for without their Appearance the Sessions cannot be holden. And in this Case no one is more bound than another to attend, unless some great Men, and Men of the Law, who are exempted by 12 *R.* 2. 10. & 2 *H.* 5. 4. and those Statutes requiring the Sessions to be held. For Default thereof all Persons in Commission (unless exempted by the Statute) are equally punishable; and if two, three or more, shall hold the Sessions, why the rest should not appear to perform the Duty, and to bear the Burden, or neglecting should not be punished, there can be no Reason given. And therefore I conceive, 1. That such as do not appear are within the Danger of 12 *R.* 2. 10. whereby for Defaults by them in not holding the Sessions, or not so long as is thereby appointed, they are to be punished by the King's Council in their Discretion; which whether it be the King's Privy Council, or the King's Learned Council, *i. e.* the Judges of the Law, or who else it be, 'tis not for me to determine; for that every one that is absent is guilty of not holding the Sessions. Or, 2. Such Justice of Peace may be indicted or informed against in the King's Bench for such Default, it being a Neglect of his Office, and fined for the same; especially if those Omissions are frequent and usual. Or, 3. There is great Reason to put him out of the Commission of the Peace for such Neglect. Or, 4. I see no Reason but the Justices of Peace in Sessions may proceed by Information or Indictment against such Defaulter, and proceed to Fine or Imprisonment: And the Reason given by Mr. *Lambard* (*lib.* 4. *p.* 3. *fol.* 383.) I think will not hold here; for what they do in Sessions they do as a Court, and not as particular Persons, as was lately holden in the Case of Sir *Nicholas Stoughton* in the King's Bench, who being a Justice of Peace in *Surry*, was required by the Court of Sessions there to find Sureties for the Good Behaviour, upon the Complaint of one *Gilham*, for threatening a Juror for presenting a Matter there, and for not giving Security was committed: And this was resolved to be well done for the Reason aforesaid; which Reason to my Observation will also hold in Case of any Neglect or Miscarriage against the Court of Sessions, even by a Justice of Peace; or otherwise against any Law whereof they as a Court have Cognizance.

The Jurors not appearing according to their Summons are punishable by Loss of Issues, which usually make Part of the Eitreats of Sessions. As are also the Constables, by Fine to be set on them.

The Justices being met to hold the Sessions, the usual Course is with three Oyes to proclaim the Sessions, and then read the Commission of the Peace; which done, to call the Constables, and out of them to make one or more Juries for Grand Juries, or Juries of Presentment; who being sworn, the Charge is given them to call the Recognizances, especially such as are to prosecute and give Evidence, that so Bills may be drawn and prepared.

pared. To which Purpose an able Clerk is requisite, that so Labour, Time and Charge may not be spent in vain ; which Bills being ready, the Parties bound over for that Purpose are sworn to give Evidence upon the Bills : And the Courſe is to bid the Evidence go with the Jury, where they conſider of the Matter of the Bill, and either find it or not find it, as the Evidence appears to them credible and ſufficient, or otherwiſe, and then they return it ; but it may be very reaſonable, if the Matter be weighty or difficult, and the Jury be not very able, or the Proſecution be too ſlack or over violent, to hear the Evidence given in Court, that ſo the Jury may be the better aſſiſted in doing their Duty.

Whiſt the Juries are gone out of Court, the uſual way is to hear Motions touching Settlements of poor Perſons, and other Things relating thereunto ; and to call Perſons bound over to the Peace or the Good Behaviour : But it may not be beſt to diſcharge them until the End of the Sessions, for fear Perſons may come to prefer Bills againſt them, or to complain of them when the Birds are flown.

And becauſe the Arraignment and Trial of Priſoners is a great Part of the Buſineſs of Sessions, I will take Notice of ſome Parts thereof, and Proceedings thereupon.

Towards the End of the Sessions, when it appears what Bills are come in againſt the Priſoners, the Gaoler being called to ſet his Priſoners to the Bar, and the Crier being called to make a Bar, that is, to diſpoſe of the Company that a Way be made open from the Court to the Priſoners, that the Court, Jury and Priſoners may ſee each other ; one of the Priſoners is called to : *A. B.* hold up thy Hand ; (this is done to notify him to the Court, the Jury and Standers by.) Thou *A. B.* ſandeſt indicted by the Name of *A. B.* of, &c. (Name him as he is named in the Indictment, &c.) for that thou, or that thou with others, &c. (and ſo recite the whole Indictment in *Engliſh* ; which done) How ſayſt thou *A. B.* art thou guilty of this Felony and Burglary, or Felony and Robbery, or Felony and Murder, (as the Caſe is) whereof thou ſandeſt indicted, or not guilty ? If the Priſoner ſay Guilty, then the Confeſſion is recorded, and no more done as to him till Judgment ; but if he ſay Not guilty, then the Clerk ſays, *Culp. priſt.* (*i. e.* Guilty already.) How wilt thou be tried ? It is uſual to ſay, By God and the Country ; but if the Priſoner ſtand mute, and will not plead, 'tis beſt to aſk him three or more Times, and to tell him the Danger of ſtanding Mute, and the Grievouſneſs of the Judgment *de peine fort & dure* : And if yet he will ſtand Mute, nothing more can be done concerning him, but to record it. But if he plead Not guilty, ſo record it ; and in like Manner all the Reſt of the Priſoners. And if two, three or more, they being called to ſeverally, thus ; you *A. B.* hold up your Hand ; you *C. D.* &c. and ſo of the Reſt. Then ſay, you *A. B.* by the Name of *A. B.* of, &c. and you *C. D.* by the Name of, *C. D.* of, &c. and ſo the reſt ; for that you, &c. and ſo recite the Subſtance of the Indictment. Then call to them ſeverally to plead, &c. (The Word *Arraign* cometh from the *French* Word *Arranger, ordine collocare, quia rei ordine vocantur ad Roſtra ſeu Cancellor, quæ nos Barram vocamus*, ſaith *Skinner.*) Which done, the Proſecutors are called on the Recognizances to give Evidence ; then the Jury are called on their Panel, (for a Return cannot be made upon a *Venire facias* made the ſame Sessions, and a Trial had thereupon in the ſame Sessions, as is held 22 *E. 4. Fitz. Coron. p. 44.* and *Stamf. l. 3. c. 5. f. 156.* in caſe of Juſtices of Peace in their Sessions ; much leſs can they nominate or direct the immediate Return of By-ſtanders. But otherwiſe it is in Caſe of the Juſtices of Gaol-delivery : Therefore conſider whether a Trial can be had of a Felon the ſame Sessions he pleads, unleſs he conſents thereunto) thus, You good Men that are returned and impannelled, to try the Iſſue joined between our Sovereign Lord the King and the Priſoners at the Bar, anſwer to your Names. Which done, and they appearing a full Jury, make Proclamation thus : If any Man can inform the King's Attorney, or this Court, of any Treasons, Murders, Felonies, or other Miſdemeanours, againſt *A. B.* &c. the Priſoners at the Bar, let them come forth, for the Priſoners ſtand upon their Deliverance. Then ſay to the Priſoners, You Priſoners at the Bar, the Perſons that you ſhall now hear called, are to paſs upon your ſeveral Lives and Deaths ; (or if it be Petit Larceny, are to paſs on your Trial ;) if you will challenge them, or any of them, you muſt challenge them as they come to the Book to be ſworn, and before they be ſworn. Then call the Foreman of the Jury, and ſay to him, Lay your Hand on the Book, and look upon the Priſoner ; You ſhall well and truly try, and true Deliverance make, between our Sovereign Lord the King and the Priſoner or Priſoners at the Bar, whom you ſhall have in Charge : You ſhall true Verdict give according to your Evidence. So help you God. Then call the Second, and ſwear him in like Manner, and

Arraignment.

Trial the ſame Sessions.

The Clerk ſpeaks to the Jury.

The Proclamation.

The Clerk ſpeaks to the Priſoners.

The Jury called over and ſworn.

The Oath.

The Jury
charged.

and so on to 12 ; and neither more nor less must be sworn. Then count them 12, and say: You good Men that are sworn, you shall understand, that *A. B.* now Prisoner at the Bar, stands indicted, for that he, (or if more than one in one Indictment), that they, &c. And having recited the Indictment say, to which Indictment he hath pleaded Not guilty, and for his Trial hath put himself upon God and the Country, which Country you are ; so that your Charge is to inquire whether he be guilty of the Felony, or Petit Larceny, or Felony and Burglary, whereof he stands indicted, or Not guilty : If you find him guilty, you shall inquire what Goods and Chattels he had at the Time of the said Felony and Petit Larceny committed, or at any Time since : (Or if it be for Felony) then what Goods and Chattels, Lands and Tenements, he had at the Time of the said Felony committed, or at any Time since. If you find him guilty, you shall inquire whether he did fly for it ; if you find he fled for it, you shall inquire what Goods and Chattels he had at the Time of such Flight. If you find him Not guilty, and that he did not fly for it, you shall say so and no more ; and so hear your Evidence. Then call the Witnesses, and swear them one by one thus : The Evidence that you shall give on the Behalf of our Sovereign Lord the King against *A. B.* Prisoner at the Bar, shall be the Truth, the whole Truth, and nothing but the Truth. So help you God. And the Evidence being given, set another Prisoner to the Bar, and say, You shall likewise understand, that *C. D.* stands likewise indicted before you this Time, for that he, &c. (and so recite the Indictment) for which he hath been arraigned, and hath pleaded thereto Not guilty, and for his Trial hath put himself upon God and the Country, which Country you are ; you are therefore to inquire of him as of your first Prisoner, (that is, where the Offence is of the same Degree) ; and so hear your Evidence, &c. After the Evidence given a Bailiff must be sworn to keep the Jury thus, You shall swear, that you shall keep this Jury without Meat, Drink, Fire or Candle ; you shall suffer none to speak to them, neither shall you speak to them your self, but only to ask them whether they are agreed. So help you God.

The Oath of
the Witnesses.

The Oath of
him who keeps
the Jury.

The Jury coming back within the Bar, or near, the Prisoners are brought to the Bar, call the Jury ; they appearing, say, Set *A. B.* to the Bar, who being there, say, Look upon the Prisoner ; how say you, is *A. B.* guilty of the Felony (or as the Case is) whereof he stands indicted, or Not guilty ? If they say Not guilty, bid him down upon his Knees. If they say Guilty, record it, and bid him be taken away. Then say, Gaoler, set *C. D.* to the Bar, &c. and do as before. And when the Verdicts are given, say, hearken to the Verdict as the Court hath recorded it ; you say *A. B.* is not guilty of the Felony whereof he stands indicted ; you say that *C. D.* is guilty of the Felony whereof he stands indicted ; and so onwards for the rest *mutatis mutandis*.

Sentence.

Then make a Proclamation and say, All Manner of Persons keep Silence whilst Sentence is giving, upon Pain of Imprisonment. Then set the first Prisoner to the Bar, and give the Sentence ; and so for the rest.

I have been the more particular herein, to shew the great Care and Solemnity the Law hath in the Trial of Man's Life.

Counsel.

And upon Trials of this Nature Counsel is not to be allowed to the Party, unless he can shew to the Court some Matter of Law, so that it may appear Counsel is necessary : But otherwise the Court is to be of Counsel with the Prisoner, and ought to advise him for his Good, and ought not to take Advantages too strictly against him. The Court may also receive Information from any By-stander, especially a Man of Law, who may offer any Thing, as *amicus Curiae*, relating to the Trial or Manner of it.

Witnesses.

* This is now
altered by the
Statute 1 Ann.
c. 19. that
the Witnesses
must be on
Oath.

No Witnesses are to be produced and examined upon * Oath against the King, but the Prisoner may offer what Witnesses he pleases, and they shall be examined, but not upon Oath ; but ought to be seriously admonished to speak the Truth as if they were upon Oath.

Trial the same
Sessions.

See Roll's 2
Part of A-
bridgment, p.
95.

Although I know it is in many Places used to try a Man for Felony the same Sessions the Indictment is found ; yet it seems to me highly reasonable (if the Prisoner desire it) to be deferred, and shew Cause probable, to defer it ; for that, 1. The Sessions are holden oftner than the Assizes : 2. The speedy Trials seem to be in Favour of the Prisoner : And *Volenti non fit injuria* : 3. If a Traverse upon an Indictment of Nufance be not triable the same Sessions that it is joined, but a Man shall have Time to provide for it ; much more in Matter of Life, where usually the Party is in Prison, and may well be supposed less able to provide for it, and in the Nature of it requires greater Consideration.

Many Things (according to the Rules and Reason of the Common Law) cannot, or ought not, to be done by Justices of the Peace but at their Sessions; for that the Exercising of their great Authority doth require a Court and publick Meeting for the Doing thereof; and the Holding such a Court doth arise out of the Authority given them by their Commission for the due Execution of it: For the Law requires, that Things of great Import be solemnly done, as the Matters of Trial of Offenders.

Many Things there be, that by several Statutes yet in Force cannot be executed but only in the Sessions after *Easter*, or some other particular Sessions; as the Taking the Accounts of the Treasurers for maimed Soldiers and Charitable Uses, and the appointing new Treasurers, by the Statutes of 43 *El.* 3. and 43 *El.* 2. must be done in *Easter* Sessions. And so also must the Rates of Wages by the Statute of 5 *El.* 4. be made and published in *Easter* Sessions yearly, or within six Weeks after; and every Justice of the Peace not present thereat (being not let by Sicknes) shall forfeit 10 *l.* with others of like Nature.

Divers other Things there be that must be done in some Sessions, and not out of the same; as an Apprentice ill used by his Master must be discharged by four Justices of Peace in Sessions under their Hands and Seals; by 5 *El.* 4. *Badgers* must be licensed in open Sessions under the Hands and Seals of three Justices of Peace, *Quorum unus*. Every Person having any Office or Place of Trust of the King's Gift or Grant, shall in the next Sessions after his being admitted into that Office, after receiving of the Sacrament, in open Sessions (between the Hours of nine and twelve in the Morning) prove the Doing thereof by two Witnesses, and take the Oaths prescribed by 1 *El.* 1. and 3 *Jac.* 4. and make a Declaration against Transubstantiation, according to 25 *Car.* 2. And many other Particulars there be of that Nature. *Apprentice.*
Badgers.
Vide chap. 67, supra.

This also I would observe, that the Manner in some Counties is to make Orders in the Chamber after the Adjournment of the Sessions, touching several Matters of great Importance; which is a very ill Usage, and contrary to the Honour and Dignity of the Employment: And such Doings are for the most part to promote some private Design, and to serve Turns and By-ends, but not the Publick, and are neither valid nor safe, should they be complained of. *Private Orders.*

Another Thing censurable in our Justices of Peace is, their over easy Discharging and Setting aside Orders made in open and publick Sessions; whereas be it an Order made by them upon an Appeal from the Order of other Justices, as from the Order of two Justices of Peace in Case of Bastard-Children, by and upon 18 *Eliz.* 2. or be it an Order made upon Appeal from the Order of two Justices upon 14 *Car.* 2. touching Settlements: In these Cases the same nor any other Sessions can repeal these Orders, according to *Pridgeon's Case*. Nay, be it an Order made by themselves, intended to be final and made absolute, without any Time to shew Cause; I see not how another Sessions can repeal it: For such Order is in the Nature of a Judgment on Record, as all Things are that are done in Sessions, and may be reversed by a superior Court, but not by themselves. *Reversing Orders.*

By the Statute of 14 *R.* 2. *cap.* 11. none above the Degree of a Knight shall take the King's Wages for Service at the Sessions, nor above eight Knights at one Time. *Quære*, Whether a Knight shall take Wages, whereas a Banneret shall not, for so is the Original, not a Baronet. *Wages.*

The *Estreats* of Sessions are a great Part of the Justice of Peace his Duty; and they are to be doubled, and one Part thereof unto the Justice's Hands is to be delivered to the Sheriff to levy by them, and thereout to pay the Justices of Peace their Wages by the Hand of the Sheriff, by Indenture between them to be made; and the Justices Names are to be put in those Indentures, that the Sheriff may know whom to pay, and for whom to have Allowance made. 14 *R.* 2. 11. *Estreats.*

The same Sessions may alter their own Orders, but then the first Order must be set aside, and the second entered. 6 *Mod.* 287.

They have Power only to quash or affirm, but not to suspend or supersede an original Order made by two Justices, to remove a poor Person. 2 *Salk.* 472.

See *Chap.* 195. *Tit. Certiorari*, *infra*.

C H A P. CLXXXVI. (a)

*Jurors, and Challenges to them.**Trial by Jurors.*

THIS is that happy Way of Trial, that notwithstanding all Revolutions of Times, hath been continued beyond all Memory to this present Day, the Beginning whereof no History specifies, it being contemporary with the Foundation of this State, and one of the Pillars of it both as to Age and Consequence: That Maxim, *Ad quæstionem facti respondent Juratores*, being as antient and fundamental as that other, *Ad quæstionem Juris respondent Judices*; the one being as liable to be controlled by a Writ of Error as the other by an Attaint, both essential to the Justice of this Nation. And although Jurors are in other Things subject to his Majesty's Judges, yet they are not so in Point of Judgment, which after some Disputes was happily asserted in the Case of the *Habeas Corpora* prosecuted by *Buskel* and others, by a nigh unanimous Opinion of all the Judges.

This Trial is the Birth-right of every Subject of *England*, and is put to him by Way of Question, *How wilt thou be tried?* Which is thought to be so just and equal for him to chuse, that the Waiver of it is revenged with *paine forte & dure*; no Punishment being judged too severe for one that refuseth so just a Trial.

So happy is our Condition, that every *Engliskman* (in Matters of Crime and Forfeitures) passeth a double Jury; neither to my Apprehension doth the Care of the first Inquest differ from the last, but only in Consequence brought on by Custom, the Indictment being as much found to be true by the one as the other.

Challenge.

These Jurors are returned by the Sheriff by Virtue of a Precept to that Purpose, against which at the Common Law both the King and the Party had two lawful Challenges, one peremptory, the other upon Cause shewed.

By the King.

But because Life, Liberty and Estate are all at Stake in Cases of Felony, it is provided by 33 *E. 1.* that the King shall not challenge peremptorily, but must shew his Cause, which shall be inquired and tried, if true, as alledged, and if found otherwise, shall be rejected.

By the Party.

Yet the peremptory Challenge remaineth for the Party, although not so amply as at Common Law, according to which he might challenge thirty-five without Cause shewed, and as many more as he could upon Cause shewn: But now by the Statute of 32 *H. 8. 3.* this peremptory Challenge is reduced to twenty; to challenge peremptorily beyond which Number, is to waive his Trial; and to stand unto which is a great Offence, and grievously punished in our Law, that Person being judged unworthy of Life, whose Innocency is not clear to endure an *Englisk* Trial.

Who good Jurors.

The Jurors ought to be fairly impanelled, and duly returned, by the Sheriff or other sworn Bailiff, and not at the Nomination of the Juror himself, or any other, by 11 *H. 4. 9.* or else the Indictment is void by that Statute. And they are to be *liberi & legales homines*: For first they must be *liberi*, not Villeins born: 2. *Legales*, not convicted or attainted, and so Slaves to Punishment as well as to their own Vices; and an Outlawry in a personal Action seems to be not only a good Challenge, but also good Cause to set aside the Indictment. *Jones Rep. 196.*

* By 2 *H. 5. ft. 2. c. 3. increased to 4 l. per Stat. 27 Eliz. c. 6. and farther increased by later Statutes. Vid. infra. † By Stat. 23 *H. 8. c. 13. Vide infra.**

They must also be sufficient; 1. *Respectu census*, every one must have * forty Shillings of Lands or Tenements by the Year; but for this Cause he must be challenged, or else if the Party omit to challenge him, the Trial is well made by such a Juror. 2. *Respectu rationis*, he must be no Ideot, Lunatick, &c.

And because many Times by such Challenges to Jurors for Want of Freehold upon Trials of Offences in Cities, Beroughs, or Towns corporate, such Trials were deferred; it is † provided, that every Person being the King's natural-born Subject, that useth or enjoyeth the Freedom of such Place, and dwelleth there, having in Moveables and Substance to the Value of 40 *l.* clear, may be admitted on such Trials, except Knights and Esquires.

Medietas Linguae.

There is a Way of Trial also peculiar to Forcigners, called *De medietate linguae*; which ought to consist of six *Englisk* and six Forcigners, if so many be in the Place; if not, then so many as can be found there: But it Matters not whether they be of the same Nation the Prisoner is of, for they may be of another Nation; and the Party must pray it,

it, and shew the Matter to the Justices. Yet where Persons calling themselves *Ægyptians* are to be tried for such their Offence, they are ousted of this Benefit by 1 & 2 P. & M. cap. 4.

It is also a good Challenge to a Juror, that he was one of the *Party's Indictors*, for Indictor: having been of that Mind that the Prisoner was guilty, he shall not be presumed to change his Mind: This is declared by 25 E. 3. 3. to be good Cause of Challenge, for it was so also by the Common Law, and therefore is good Cause of Challenge as well in Felony as Treason.

Many other Causes of Challenge there are, as well for the King as the Party, which you may find very largely and learnedly handled by Justice *Staundeforde* in his Pleas of the Crown, lib. 3. cap. 7. which relate to criminal Matters only; and a most excellent Scheme you may find touching Challenges between Party and Party in my Lord *Coke*, 1 Inst. fol. 156. many whereof may by a discerning Reader be easily adapted to this present Purpose, and therefore I forbear to mention them.

And because Jurors are too apt to be favourable to their Neighbours or Friends, in not presenting Offences, the Statute of 3 H. 7. cap. 1. hath provided, that Justices of Peace may inquire of such *Concealments* by another Jury, and punish them by Amercement by their Discretions; touching which these Things are considerable. Concealments.

1. The Matters which they may be thus punished for the Concealment of, must be such as by the Commission of the Peace or Statutes may be inquired of and presented before such Justices.

2. Where Inquests have been taken before Coroners, or some particular Justices out of Sessions, yet the Justices of Peace may inquire thereof, for the Words are Concealments of Inquests taken afore them or afore others. The like seems to me of Inquests in Leets or the Sheriff's Turn, in Matters whereof the Justices of Peace have also Cognisance.

3. Every Juror that shall be impanelled to inquire of such Concealments must have 40 s. *per Annum* of Lands or Tenements.

4. There must be Complaint before them made by Bill or Bills of such Concealment, if the Word Bill or Bills in that Act do refer unto the Proceedings against such Concealments; or otherwise such Concealments must be in Matters that have been complained of by Bill or Bills, and not for not presenting Things not so first complained of, but in not finding Bills drawn up and presented to them to find; for the Words are doubtful.

Such Inquiry or Concealment must be made within the Year after such Concealment.

6. Such Amercement must be reasonable, although directed to be by Discretion, which must be *sana & legalis*; and see *F. N. B.* 175. in the Writ *De moderata misericordia*.

7. It seemeth reasonable the Inquest ought to consist of as many more as the first Inquest did; for this is a Way of Attainting a Jury which is *crimini accusare, vel suspitione criminis attingere*.

8. Notwithstanding any trivial Complaint, the Justices of Peace may take or not take such Inquests as they see Cause; for it is left to their Discretion by the Statute.

9. Such Amercement on Jurors for Concealment must be set in *plein* Sessions, not *plain* (as I take it) as the printed Book is.

If any Jurors shall, either upon an Issue of a Traverse in any Thing not Felony, or which is Felony, doubt upon the Evidence what the Law is, they may (as it seems) give a special Verdict in Sessions as in the Courts of Gaol-Delivery or Assises, and that by the Common Law before the Statute of *West.* 2. cap. 3. for that Statute is but declaratory of the Common Law. *Co.* 2 Inst. 425. Special Verdict.

Jurors, by the 4 *W. & M.* cap. 24. sect. 15. to be returned for Trials of Issues joined in the Courts of King's Bench, &c. or before Justices of Assise, &c. or Quarter-Sessions in any County of *England*, shall have within the County 10 l. by the Year of Freehold or Copyhold, or Ancient Demesne, or in Rents in Fee-simple, Fee-tail, or for Life; and in every County of *Wales* every such Juror shall have 6 l. 4 W. & M. c. 24. §. 15.

This Act was continued by 7 & 8 *W.* 3. cap. 32. and afterwards continued along with the said Act of 7 & 8 *W.* 3. which see in the next Chapter.

By 3 *Geo.* 2. cap. 25. sect. 18. it is enacted, That any Person having Land in his own Right of the yearly Value of 20 l. over and above the reserved Rent, being held by Lease for the absolute Term of 500 Years or more, or for 99 Years, or any other Term determinable on one or more Lives, may be summoned to serve on Juries as a Freeholder. 3 Geo. 2. c. 25. §. 18.

By Statute 3 & 4 *Ann.* cap. 18. Justices at *Midsummer* Sessions yearly, are to issue out Warrants under the Hands and Seals of two or more of them, to the High Constables of each 3 & 4 Ann. c. 18. §. 5.

* See here the next Chapter.

each Hundred, requiring them to issue out their Precepts to the Petty Constables, &c. to meet them within fourteen Days after the Date of such Precept, to prepare a List of Freeholders * according to the Statute 7 & 8 W. 3. cap. 32. which Lists they must sign and return the first Day of *Michaelmas* Sessions.

Any Head Constable failing to issue such Precept, &c. shall forfeit 10 *l.* and the Petty Constables not meeting and returning the Lists, forfeit 5 *l.* And every such high Constable, Constable and Tithingman so offending, shall be prosecuted at the Assises, Sessions of *Oyer and Terminer*, or general Gaol-Delivery, or Sessions of the Peace. And the Justices of Peace at the Quarter-Sessions after the 24th of *June* yearly, shall cause the said several Acts (*viz.* 4 W. & M. cap. 24. and 7 & 8 W. 3. cap. 32.) to be read in Court.

3 Geo. 2. c. 25.
§. 2. made perpetual
6 Geo. 2. c. 37.

By Statute 3 *Geo.* 2. cap. 25. it is enacted, That if any Persons required by the Statute 7 & 8 W. 3. cap. 32. and 3 & 4 *Ann.* cap. 18. to give in, or by this Act to make up true Lists of the Names of Persons qualified to serve on Juries, shall wilfully omit out of any List, any Name which ought to be inserted, or take Money for omitting or inserting any Person, he shall forfeit 20 *l.* on Conviction before one or more Justices; one Half to the Informer, and the other to the Poor of the Parish; and if not paid in five Days shall be levied by Distress, by Warrant from one Justice of Peace.

Ib. §. 7.

It shall be sufficient for any Constables, &c. after they have completed the Lists for their Precincts, according to 7 & 8 W. 3. cap. 32. and 3 & 4 *Ann.* cap. 18. and this Act, to subscribe the same in the Presence of one Justice for each County, &c. and at the same Time to attest the Truth of such Lists upon Oath, to the best of their Knowledge or Belief; and the Lists shall (being signed by the Justices) be delivered by the Constables, &c. to the High Constables, who are to deliver in such Lists to the Quarter-Sessions, attesting upon Oath the Receipt of such Lists from the Constables, &c. and that no Alteration hath been made since their Receipt thereof.

Ib. §. 19.

Jurors for the Sessions of the Peace, &c. to be held for the City of *London*, shall be House-keepers, and have Lands, &c. or personal Estate to the Value of 100 *l.*

Ib. §. 20.

The Sheriff, &c. shall not return any Person to serve on a Jury for the Trial of any Capital Offence, who would not be qualified to serve as a Juror in Civil Causes.

Ib. §. 21.

This Act to be read at every *Midsummer* Quarter-Sessions.

C H A P. CLXXXVII. (a)

Trial.

Scotland.
7 Jac. 1. c. 1.
§. 3. reviewed
by 13 & 14
Car. 2. c. 22.
for Suppression
of Mofs.
Troopers fly-
ing out of Eng-
land into Scot-
land, or out of
Scotland into
England.
Quere, How
far it is in
Force since the
Union.
County.

IF any commit in *Scotland* an Offence, which by the Laws of *England* is or shall be declared or adjudged to be Petty Treason, Murder, Manslaughter, felonious Burning of Houses and Corn, Burglary, Robbing of Houses by Day, Robbery, Theft or Rape, and shall fly into *England*, and be apprehended in the Counties of *Northumberland*, *Cumberland*, *Westmorland*, or within the Parts or Places lying on the North-side of the River *Tine* called *Bodlingtonshire*, *Northamptonshire* and *Islandshire*, the Town and County of *Newcastle upon Tine*, and Town of *Berwick upon Tweed*, or Liberties thereof: It shall and may be lawful for the Justices of Peace in their general Quarter-Sessions, or any four of them, upon due Examination and pregnant Proofs, by Warrant under their Hands and Seals to remand and send such Offenders into *Scotland*, there to receive Trial, &c.

The Trial of an Offender ought regularly to be in that County where the Offence was committed; unless any Statute doth otherwise provide, as some do, *viz.* 1 & 2 *Ph.* & *M.* cap. 4. and divers others. But if one steal Goods in the County of *A.* and carry them with him into the County of *B.* and be there apprehended, he may be tried and punished for the same in the County of *B.* for in this Case *Facinus sequitur personam.* 1 *Jac.* 11. Bigamy shall be tried where the Party is apprehended.

The same
Sessions.

The Trial of Felonies, and of Things and Offences, for which a Person is notailable, or the Party cannot get Bail, but lies in Prison, ought to be as speedy as may be *in favorem libertatis*: And therefore it is usual to indict them and try them at the same Sessions. See before in *Sessions*. But in other Causes of Indictment for Breach of Penal Statutes, or for Nuisances, or for other Misdemeanors not made Felony, they cannot try the Cause the

same Sessions the Indictment is, as was resolved in *Bampfled's Case*, *Hill. 11 Car. i. Cro.* where a Person was indicted of Extortion, and proceeded against to Conviction the same Sessions, and adjudged not good: And so was also resolved *Trin. 23 Car. i.* upon an Indictment for Words spoken of the Queen Mother: So likewise of Justices of *Oyer and Terminer*. But otherwise it is of Justices of Gaol-Delivery; and by the Case of *22 E. 4. Fitz. Coron. 44.* it appeareth, that the Justices of Peace in their Sessions cannot proceed in a Cause criminal the same Sessions, especially where the Party requires Time to be advised.

By the Statute *22 H. 8. 14.* made perpetual by *32 H. 8.* the Trial against the Party indicted shall be in the County where he is indicted for Murder or Felony, notwithstanding any foreign Plea. *Foreign Plea.*

All Constables, &c. of Towns in each County, shall at the general Quarter-Sessions of the Peace yearly, in the Week after the Feast of *Saint Michael*, give a List of the Names and Abodes of all Persons, within the respective Places for which they serve, qualified to serve on Juries, between the Age of twenty-one and seventy Years, which List they shall deliver to the Justices, who shall cause the Clerk of the Peace to deliver a Duplicate thereof to the Sheriff of the County before the first of *January* next following, to be enter'd among the Records of the Sessions. And no Sheriff shall impanel any Person to serve in any Jury at the Assises, Gaol-Delivery or Sessions of the Peace, who is not named in the List. Constable failing to make such Return to forfeit *5 l.* to the King. *Juries.*
7 & 8 W. 3. c. 32. continued for 11 Years by 10 Ann. c. 14. and farther continued for 7 Years by 9 Geo. 1. c. 8. and referred to by 3 Geo. 2. c. 25. which last Act is made perpetual by 6 Geo. 2. c. 37.

The Justices Return shall excuse the Sheriff if he summons one not qualified. And in an Action brought thereon the Sheriff may plead the General Issue, and give this Act in Evidence, and upon Nonsuit, Discontinuance or a Verdict for the Defendant, the Plaintiff shall pay treble Costs. *Justices Excuse.*

The Inhabitants of *Westminster* shall be exempted from serving in any Jury at the Sessions of the Peace for the County of *Middlesex*. *Westminster exempted from Middlesex.*

This Act shall not extend to the City of *London*, nor to any other County of City or Town within this Realm; nor to any Corporation that hath Power by Charter to hold Sessions of Gaol-Delivery, or of the Peace. *Not to extend to London, &c.*

See 3 Geo. 2. cap. 25. here, in the preceding Chapter.

C H A P. CLXXXVIII. (a)

Judgment.

A Woman convicted of taking Goods above the Value of *12 d.* and under the Value of *10 s.* or as Accessary to any such Offence, for which a Man might have his Clergy, shall for the first Offence be branded and marked in the Hand, upon the Brawn of the left Thumb, with an hot burning Iron, with a T upon the Iron, openly in Court; and be farther punished by Whipping, Imprisonment, Stocking, or sending to the House of Correction, in such Manner and for such Time (not exceeding one Year) as the Judge shall think fit, and then be delivered out of Prison. *Woman.*
21 Jac. 1. 6.

But if she offend again, she is to have Judgment of Death, as she was to have had at Common Law.

For the Judgment in Treason and Petty Treason, the Justices not meddling therewith, I refer you to the Books, and especially to Mr. Justice *Staundeforde*, who hath written learnedly and largely of the Pleas of the Crown, *lib. 3. c. 19.* and also *Coke, Tit. Pleas of the Crown.*

In Case of Felony the Judgment is usually pronounced thus: You shall be carried back to the Prison from whence you came, and from thence to the Place of Execution, and there be hanged by the Neck until you be dead, and the Lord have Mercy upon your Soul. *Felon.*

In Cases of Petit Larceny the Justices of Peace may award the Party either to be whipped at the Cart's Tail, or at the Whipping-Post, as they shall judge convenient. But Whipping *Petit Larceny.*

ping is grown the usual and ordinary Punishment, although formerly it was uncertain, and punished by Pillory or cutting off the Ears. *Co. 4 Inst. 218.*

Altering the Judgment.

By many Statutes peculiar Punishments are appointed for several Offences, as *Pillory, Stocks, Imprisonment, Binding to the Good Behaviour, &c.* But in all these Cases no Room is left for the Justices Discretion, for they ought to give Judgment, and to inflict the Punishment in all the Circumstances thereof as such Statutes do direct. For if the King cannot alter the Manner of Execution, as to direct a Person to be beheaded that hath Judgment to be hanged; much less can an inferior Court alter a Judgment and Sentence directed by Act of Parliament. And therefore the Course taken up in some Counties, to admit the Party indicted for Breach of Penal Laws to submit with a Protestation of Not guilty, and therefore forbear to inflict the Penalty imposed, and so mitigate the Penalty, is an Offence for which they are punishable: For thereby, 1. The Sentence imposed by Act of Parliament is quite altered. 2. The Mischiefs intended to be remedied go unredressed. 3. Many Times the Poor, who are by Direction of several Acts to have the Penalty, are thereof defrauded.

C H A P. CLXXXIX. (a)

How Justices of Peace may defend themselves against Suits.

General Issue.
7 Jac. 1. 12.

IF any Action, Bill, Complaint, or Suit upon the Case, Trespass, Battery, or False Imprisonment, shall be brought any where against a Justice of Peace, &c. for any Thing done *virtute officii*, it shall be lawful for them, or any other that act in their Aid, Assistance or Command, to plead the General Issue, and to give the Special Matter in Evidence. If the Verdict pass for the Defendant, or the Plaintiff be Nonsuit or discontinued, the Judge shall allow double Costs.

Costs.

County.

21 Jac. 1. 12.

Which Statute was to continue but for seven Years, but is made perpetual by 21 Jac. 1. 12. and it is thereby enacted, That all Actions upon that Statute shall be laid in the proper County where the Fact was done; and if upon the Trial the Plaintiff shall not prove the Fact done in that County where the Action is laid, the Jury shall find the Defendant Not guilty: And in case of such Verdict, Nonsuit or Discontinuance, the Defendant shall have his double Costs.

Constable.

A Constable may make a Deputy, and may plead the General Issue, and thereby take Benefit of 7 Jac. 1. 5. as was resolved *Mich. 13 Jac. B. R. Phillips contra Winckcombe, Moor's Rep. p. 845. Bulstr. Part 3. p. 77.**

* Vide supra
c. 1.

C H A P. CXC. (a)

Clergy.

What.

WHAT Clergy is, with the Beginning and Use thereof, see *Hobart Rep. Searle and William's Case, p. 288.*

By Common Law.

By the Common Law one committing Sacrilege shall not have his Clergy: *Frustra enim petit auxilium Ecclesie, qui peccat contra Ecclesiam.*

Also for High Treason no Clergy was allowed at Common Law. 1 *Inst. 150, 336.* But in all other Cases the Offender might; and some say in all Treasons but those against the King's Person.

By the Common Law every Person in Holy Orders might have the Benefit of the Clergy, and so might others also, by 4 *H. 7. 13.* But as to all, except those in Holy Orders, it is restrained to *once* by that Statute: And every Person so convicted for * *Murder* to be marked with an M. in the Brawn of the left Thumb, and for other Felony with a T. and these Marks to be made by the Gaoler in open Court before the Judge.

* Formerly the Clergy was allowed for Murder.

By the Statute of 28 *H. 8. cap. 1.* Persons in Holy Orders shall be burnt in the Hand, and used as others be. See 32 *H. 8. cap. 3.*

And by the Statute of 23 H. 8. 1. 28 H. 8. 1. 32 H. 8. 3. Clergy is taken away in these Cafes. *Where taken away.*

1. Persons found Guilty after the Laws of the Land for *Petit Treason*.
 2. For wilful Murder of Malice prepensed or *Poifoning*. 1 E. 6. 12.
 3. Or for *Robbing of Churches* or Chapels, or other Holy Places. Ibid.
 4. *Robbing* any Persons in their * Dwelling-houfe, or Dwelling-place, or any Parcel thereof, the Owner or Dweller of the fame Houfe, his Wife, Children, or Servants then being within the fame, or within the Precinct thereof, and put in Fear or Dread by it, or whether they be waking or fleeping. Ibid.
- Value of 5 s. tho' no Perfon is in it.* 3 & 4 W. & M.
5. Or for robbing any Perfon in or near the *Highway*. 1 E. 6. 12.
 6. Or for wilful *Burning any Dwelling-houfe*, or *Barn* wherein Grain or Corn fhall happen to be.
 7. Any found guilty of Abetment, Procuring, Helping, Maintaining, or Counselling to fuch Offences, by 25 H. 8. 5. and 5 El. 17. 4 & 5 P. & M. 4.
 8. No Perfon convicted of *Buggery* fhall have his Clergy.
 9. Or of *breaking any Houfe by Day or by Night*, and any Perfon being therein, and put to Fear or Dread. 1 E. 6. 12.
 10. Or for the felonious Stealing of *Horfes*, *Geldings*, or *Mares*. 1 E. 6. 12.
- But by 1 E. 6. 12. Clergy was allowed in all other Cafes of Felony; yet fince that Time Clergy hath been taken away from feveral Persons; as,
11. Such as fhall *command, hire, or counfel another* to commit or do any *Petit Treason*, or *Murder*, or *Robbery* in any Dwelling-Houfe or Houfes; or to commit or do any Robbery in or near any *Highway* in the Realm of *England*, or any the Queen's Dominions; or to commit or do any Robbery in the Marches of *England* againft *Scotland*; or to burn any Houfe or Barn having Corn in it. *Accessaries.*
4 & 5 P. & M. c. 4.
3 & 4 W. & M.
 12. If any rob any Perfon in any *Booth or Tent*, in any Fair or Market, the Owner, his Wife, Children, or Servant then being therein. 8 E. 6. 11.
 13. All Persons being transported into *England* called *Egyptians*, ftaying here above a Month. 1 & 2 P. & M. 13.
 14. Any Perfon feen or found in the Company or Fellowship of Vagabonds, calling themfelves, or called *Egyptians*, or counterfeiting or difguifing themfelves by their Apparel, Speech, or Behaviour like them, and fo remaining a Month at one Time or feveral Times. 5 E. 1. 4. 20.
5 E. 20.
 15. All Persons convicted of the felonious Taking away of Money, Goods or Chattels, to 5 s. or upwards, in any Dwelling-Houfe, or Part thereof, or any Out-Houfe belonging to and ufed with any Dwelling-Houfe, although no Perfon be in the Houfe. 39 El. 15.
3 & 4 W. & M.
 16. Nor for the felonious Taking of any Money, Goods, or Chattels from another Perfon *privily*. 8 El. 4.
 17. Or he that doth ftab or thruft any Perfon that hath not a Weapon drawn, or that hath not firft ftricken him, if the Party die within fix Months. 1 Jac. 1. 8.
 18. Popifh Recufants or Schifmaticks commanded to abjure, and do not depart, or do return again. 25 El. 1. & 2.
 19. Or any Persons receiving, &c. a Jefuit, Seminary Prieft, or other Prieft born in *England*, ordained by any Authority from *Rome*. 27 El. 2.
 20. Or any convicted or attainted for any Offence made Felony by 3 H. 7. 2. *viz.* 3 H. 7. 2. taking any Maid, Widow or Wife of Subftance in Lands or Goods, or after Marrying her or Affenting to it, or Defiling and Receiving her, knowing it.
 21. After Conviction of Forgery the fecond Time committing that Offence. 5 El. 14.
 22. Nor any committing Rape or Burglary.
 23. Exercifing Conjuraton or Invocation, whereby any Perfon is killed or lamed. 18 El. 7.
 24. Nor a Soldier departing without Licenfe from his Captain. 1 Jac. 12.
2 Ed. 6. 2.
 25. Nor a wandering Solder or Marriner that offendeth againft 39 El. 17. 39 El. 17.
 26. Or fuch as steal Cloth from the Tenters. 22 Car. 2.
 27. Nor fuch as imbezil his Majesty's Stores. 22 Car. 2.
 28. Nor fuch as maliciously maim any Perfon. And by many other Statutes. 22 & 23 Car. 2.
18 El. 7.

Every Perfon having his Clergy fhall be forthwith delivered out of Prifon, and not to the Ordinary; yet the Juftices may detain him in Prifon as a further Punifhment for any Time not exceeding one Year, and he fhall (notwithftanding his Admiffion to his Clergy) anfwer any other Offences.

Benefit of
Clergy.
3 & 4 W. &
M c 9.

A Transcript certified by the Clerk of the Crown, of the Peace, or of the Assizes, concerning the Tenor of the Indictment, and of the Person's having had the Benefit of his Clergy or of this Act, to the Judges or Justices in any other County, shall be a sufficient Proof that such a Person hath had the Benefit of his Clergy, or of this Act.

On this Head of Clergy, see 2 Hawk. P. C. Chap. 33.

C H A P. CXCI. (a)

Informations. Actions Popular.

Kinds.

THE Civil Law hath two Sorts of Informers; 1. *Voluntarius*, as our common Informer. 2. *Necessarius, qui invitatus facit propter publici officii necessitatem*; as with us the King's Attorney, the Clerk of the Crown in the King's Bench, who is *Capitalis Coronator Domini Regis*, which they call *Delator stationarius, fscalis*, which with us is Honorary.

The *Delator voluntarius* is with us more necessary than creditable; for great have been the Complaints against them, and many and severe Laws have been made against them; yet such as govern themselves well are to be encouraged as Furtherers of the publick Good.

How Informa-
tions may be
exhibited,
when, and by
whom.
18 El. 5.
19 El. 5.

1. Every Informer shall exhibit his Information in Person, or by Attorney, and not by Deputy.

2. None shall be admitted to pursue against any Person upon any Penal Statute, but by Information or Original Action, and not otherwise.

3. Upon every such Information a Note shall be made of the Day, Month and Year of the Exhibiting thereof into any Office, or to any Officer, without antedating thereof, and to be accounted of Record from that Time and not before.

Process.

4. No Process shall issue until the Information be exhibited in Form aforefaid; and upon such Process shall be indorsed as well the Person's Name that pursueth, as the Statute on which it is brought.

5. The Clerk that maketh out Process contrariwise shall forfeit 40 s. a Moiety to the Queen, the other Moiety to the Party against which such Process is made, to be recovered in any Court of Record, &c.

6. No Informer shall agree with the Offender before Plea pleaded, nor after, without Leave from the Court.

Composition.

7. Every Person (except Clerks in Court) offending against the Act, or making any Composition, or taking any Money, Reward or Promise of Reward, without Consent of some of the King's Courts at *Westminster*, the Party convicted shall stand two Hours in the Pillory in some Market next adjoining, and be disabled to be an Informer, and forfeit 10 l. a Moiety to the Queen, and the other Moiety to the Party grieved, to be recovered in any Court of Record.

8. If any Informer shall willingly delay his Suit, or shall discontinue, or be nonsuited, or a Verdict pass against him, and Judgment, he shall pay the Defendant his Costs, and have usual Executions.

But that Act shall not extend,

1. To Officers of Record, who in Respect of their Offices have used to exhibit Informations.

2. Nor to Informations upon the Statutes of Maintenance, Champerty, buying of Titles, or Embracery, as to the Parties grieved.

3. Nor to Persons to whom any Penalty or Forfeiture is given certainly, and not generally to him that will sue.

Justices of Peace in their Sessions have Authority to hear and determine Offences against that Act. This Act was made temporary, but is made perpetual by 27 El. 10.

Who may in-
form
31 El. 5.
County.

No Person shall be admitted to be an Informer, that by any of the Queen's Courts is disabled for any Misdemeanor.

In every Informer's Declaration the County shall be alledged wherè the Offence was done; and the Defendant may traverse the County, except in *Champerty*, *Buying of Titles*, or *Extortion*, and Offences against 1 El. 11. & 1 El. 10. for *Tunnage and Poundage*, or for *Ujury*, or for *Regrating*, *Forestalling*, or *Ingressing*, where the Penalty exceeds 20 l.

Any Suit for any Offence whereof the Forfeiture is given to the King alone, shall be brought within *two Years after the Offence*, and not after. And where the Forfeiture is given to the King and any other, within *one Year after the Offence*. Except upon the Statute of Tallage by the Party that will sue, or in his Default within two Years after that by the Queen. And any Suit brought otherwise is void.

All Suits for using any *unlawful Game*, or not using any lawful Game, or not having Bows or Arrows, or using a Trade not having been an *Apprentice*, shall be heard and determined in the Sessions or Assizes of the County, &c. and not out of it.

If any Person sue any Action Popular, and the Defendant plead a Recovery in an Action Popular in Bar, or that before that Time he had barred the Plaintiff in such Action, the Plaintiff may aver such Recovery or Bar was by *Covin*; and upon such Covin found the Plaintiff shall have Judgment, and the Defendant so attainted or condemned of Covin shall have Imprisonment for two Years by Process of *Capias* or Outlawry, as well at the King's Suit as at any other; and the Release of the Party shall not avail the Defendant.

All Offences to be committed against any penal Statute, for which any Informer or Promoter may ground any Suit, &c. before Justices of Assize, *Nisi Prius*, Gaol-delivery, *Oyer and Terminer*, or of the Peace in their General Sessions, shall be commenced, sued, prosecuted, tried, recovered and determined, by Action, Bill, Plaint, Information, or Indictment, before the Justices of Assize, &c. or before the Justices of Peace of the County, City, Borough, or Town Corporate and Liberty in any the Courts, Judicatures or Liberties, at the Choice of the Prosecutor, and not elsewhere.

Like Process in every Popular Action, Bill, Plaint, Information, or Suit to be prosecuted according to the Purport of this Act, be had and awarded as in Actions of Trespass *vi & armis* at the Common Law.

Excepted, &c. all Offences for Recusancy against those that shall not frequent the Church, for *Champerty*, *Maintenance*, buying of Titles, or for transporting of Gold or Silver, Ordnance, Powder, Shot, Munition, Wool, Woolfels or Leather, or for Tunnage, Poundage, Impost, Prifage, Subsidy, &c.

No Officer shall file any Information, Bill or Plaint, Count or Declaration, grounded upon any penal Statute, which by that Act are to be tried in the proper Counties, until the Informer hath made Oath before some Judge of the Court, that the Offences were not committed in other Counties than where the Information, &c. is laid.

The Defendant to any Information, &c. to be exhibited on the Behalf of the King, or by any other, or on the Behalf of the King and any other, may plead the General Issue, and give the special Matter in Evidence.

Now touching Informations take these Rules.

1. One Person cannot exhibit two Informations in the same or in several Courts; if he do, the Defendant may plead the first in Bar of the Second.

2. If two Informers exhibit Informations against the same Person, for the same Offence on the same Day, they are both void, and they may be pleaded the one in Bar of the other, for as much as there is no Right of Priority.

3. Informations and Suits on penal Statutes are *stricti juris*, and excepted out of all the Statutes of Jeofails.

4. The Statute of 21 Jac. 4. gives no Jurisdiction to Justices of Peace where they had none before; but only appoints, that where Informations might have been brought in the Courts at *Westminster*, and before Justices of Peace, they shall now be brought before Justices of Peace only. *Farington's Case*, Trin. 4 Car. 1. Cro. *Green's Case*, Mich. 4 Car. 1. Cro.

5. The Statute of 31 El. 5. extends not to an Action or Information by the Party grieved; for he may bring it in any County. *Allen's Case*, Mich. 40. El. Cro. 645.

6. If Jurisdiction be given to the Sessions to hear and determine, and doth not say by Information, this shall be by Indictment and not Information. *Jones Rep. p. 133.*

7. Where the Suit is directed to be in any Court of Record, or in any the King's Courts of Record, that is intended the Courts at *Westminster*. *Jones Rep. 193.*

8. Where an Information is *tam pro Dom' Rege quam pro seipso*, if the Informer die, yet the Attorney General may prosecute for the King; and altho' the Use is that the Attorney General only join the Issue, yet he cannot hinder the Prosecutor for his Part. 3 Inst. cap. Informers.

Informations.

4 & 5 W. c. 18. **T**HE Clerk of the Crown in the King's Bench shall not without express Order of that Court, exhibit, receive, or file any Information, for any *Trespasses, Battery, or other Misdemeanors*; or issue out any *Process* thereon before he shall have a * Recognizance from the Prosecutor in the Sum of 20 *l.* effectually to prosecute the Information, and to abide the Order of the Court; and the said Clerk shall record and file a *Memorandum* thereof in some publick Place in his Office, for all Persons to see without any Fee.

* Which the Clerk of the Crown, or any Justice of the Peace of the County where the Cause of the Information doth arise, may take.

If the Informer shall delay the Prosecution, or a Verdict pass against him, the Court shall award Costs, unless the Judge shall certify on the Record that there was a reasonable Cause for the Information.

This Act doth not extend to any other Informations than such as are exhibited in the Name of the King, Coroner, or Attorney in the Court of King's Bench, called the Master of the Crown-Office.

1 Salk. 376.

Upon a Motion to file an Information in Nature of a *Quo Warranto* against the Mayor and Aldermen of *Hertford*, to shew Cause by what Authority they admitted Persons to be Freemen of that Corporation, who did not dwell therein; it was granted, but it was afterwards moved to set aside the Process, because no Recognizance was given pursuant to the said Statute above mentioned; and the Question was, whether this Matter was within the Statute, because it was to try a Right, when the Statute mentions *Batteries, Trespasses, and other Misdemeanors*, which must be intended Misdemeanors of an inferior Nature, but adjudged that this Power usurped by the Mayor, &c. was a *Misdemeanor*, and the Information for it might be vexatious, for the Process was set aside, but the Information stood.

4 & 5 W. c. 18.

Upon Informations, for *Trespasses, Batteries, and other Misdemeanors*, one Justice may take a Recognizance of 20 *l.* of the Informer, that he will prosecute the Cause with Effect, and abide such Order as the Court shall direct.

See 2 Hawk. P. C. Chap. 26. of Information.

C H A P. CXCII. (a)

Mayor or Magistrate, where he may act as a Justice of Peace by some particular Statutes.

Customs.

14 Car. 2.
c. 11. Parl. 2.

THE next Magistrate may commit to Prison until next Sessions such as shall abuse an Officer of the Customs.

Preachers.

14 Car. 2.
c. 14. Parl. 1.

Mayor or Chief Magistrate of any City or Town Corporate may commit any preaching a Sermon or Lecture disabled by the Act so to do.

Custom.

12 Car. 2.
c. 19.

The Chief Magistrate of the Port or Place next adjoining may (upon Complaint) grant a Warrant to search for uncustomed Goods.

Alchouses.

3 Car. 1. c. 3.

Mayors and Head Officers may convict unlicensed Alehouse-keepers, and levy the Penalties.

Sunday.

3 Car. 1. c. 1.

The Mayor or Head Officer may put in Execution the Statute of 3 *Car. 1. cap. 1.* for Breach of Sunday.

Swearing.

1 Jac. 9.
21 Jac. c. 20.

The Mayor, &c. may punish Offenders for profane Swearing or Cursing.

Armour.

2 E. 3. 3.

Mayor and Bailiffs of Cities and Boroughs may execute the Statute against riding armed.

Beer.

23 H. 8. 4.

Mayors, &c. in Corporations may assess the Prices of Ale and Beer.

Games.

23 H. 3. 9.

Mayors, &c. may commit Persons they find playing at unlawful Games.

Weights.

11 H. 7. c. 4.

Mayors, &c. may punish Offenders touching false Weights.

Mayors and Head Officers may hear and determine Matters touching Servants and Apprentices.	<i>Servants.</i> 5 El. 4.
The Mayor and Head Officers may inquire of Offences against	1 El. 2.
Mayors, &c. may make a Tax for Relief of Persons and Places visited with the Plague.	<i>Plague.</i> 1 Jac. 31.
Mayors, &c. and Head Officers may inspect and assess the Assize of Talewood, Billet and Faggot.	<i>Wood.</i> 43 El. 14.
Mayors, &c. may punish the Offenders against	<i>Orchards.</i> 43 El. 7.
Mayors, Bailiffs, &c. may inquire of Offences of Artificers and Victuallers.	<i>Artificers.</i> 2 E. 6. 15.
Mayors, Bailiffs, and Head Officers may assess the Prices of Beer Vessels.	<i>Vessels.</i> 8 El. 9. 23 H. 8. 4.
Mayors, Bailiffs and Governors of Cities, Towns and Markets, may search and gauge all Vessels for Salmon, Herrings and Eels.	<i>Vessels.</i> 11 H. 7. 23. 22 E. 4. 2.
Mayors, Bailiffs and Ministers of the Port, &c. may arrest Soldiers departing without Licence.	<i>Soldiers.</i> 18 H. 6. 19.
Mayors, Bailiffs, &c. may hear and determine Matters touching Leather, and examine, &c.	<i>Leather.</i> 1 Jac. 1. 27.

And see the Statutes under their several Heads supra.

C H A P. CXCIII.

Process.

The Forms of Process upon Indictment of Trespass, which also the Justices of Peace out of their Sessions may in some few Cases make out against Offenders.

NOTE, That as the Authority of making Process upon Indictments is given by express Words in the Commission to the Justices of Peace in their Sessions; so it is given by express Words in some Statutes to the Justices of the Peace (yea to one Justice of the Peace) out of their Sessions, to make out Process upon Indictments found (before them) against Offenders, or upon Information against them, as if they were indicted of Trespass in Sessions, as you may see here Tit. *Forcible Entry*, and Tit. *Sheriffs, antea*.

Also in other Cases, and by some other Statutes, this Authority of making out Process (against Offenders) by the Justices of Peace out of their Sessions is implied of Necessity: ^{Lamb. 317.} 5⁰¹. As where any Statute doth give Power to the Justices or Justice of Peace out of their Sessions to inquire, hear and determine, (as *hic* Tit. *Riots*, Tit. *Transportation*, Tit. *Tyle*, and Tit. *Weights*;) in these and in all other such Cases, where the Justices may inquire, hear and determine, there after Indictment or Presentment of the Offence, the said Justices may make out Process against such Offenders, to cause them to come and answer; for unless the Offenders do come in, either *gratis* or by Process, the Justices cannot proceed to hear and determine. Again, in the former Cases of Transportation, Tyle and Weights, as also in all other Cases where any Statute doth give Power to the Justices of Peace out of their Sessions to hear and determine, either upon the Confession of the Offenders, or upon Examination of the Witnesses, (whereof see *antea*, Tit. *Hear and Determine*, &c. and see 5 E. 6. 14. against Foretallers) in all such Cases it seemeth the Justices of Peace may grant out their Process or Warrant against such Offenders, to appear before them, to answer to their said Offences: And thereupon may proceed to examine, hear and determine the Offence, as being convicted thereof upon such Confession or Examination, without any Indictment or Process.

(a) The Difference between Process and the Precept or Warrant of the Justices of Peace, seems to be this:

The Precept or Warrant of the Justice is only to attach and convene the Party before any Indictment or Conviction, and may be made either in the Name of the King or of the Justice, as is before shewed.

Process is always in the Name of the King, and usually after an Indictment found, or after other Conviction.

Now these Processes seem to be as followeth.

27 El. 12. **T**HE Justices of Peace for the Offences mentioned in 27 *El.* 12. for Sheriffs, &c. not taking the Oaths upon Conviction, may award Execution for the Forfeitures by *Fi. fa.* Attachment, *Capias*, or Extent.

4 & 5 P. & M. c. 3. Process upon 4 & 5 *P. & M.* 3. touching Soldiers, &c. shall be as upon Indictments of Trespafs at Common Law.

1 E. 6. 1. The Justices of Peace before whom any Person shall be indicted for depraving or speaking irreverently of the Sacrament contrary to 1 *E. 6.* 1. may award two *Capias* and an Exigent, as well into the County where the Party is indicted, as into any other County.

1 *Venire fac.* (d) First, If the Offender be absent, a *Venire facias* shall be awarded by the Justice or Justices of the Peace under his or their own *Teste*. And if thereupon the Offender be returned sufficient, (and maketh a Default) then *Distringas* is awarded, which *Distringas* shall go forth *infinite* till the Offender come in. But if a *Nihil habet*, &c. be at the first returned, then after the *Venire facias* a *Capias*, then an *Alias*, and after a *Pluries*, shall go forth, and after that an *Exigent*, till the Party be taken, or yield himself, or else be outlawed.

2. *Distringas*
or *Capias*.

And these are the ordinary Processes upon all Indictments of Trespafs against the Peace, or of other Offences against penal Statutes, not being Felony, or a greater Offence. But the Process is commonly grounded upon an Indictment, and is only to cause the Offender to come in, and to make his Answer; and therefore if the Offender be present, and confess such Indictment, Information, or Offence, there needeth no Process at all, for he shall be forthwith committed to Prison, there to remain until he hath paid Fine, or given Security for it. 1 *H.* 7. 20. and *Br. Imp.* 100.

Also these Processes shall be always directed to the Sheriff, (who is the immediate Minister and Officer of the King to execute all Processes) except the Sheriff himself or his Officers be Parties: But if the Justice of Peace be to grant out Process against the Sheriff, Under-Sheriff, or their Officers, offending contrary to the Statute 8 *H.* 6. *cap.* 9. or 11 *H.* 7. *cap.* 15. which you may see here before; it seemeth such Process shall be directed to the Coroners of the County, and shall be served by them. And so are divers Books, as 2 *H.* 6. 12. 8 *H.* 6. 30. 9 *H.* 6. 11. and 18 *Ed.* 4. 7. and others. And so also the Oath of the Justices of Peace seemeth to bind them.

Br. Franc. 18. Note also, that this Process ought always to be made in the Name of the King: And for that the King is Party, it must be with a *Non omittas propter aliquam libertatem*, &c. But the *Teste* thereof may be under the Name of the Justices of Peace.

(a) If the Offender be within any Liberty or Franchise, the Sheriff is to enter the Franchise, and execute the Process himself, (and not to write to the Bailiff of the Franchise, because the King is a Party.) See 41 *Aff.* 17. *Br. Franck.* 18. 31.

(d) The Forms of these Processes to be made by the Justice of Peace out of the Sessions, seem to be as followeth:

The Venire Facias thus.

Venire Facias. **G**EORGE by the Grace of God, &c. King, &c. To the Sheriff of the County of Cambridge, Greeting: We command you, that you omit not, by Reason of any Liberty in your Bailiwick, but that you Cause *A. B.* of *D.* in your said County, Yeoman, to come before *R. M.* &c. and *D. M.* &c. two of our Justices assigned to keep the Peace, as also to hear and determine, &c. at *L.* in your County on the Day of next to be, to answer to us upon certain Articles presented against him *A. B.* And have you there this Precept. Witness *R. M.* and *M. D.* at, &c.

The Distringas thus.

Distringas. **G**EORGE by the Grace of God, &c. To the Sheriff, &c. We command you, that you omit not by Reason of any Liberty in your Bailiwick, but that you enter the same, and distrain *A. B.* of *D.* &c. by all his Lands and Tenements, &c. and that you

you answer for the Issues of the same, &c. and that you have his Body before, &c. the Justices, &c. to answer, &c. Witness, &c.

The Writ of Capias thus.

GEORGE by the Grace of God, &c. to the Sheriff, &c. We command you that you omit not by Reason of any Liberty in your Bailiwick, but that you enter the same and take J. D. of A. &c. if he be found in your Bailiwick, and him cause to be safely kept, so that you have his Body before, &c. two of our Justices assigned, &c. at L. in your County, on the Day of next to be, to answer to us of divers Trespasses and Offences of which he is indicted. And have you then there this Writ. Witness, &c.

At which Day W. W. &c. Sheriff of the County aforesaid, made a Return that he is not found in his Bailiwick, and he did not come. Therefore it is commanded as before, &c.

The Alias Capias.

GEORGE, &c. To the Sheriff, &c. We command you as we before commanded you, that you omit not, &c. (as before). *Alias.*

At which Day, &c. (as before) and he did not come. Therefore it is commanded as we have often commanded, &c.

The Party may appear *Gratis*, and so avoid the Attachment or Arresting of his Body; and that is the Cause that the Entry is, *Et ipse non venit* (he did not come).

The Pluries Capias.

GEORGE, &c. To the Sheriff, &c. We command you as we often have commanded you, that you omit not (as before). *Pluries.*

At which Day W. W. and the Sheriff aforesaid did make return that G. F. is not found in, &c. and he did not come. It is therefore commanded that you cause to be demanded, &c.

The Exigent.

GEORGE, &c. To the Sheriff, &c. We command you that you cause E. F. of *Exigent.* A. in your County, Yeoman, to be demanded, until, by the Law and Custom of our Kingdom of England, he be outlawed, if he shall not appear, and if he shall appear, that you take him and cause him to be safely kept, so that you have his Body before R. M. &c. and M. D. &c. two of the Justices assigned, &c. at L. in your County, on the Day of next to be, to answer to us of divers Trespasses, Contempts and Offences, of which he is indicted. And have you then there this Writ. Witness R. M. and M. D. at L. &c.

At which Day W. W. &c. the Sheriff of the said County did make Return that at the County held at Cambridge, the Day of in the Year of the Reign of our Lord the King that now is, and so at four other Counties then next following, there holden, the aforesaid E. F. was demanded, and did not appear. Therefore he was outlawed.

These Processes are sent out, to the End that either the Party shall come or be brought in to make his Answer, and to be justified by the Law; or else that for his Contumacy he shall be outlawed, and so be deprived of the Benefit of the Law. But the Power of the Justices of Peace ended with the Outlawry, for they can make no *Capias Utlagatum*, but must certify the Outlawry into the King's Bench. *Lamb. 502*
2 H. H. P. c.
52.

Also all such Processes (as well of *Capias*, &c. as of Outlawry) may be staid by a *Subpoena* *Lamb. 500.* *perfeceas* issuing from other Justices of Peace (out of Sessions) testifying that the Party hath come before them, and hath found Sureties for his Appearance to answer to the Indictment, or to pay his Fine, &c. See before.

Note, That this Authority of the Justices of Peace in sending out their Processes (being out of their Sessions) is beyond the Bounds of their Commission. And again, by the Commission one Justice of Peace alone cannot grant a *Capias*, nor other Processes, *The Comm.*
from,
14 H. 7.
Br P. c.

but two Justices of Peace at the least must do it, and that sitting the Court, and in their Sessions; and yet nevertheless in these former Cases the Statutes (expressly, or by necessary Implication) giving such Authority to the Justices of Peace, or to one Justice alone, and that out of the Sessions, are sufficient Warrant and Commission to the Justices of Peace therein, as it seemeth.

See 2 Hawk. P. C. Chap. 27. on this Head.

C H A P. CXCIV.

Traverse.

Lamb. 325. **A**FTER that such Process (or other Process *ad respond'*) is awarded against the Party, it seems he may come in and yield himself to pay his Fine: Or else he may offer his Traverse to the Indictment found against him before the Justices of Peace, and the Justices ought to allow him his Traverse against it; which Traverse is to take Issue upon the chief Matters of the Indictment, or to deny the Point of the Indictment. The formal Words of the Traverse are in Latin, *Absque hoc, &c.*

See Lamb. 522, 523. But although the Justices of Peace have Power in diverse Cases as aforesaid, (out of their general Sessions,) to take Indictments, and after such Indictments found to award a Process *ad respondendum* against Offenders, and to hear and determine thereof; and the Offenders also have Liberty to come in and to speak, and may answer for themselves, and may offer their Traverse, and that the Justices of Peace are to allow of and to receive them; yet *Quære*, whether the Justices of Peace (out of their General Sessions) may try such Traverse being tendred to them, (except in Cases of Riots and Forcible Entries) without which Trial all the rest may seem idle. Or upon the Traverse tendred they must certify or send the Inquisition of the Indictment so found before them into the King's Bench, or unto their Quarter or General Sessions of the Peace, there to be tried and determined. Howsoever it is safest in all Cases, (after such Traverse tendred) to certify or deliver such Inquisition or Indictment into the King's Bench, or to their next Quarter-Sessions, and so to refer the Trial of the Traverse, and farther Proceedings therein, to them.

C H A P. CXCIV.

Certiorari.

THE Return of a *Certiorari* sent to remove an Indictment may be thus: First, upon the Backside of the Writ of *Certiorari* indorse these or the like Words: The Execution of this Writ appears in a Schedule to the same Writ annexed. And that Schedule may be thus.

Canterbury. **I***M. D.* Esq; one of the Keepers of the Peace and Justices of our Lord the King assigned to keep the Peace, as also to hear and determine divers Felonies, Trespases and other Offences in the same County committed, by Virtue of this Writ to me delivered, I do distinctly and openly under my Seal certify into the Chancery of our said Lord the King, the Indictment, of which mention is made in the said Writ, together with all Things touching the same Indictment. In Witness whereof *I M. D.* aforesaid have to these Presents set my Seal. Given at, &c. the Day of in the Year of the Reign, &c.

Then take the Record of the Indictment, and close it within the Schedule, and seal and send them up both together with the *Certiorari*.

Now to shew what is farther meet for the Justice of Peace to know concerning this Writ of *Certiorari*, and their Certifying or Return thereof;

After an Indictment found before Justices of Peace, a *Certiorari* is procured by the Means of some Party indicted or grieved, thereby to remove such Indictment from the

said Justices, and to convey it to Justices of a higher Authority, to the End the Party may either traverse such Indictment above, or may there avoid it for Insufficiency of Form or Matter.

(a) Although the *Custos Rotularum* keep the Records, yet must the Justices return the *Certiorari*; for the Writ is directed to them, and not to him; and the Record it self must be returned, and not *Tenorem Recordi*. Hob. 135.

(d) And this *Certiorari* is the King's Writ, issuing sometimes out of the Chancery, and sometimes out of the King's Bench, and may be directed to any inferior Court of Record, or Officer of Record, (as to a Justice of Peace, Sheriff, Coroner or Escheator) to be certified of any Record which is before any of them. And first an *Alias*, then a *Pluries*, and lastly an Attachment lieth against them that should send it, if the Record be not certified accordingly. Or it seemeth a *Subpœna* is used at this Day. Fitz. 245. a.

If it be returnable into the Chancery, then the Words are, *In our Chancery*; and if into the King's Bench, then the Words are, *Nobis mittatis*; and if into the Court of Common Pleas, then *Coram Just' nostris de Banco*.

(a) This Writ is not to be slighted, nor are any Proceedings to be after the Delivery thereof, although the Return be past; for by the Delivery the Hands of the Justices are closed. A Forcible Entry was found, and Restitution awarded, but not executed. A Writ of *Certiorari* comes to a Justice of Peace, and he refuses to open it till he had spoke with his Companions. Restitution was in the King's Bench prayed and granted, and the Justice of Peace much chid. *Yelv. 32.*

(d) The *Certiorari* may be sometimes to remove and send up the Record it self, and sometimes but only the Tenor of the Record, (as the Words therein be) and it must be obeyed accordingly. Plow. 393.

If there be *Variance* between the *Certiorari* and the Record removed, the Justices need not to certify such Record. *Lamb. 500.* Fitz. 245. b.

A Justice of Peace may deliver or send into the King's Bench an Indictment found before him, or a Recognizance of the Peace taken by him, or a Force recorded by him, without any *Certiorari*: But if he having a Record in his Hands be discharged of his Office, now he cannot certify it without a *Certiorari*, although he be made a Justice of Peace again. See 8 *H. 4. f. 5.* *Br. Record 64.* Cro. 130. a. & 133. b.

If a *Certiorari* be to send up the Indictment of *A.* in which Indictment some others be indicted with the same *A.* yet need not the Justices of Peace to make any Certificate concerning any but *A.* For although they be named jointly, yet they be indicted severally, and the King may pardon *A.* without forgiving the other. *6 Ed. 4. 5.*

If a *Certiorari* shall come to the Justices of the Peace to remove an Indictment, and the Party sueth not to have it removed, but suffereth it to lie still after the Day of the Return of the *Certiorari*; yet the Justices of Peace ought *ex officio* to send it away, because the Writ containeth in it self a Command to them so to do; and so is a *Superfedeas* of it self to the Justices of Peace to stay their Proceedings. See *antea*, Tit. *Forcible Entry*. 6 H. 7. 16. Br. Jud. 17.

(a) And yet by others the Justices may proceed upon the Indictment. *Vide Crom. 132, 133. & 166. Dyer 245.*

(d) And albeit the *Certiorari* be a *Superfedeas* of it self, yet may the Party upon the *Certiorari* purchased, have a *Superfedeas* also directed to the Sheriff, commanding him that he arrest him not upon that Record before the Justices of Peace. *Fitz. f. 237.* In which Place also he doubteth whether the Justices of Peace themselves ought not of Duty to award their own *Superfedeas* to the same Effect, after that the Writ of *Certiorari* is brought to their Hands. Lamb. 497. F.N.B. 237. c.

If a *Certiorari* come to the Justices of Peace to remove an Indictment, and in Truth it was not taken till after the Date of the *Certiorari*; yet if the Indictment be removed thereby, it is good enough, for that they be both the King's Courts. (1 *R. 3. 4.*) and in such a Case it is now usual to remove it. *Vide Fitz. 71. d.* Lamb. 438.

(a) But all Writs of *Certiorari* being to remove any Indictment of Forcible Entry, or Riot, or of Assault and Battery, found before the Justices of Peace, shall now be delivered at some Quarter-Sessions of the Peace in open Court, &c. 21 *Jac. 1. cap. 8.* See *hic antea*, Tit. *Forcible Entry*. And the Persons so prosecuting the same shall (before the Allowance thereof) become bound unto the Prosecutor in 10*l.* Bond with Sureties, as the Justices shall think fit, with Condition to pay to the Prosecutor (within one Month after Conviction) such reasonable Costs and Damages, as the Justices of the Peace of the County

County (where the Bill shall be found) shall assess and allow; and in Default thereof the Justices may proceed.

Lamb. 501.

(d) All the higher Courts at *Westminster* may write to the Justices of Peace, to certify their Records for the Trial of Causes depending before them, as you may read 19 *H. 6.* 19. where they of the Common Pleas did send to the Justices of Peace for an Indictment, because in a Writ of Conspiracy (brought or depending before them) it was material to have it.

In some Cases the Justice of Peace may certify a Record (by him made or found before him out of Sessions) without any Writ of *Certiorari* therefore to him directed. *Vide antea*, Tit. *Forcible Entry*.

In other Cases he must of Duty certify his Proceedings, but may spare to certify the Record, until a *Certiorari* come to him for it. See hereof *antea*, Tit. *Surety for the Peace*.

For the Manner of the Writ of *Certiorari* to remove Records from one Court to another, or from the Justices of Peace, or other Officers of Record, to any of the higher Courts at *Westminster*, &c. there are divers Forms and Sorts thereof, as you may see *F. N. B.* 242. &c.

I will only set you down here one Form for all, and so conclude.

The Form of Certiorari out of the Chancery to certify a Recognizance taken by a Justice of Peace in the County for the Keeping of the Peace, &c.

* *Certiorari of the Good Behaviour, as the Case is.*
F.N.B. 18. c.
Cromp. 148.

GEORGE, &c. To the Keepers of our Peace in the County of *Cambridge*, and each of them, Greeting: We being willing* for certain Reasons, to be certified upon the Tenor of a certain Security of the Peace, which *A. P.* Esq; lately found before you, or some one of you, of that that he should not do nor procure to be done any Damage or Hurt to *R. S.* or to any other of our People, of their Bodies; we command you that without Delay you do distinctly and openly, under your Seals or the Seal of one of you, to us into our Chancery, in eight Days of the Purification of the blessed *Mary*, wherever we shall then be, send the Tenor of the Security of the Peace aforesaid; And that this you or any of you no ways omit under the Penalty of one hundred Pounds. Witness my self at *Westminster* the Day of in the Year of our Reign.

The Return hereof see *antea*, Tit. *Surety for the Peace*.

(a) But if the *Certiorari* be with these Words, We command that you send all and singular the Recognizances aforesaid, with all Matters concerning the same, as fully and wholly as before you, &c. they were late taken, &c. Here the Justice of Peace, together with the Recognizance, must certify and send his Examinations taken, or the Warrant whereby the Party was brought before him to find such Surety, and such other Matter or Cause as he knoweth, why such Surety was required against the Party; that so the Court above may proceed against the Party (if Cause be required) according to Law and Justice. And the Certificate may be thus.

IM. D. one of the Justices of the Peace in the County of *Cambridge* do certify his Majesty in his Court of Chancery (or King's Bench) That I by Virtue of a certain Warrant (the Tenor of which is here under written) did compel *R. C.* in the same Writ named, to find Surety according to the Form of the said Warrant. And I the said *M. D.* by Virtue of the said Writ, the said Recognizance in the said Writ mentioned, and all Things touching the same, to his Majesty (under my Seal) do hereby distinctly send, as in the said Writ is of me required. In Witness whereof, &c.

The Tenor of the above-mentioned Warrant followeth. Then underneath write the Warrant, &c. *Verbatim*.

Note, That a Record shall not be removed but by *Certiorari* or *Corpus cum Causa*. Fitz. Record 3.

Note also, That upon a *Certiorari* to remove an Indictment of a *Riot* or *Forcible Entry*, &c. the Return must have these Words, *as also to hear and determine diverse Felonies*, &c. For if the Return mentions only that they are Justices of the Peace, without such Words, according to the Commission, the Return is insufficient. 12 *H. 7.* 25. 2 *R.* 3. 9. *Br. Indictment* 32, 50.

Also note, that no *Certiorari* shall be granted to remove any Recognizance, except the same Writ be signified with the proper Hand of the Chief Justice, or (in his Absence)

fence) of one of the Justices of that Court out of which the said Writ shall be awarded or made. 1 & 2 P. & M. cap. 14.

Certioraries shall be delivered in open Sessions, and before they are allowed, the Parties indicted shall become bound to the Prosecutor in 10 *l.* with such Sureties as the Sessions shall think fit, with Condition to pay within one Month after Conviction, such Costs and Damages as the Sessions shall allow; and in Default of such Payment the Sessions may proceed.

In what Cases Certiorari's shall not be granted, and upon what Conditions.

21 Jac. 1. c. 8.

Two or more Justices residing near the Place where Offences and Forfeitures relating to the Duties of Excise, shall be done or made, are appointed to judge and determine the same, and no *Certiorari* shall be allowed to supersede the Execution of any of their Orders or Proceedings.

12 Car. 2. c. 23.

By this Statute the Justices of Peace have Power to hear and determine Offences relating to the Highways, and no *Certiorari* shall be allowed to remove their Proceedings, unless the Person indicted shall before such Allowance, be bound to the Prosecutor in 40 *l.* with Sureties conditioned to pay him, within one Month after Conviction, full Costs and Damages to be ascertained on Oath of the Prosecutor; and in Default thereof, the Sessions may proceed.

Highways. 13 & 14 Car. 2. c. 6.

No *Certiorari* shall be allowed to remove any Proceedings concerning Deer-stealing, unless the Person prosecuted become bound to the Prosecutor in 50 *l.* with such Sureties as the Justice before whom convicted shall think fit, with a Condition to pay the Prosecutor his full Costs and Damages, if the Conviction is affirmed, or a *Procedendo* allowed; and in Default thereof the Justice may proceed to Execution.

Deer-stealing. 3 & 4 W. 3. c. 10.

All Matters concerning Highways, Causeys, Pavements and Bridges, mentioned in this Act, shall be heard and determined in the proper County, and not elsewhere; and no Proceedings made by Virtue thereof shall be removed by *Certiorari* out of the proper County into any other Court.

3 & 4 W. 3. c. 12.

No *Certiorari* shall be allowed to remove Convictions or Proceedings of Justices concerning the Game, by virtue of this Act, unless the Party desiring it shall, before such Allowance, become bound to the Prosecutor in 50 *l.* with Sureties to be approved by the Justices, to pay the full Costs and Damages, on Oath of the Prosecutor, within a Month after Conviction, or a *Procedendo* granted; and in Default thereof the Justice may proceed, &c.

The Game. 4 & 5 W. 3. c. 23.

Certiorari shall not be granted in Term-Time at the Instance of any Person indicted or presented for a Trespass or Misdemeanor before a Trial is had at the Sessions, unless upon Motion in Court of *B. R.* and a Rule made for that Purpose, and afterwards, and before it shall be allowed, the Party must enter into a Recognizance of 20 *l.* with two sufficient Sureties, before a Justice of the County, conditioned to appear at the Return of the Writ, and plead to such Indictment or Presentment, and procure Issue to be joined at his own Costs, and to be tried at the next Assizes for the County, after the Return of the Writ; and if in *London* or *Middlesex*, then to be tried the next Term after the Writ granted, &c. and to give due Notice of such Trial.

Term-Time. 5 & 6 W. 3. c. 11. *This Act was made perpetual by 8 & 9 W. 3. c. 33. See postea.*

And this Recognizance must be certified into *B. R.* together with the *Certiorari* and Indictment, there to be filed, and the Name of the Prosecutor, &c. indorsed on the Indictment; and if the Defendant shall not enter into such Recognizance, the Justices may proceed to Trial.

And if he who procures the *Certiorari* is convicted, *B. R.* must give reasonable Costs to the Prosecutor, and to be taxed according to the Course of that Court; and if the Party doth not pay it within ten Days after Demand, then Oath being made of his Refusal to pay, &c. an Attachment shall be granted against him, and the Recognizance shall not be discharged till the full Costs are paid.

Any of the Judges of *B. R.* may grant a *Certiorari* in * Vacation, but then his Name, and also the Name of the Party at whose Instance it was granted, must be indorsed on the Writ, and the like Recognizance entered into before 'tis allowed.

Vacation Time. * If 'tis Teste of the precedent Term, the Fiat

for it must be signed by some Judge before the Effoin-day of the subsequent Term; otherwise a *Procedendo* will be granted; but the *Certiorari* itself, unless 'tis required by Statute.

And on every *Certiorari* granted in Counties Palatine, the same Rules shall be observed.

Counties Palatine.

But where the Right of repairing Highways or Bridges, &c. is in Question, in such Case, upon an *Affidavit* made of the Truth thereof, a *Certiorari* may be granted

Highways, &c. Bridges.

granted, the Party procuring it entring into such Recognizance with Sureties, as aforesaid.

8 & 9 W. 3.
c. 33.

The aforesaid Statute 5 & 6 *Will.* which was only temporary, was made perpetual; and it was farther enacted, that the Party at whose Instance a *Certiorari* shall be granted to remove any Proceedings from the Sessions, may enter into a Recognizance with two sufficient Sureties before a Judge, with the same Condition as in the aforesaid Statute, which shall be mentioned on the Back of the Writ, under the Hand of the Judge who took it; and this shall be as effectual to supersede any farther Proceedings below, for the Removal whereof a *Certiorari* shall be granted, as if the Recognizance had been taken by a Justice of the Peace of the County, according to the said Act; only if 'tis taken before a Judge, it must be added to the Condition of the Recognizance, that the Party prosecuting the *Certiorari* shall appear from Day to Day in the Court of *B. R.* and not to depart without Leave of the Court.

Tithes.

7 & 8 W. 3.
c. 6.

Two Justices have Power to hear and determine Differences concerning small Tithes under the Value of 40 s. an Appeal lies to the next Quarter-Sessions, but no *Certiorari* must be granted to remove any Proceedings by Virtue of that Act, unless the Title of the Tithes come in Question.

Game.

5 Ann. c. 14.

No *Certiorari* must be allowed to remove any Proceeding of the Justices against Persons destroying the Game, unless the Party accused shall, before the Allowance thereof, become bound to the Prosecutor in 50 l. with such Sureties as the Justice shall think fit, conditioned to pay him, within four Days after *Conviction* or a *Procedendo* granted, *full Costs* and Charges on Oath; and in Default of such Security the Justice may proceed as if no *Certiorari* had been.

'Tis a Super-
fedeas as soon
as 'tis deliver-
ed.

A *Certiorari* being delivered is a *Supersedeas* to all subsequent Proceedings on the Record; but then it must be delivered before the Jury who are to try the Cause are sworn, for if afterwards, they may proceed.

Falsè Return.

And the Person to whom 'tis delivered may make what Return he thinks proper; which if falsè, yet the Court will not stay the Filing it, on *Affidavits* made that 'tis falsè, except in publick Cases, as in Cases of Commissioners of Sewers, or for not repairing Highways, or for some such special Causes, because the Remedy for a Falsè Return is either an Action on the Case at the Suit of the Party grieved, or an Information at the Suit of the King.

*Cinque Ports,
Counties Pala-
tine and
Wales.*

Cro. Car.
252, 264.

It hath been doubted whether a *Certiorari* would lie to remove Indictments found in the Cinque Ports, Counties Palatine and *Wales*. But 'tis now settled, and it hath been awarded to the Mayor and Justices of *Dover*, and not to the Lord Warden, to remove an Indictment for Felony found there.

*Mich. 8 W. 3.
Rex vers.
Bird.*

So it was granted to remove the like Indictment out of the Court at *Romney*, upon a Suggestion, that the Defendant could not have an indifferent Trial before the Steward there, though it was insisted against the *Certiorari*, that they had a very antient Charter to exempt them from the Jurisdiction of the Court of King's Bench, and of Justices of Assise.

*Counties Pala-
tine.*

*March
Rep. 165.*

Wales.

34 H. 8. c. 26.
26 H. 8. c. 6.

It hath been granted to remove Indictments out of Counties Palatine; for though they have Grants of *Jura Regalia*, yet the King never intended to exclude himself, and all Indictments are at his Suit.

It hath been granted to remove an Indictment of Murder found in a *Welsh* County, for though by the Statute 34 *H. 8.* the Justices in *Wales* have Power to hold Pleas of the Crown, as the Chief Justice of *England* may do, yet that is not a Repeal of the Statute 26 *H. 8.* which allows Indictments for Felony found in *Wales*, to be tried in the adjoining *English* Counties; besides, *B. R.* is not excluded by any negative Words in the Statute 34 *H. 8.*

But lastly, Where-ever a Statute gives an *Appeal* from the Order of the Justices to the next Sessions, in such Case the Granting a *Certiorari* before the Matter upon the Appeal is determined, is altogether irregular; therefore if an Order should be removed, then before 'tis filed, the Party may, upon Motion, object against the *Certiorari*; and then the Order thus removed will be sent down again, but not after the Time of *Appeal* is expired, for then it will be too late to object against the *Certiorari* thus granted.

5 Geo. 2.
c. 19. §. 1.

Upon Appeals to the General Sessions for any County or Precinct within *England*, against Orders made by Justices of Peace, such Justices assembled at any General Sessions shall cause any Defects of Form in such Orders to be amended without Costs, and proceed to hear the Merits of such Orders, and to make such Determinations thereupon as by Law they ought, in case there had not been such Defect of Form.

No *Certiorari* shall be allowed to remove any Order, unless the Party prosecuting shall enter into a Recognizance with Sureties before one Justice of Peace where such Order shall have been made, or before one of his Majesty's Justices of the King's Bench, in the Sum of 50 *l.* with Condition to prosecute without wilful Delay, and to pay the Party, in whose Favour such Order was made, within one Month after the said Order shall be confirmed, his Coſts to be taxed; and in caſe the Party prosecuting ſuch *Certiorari* ſhall not enter into ſuch Recognizance, or ſhall not perform the Conditions aforeſaid, it ſhall be lawful for the Juſtices to proceed and make further Orders, as if no *Certiorari* had been granted. Ib. §. 2.

The Recognizances to be taken as aforeſaid ſhall be certified into the King's Bench, and filed with the *Certiorari*, and Order removed thereby; and if the Order ſhall be confirmed, the Perſons intitled to ſuch Coſts, within ten Days after Demand made, upon Oath made of the making ſuch Demand and Refuſal of Payment, ſhall have an Attachment for Contempt, and the Recognizance ſhall not be diſcharged until the Coſts ſhall be paid, and the Order complied with. Ib. §. 3.

No Writ of *Certiorari* ſhall be allowed to remove any Conviction, Judgment, Order, or other Proceedings before any Juſtice or Juſtices of Peace of any County, City, Borough, Town Corporate, or Liberty, or the reſpective General or Quarter-Sessions thereof, unless ſuch *Certiorari* be moved or applied for within fix Kalendar Months next after ſuch Conviction, &c. and unless it be duly proved upon Oath, that the Party ſuing forth the ſame has given fix Days Notice thereof in Writing to the Juſtice or Juſtices before whom ſuch Conviction, &c. ſhall be made, to the End that ſuch Juſtice or Juſtices, or the Parties therein concerned may ſhew Cauſe, if he or they ſhall think fit, againſt the granting ſuch *Certiorari*. 13 Geo. 2. c. 18. §. 5.

C H A P. CXCVI.

Of the Powers given to Juſtices of the Peace by ſeveral late Statutes.

ALL Actions, Suits, and Informations to be commenced upon this, or any other Acts for preventing the Exportation of Wool, Wool-fells, Wool-flocks, Mortlings, Shortlings, Worſted, Bay or Woollen Yarn, Crewels, or Wool ſlightly manufactured, or Matreſſes, or Beds ſtuffed with combed Wool, or Wool fit for Combing, Fullers Earth, Fulling Clay, Tobacco-Pipe Clay, or any other Scouring Earth or Clay from *Great Britain* or *Ireland*; or for Preventing the Exportation from *Ireland* into foreign Parts, of Cloth, Serges, Bays, Kerſeys, Frizes, Duggets, Shalloons, Stuffs, Cloth-Serges, or any other Drapery made of, or mixed with Wool manufactured in *Ireland*, may be enter'd and prosecuted, (except where it is in this Act otherwiſe directed) at the Quarter-Sessions of the Peace, or before any two Juſtices of the Peace, for any County, City or Place in this Kingdom, in a ſummary Way, at the Election of the Seiſor or Informer. The *Onus probandi* ſhall lie on the Claimer of the Property, and not on the Officer or Seiſor. Wool-Bill. 12 Geo. 2. c. 21. §. 18.

If any Officer of the Customs, Excise or Salt, or Perſon aſſiſting any ſuch Officer, ſhall be hindred, oppoſed, obſtructed, moleſted, wounded or beaten, in ſeiſing any Wool or other Goods before enumerated, by any Perſon, by Day or Night, by Land or Water; the Perſon ſo hindring, &c. or any other Perſon armed with offensive Weapons, or wearing any Mask or other Diſguiſe, who ſhall Reſcue, or attempt to Reſcue any Wool or other Goods aforeſaid, ſeiſed by any ſuch Officer, every ſuch Offender being convicted may be transported for any Time not exceeding ſeven Years; and returning from Transportation before the Expiration of the Time for which he is transported, ſhall ſuffer as a Felon, without Benefit of Clergy. Ib. §. 26.

The Act 4 *Geo. 1. cap. 11.* * ſhall be conſtrued to extend to all Perſons who act as Aiders and Abettors to Exporters of Wool or Wool-fells. Ib. §. 27. * Vide ſupra c. 113.

The Juſtices of Peace in *England*, at their Quarter-Sessions, ſhall have Power to make one general Rate for ſuch Sums of Money as they ſhall think ſufficient to answer all the Ends and Purpoſes of the ſeveral Acts before recited (*viz.* 22 *H. 8. cap. 5.* 1 *Ann. St. 1.* County Rates. 12 Geo. 2. c. 29. §. 1. cap. 18.

cap. 18. 11 & 12 W. 3. cap. 19. 7 Jac. 1. cap. 4. 43 El. cap. 2. 14 El. cap. 5. 19 Car. 2. cap. 4. 12 Ann. St. 2. cap. 23.) instead of the separate and distinct Rates thereby directed to be levied; which Rate shall be assessed upon every Parish or Place within the Limits of their Commissions, in such Proportions, as the Rates made in pursuance of the said Acts, have been usually assessed; and the Sums so assessed shall be collected by the High Constables of the respective Hundreds and Divisions in which any Parish or Place lies, in the Manner and at the Times herein after directed.

Ib. §. 2.

The Church-wardens and Overseers of the Poor of every Parish and Place, are required, out of the Money collected for Relief of the Poor, to pay to the High Constables of the respective Divisions, the Money so rated and assessed, within thirty Days after Demand thereof in Writing, to be given to the said Church-wardens or Overseers, or left at their Dwelling-houses, or affixed on the Church-doors of the Parishes to which they belong, by the said High Constables; which Demand the High Constables are to make, at such Times as the Justices shall in Sessions direct; and the Receipts of such High Constables shall be a sufficient Discharge to such Church-wardens, &c. paying the same, and shall be allowed in their Accounts. And in case the Church-wardens and Overseers shall neglect to pay the Money hereby assessed, after Demand, the High Constables are to levy the same by Distress and Sale of the Goods of such Church-wardens, &c. by Warrant under the Hands and Seals of two Justices of the County or Place residing in or near such Parish, rendering the Overplus (if any) after deducting the Money assessed, and the Charges of Distress and Sale, to the Owners.

Ib. §. 3.

In case no Rate be made for Relief of the Poor in any Parish or Place, the Justices may direct the Sum assessed on such Parish or Place for the Purposes of this Act, to be levied by any Petty Constables, or other Peace-Officer belonging to the same, in such Manner as Money for Relief of the Poor is by Law to be rated and levied; which Sum so levied shall be paid to the High Constable for the Division or Liberty wherein such Place lies; and shall be demanded of, or levied on such Peace-Officer, in the same Manner as the Rates are herein before directed to be demanded of, and levied on the Church-wardens and Overseers of the Poor: And if such Peace-Officer shall pay such Sum, before the same shall be by him rated, and levied, he may afterwards rate and levy the same, or shall be reimbursed the said Sum out of any Constable's or other Rate made on any Parish or Place which the said Justices shall in Sessions direct.

Ib. §. 4.

The Justices of the Peace for the Counties of *York, Derby, Durham, Lancaster, Cheshire, Westmorland, Cumberland, and Northumberland*, may order the Sum directed to be assessed on any Parish or Place within the said Counties, for the Purposes of this Act, to be paid by the Petty Constable of any such Parish, in such Manner as the same is directed to be paid and levied where no Rate is made for Relief of the Poor.

Ib. §. 5.

Nothing herein contained shall extend to make any Persons or Places liable to pay any Rate to be made in pursuance of this Act, to which such Person or Place was not liable to contribute before the passing thereof; but the Justices may ascertain what Proportion of any Rate to be made by virtue of this Act, shall be assessed on the several Persons and Places who have usually contributed only to one or more of, and not to all the Rates hereby intended to be raised, and thrown into one general Assessment.

Ib. §. 6.

The High Constables, at or before the next General or Quarter-Sessions, after they shall have received such Sums of Money, shall pay the same to such Persons (being resident in any such County or Place, where the Rates shall be made) as the Justices shall appoint to be Treasurers (whom they are hereby impowered to nominate) such Treasurers first giving Security to be accountable for the Money which shall be paid to them, and to pay such Sums as shall be ordered by the Justices in their Quarter-Sessions, and for the faithful Execution of the Trusts reposed in them; and all Money paid into their Hands by virtue of this Act, shall be deemed the publick Stock; and they are to pay so much of the same to such Persons as the Justices shall direct, for the Purposes of the said Acts, and for any other Uses, to which the publick Stock of any County, City, or Liberty, is applicable by Law.

Ib. §. 7.

The Treasurers are to keep Books of Entries of the Sums received and paid by them; and also to deliver in true Accounts upon Oath, if required, of all the Money received and paid by them, distinguishing the particular Uses to which the same has been applied, to the Justices at every General or Quarter-Sessions held within the Limits of their Commissions; and shall lay before the Justices at such Sessions the proper Vouchers for the same.

The High Constables are to demand and levy such Assessments in Manner before directed, and to account for the same before the Justices, if required, in like Manner as the Treasurers are directed to account; and if any High Constable shall neglect so to do; or if he shall refuse to pay any Money remaining in his Hands, which ought to be paid to the respective Treasurers at the Times limited by this Act, in order to be applied to the Uses aforesaid, the Justices may commit such High Constable to the common Gaol, there to remain without Bail or Mainprize, till he shall have caused such Assessment to be demanded and levied, and shall have rendered a true Account in Manner directed, and made full Payment of the Money that shall appear to be due on such Account; and all the Accounts and Vouchers of the said Treasurers and High Constables, after having passed by the Justices at the Quarter-Sessions, shall be deposited with the Clerk of the Peace of each County, or the Town-Clerk, or other chief Officer of any City or Liberty, who is to keep them among the Records of such County, &c. to be inspected by any of the Justices, within the Limits of their Commissions, without Fee or Reward.

The Treasurers Receipts shall be sufficient Discharges to all High Constables; and the Discharges of the Justices, made at the Quarter-Sessions to such Treasurers, shall be allowed as good and sufficient Releases in any Court of Law or Equity.

No new Rate shall be made, until it appear to the Justices, by the Accounts of their Treasurers, or otherwise, that three Fourths of the Money collected by the preceding Rates have been expended for the Purposes aforesaid.

The Justices may continue or remove the Treasurers at their Pleasure, and may allow every of them, insisting on the same, such reasonable Sums of Money for their Pains in the Execution of such Trust, not exceeding 20*l. per Ann.* as they shall think fit, which they are impowered to direct the Payment of out of the Monies arising by the Rates.

If the Church-wardens and Overseers of any Parish shall have Reason to believe the said Parish is over-rated, they may appeal to the Quarter-Sessions against such Part of the Rate only as affects the Parishes in which they serve such Offices, who are to hear and finally determine the same; but the said Rate shall not, upon such Appeal, be quashed in regard to any other Parishes assessed thereby.

No Part of the Money to be raised by this Act, shall be applied to the Repair of any Bridges, Gaols, or Houses of Correction, till Presentments be made by the respective Grand Juries at the Assize, Great Sessions, general Gaol-Delivery, or Quarter-Sessions held for any County, City, or Liberty of the Insufficiency, or want of Reparation of their Bridges, &c.

When any publick Bridges, or other Works are to be repaired at the Expence of any County, &c. the Justices of the Peace at their Quarter-Sessions, after Presentment to be made, as aforesaid, may contract with any Persons for Rebuilding and Repairing of such Bridges, &c. as shall be within their respective Counties, &c. and all other Works which are to be repaired, and done by Assessment on the respective Counties, &c. for any Term of Years not exceeding seven Years, at a certain annual Payment for the same, such Contractors giving Security for the due Performance thereof, to the Clerk of the Peace, or chief Officer of any City or Liberty; and such Justices shall give publick Notice of their Intention of contracting with any Persons for Rebuilding and Repairing the Bridges, and other Works aforesaid; and such Contracts shall be made at the most reasonable Prices which shall be proposed by such Contractors; and all Contracts and Orders relating thereto, shall be enter'd in a Book to be kept by the Clerk of the Peace, or chief Officer of any City or Liberty amongst the Records of such County, City, or Liberty, to be inspected at all reasonable Times by any of the Justices within the Limits of their Commissions; and by any Persons employed by any Parish or Place contributing to the Purposes of this Act, without Fee or Reward.

There shall be but one Rate made by the Justices *Com' Middlesex* in the said County, City, and Liberty of *Westminster*, for the Purposes aforesaid, and for Repair of the Gaol called *New Prison*, in the said County.

Provided, That the Justices for the City and Liberty of *Westminster*, at the Quarter-Sessions, shall have power to appoint the Governor of the House of Correction in the said City, who shall have such Sum of Money yearly, for the Maintenance of the Prisoners in his Custody, who shall be sick, or unable to work, not exceeding the present Allowance of 50*l. per Ann.* and direct the Repairs and Management thereof, as they have heretofore done; and the Treasurers of the Money arising by the Rates collected in the said County of *Middlesex*, and City of *Westminster*, shall obey all Orders made by the Ju-

Justices at the Quarter-Sessions, for the Payment of any Money for the Allowance allotted to such Governor of the House of Correction, and the Repairs thereof, which Orders shall be sufficient Discharges to such Treasurers.

Ib. §. 17. The Justices may oblige the High Constables, or any other Persons, who are or have been impowered to levy any Money for the Purposes aforesaid, and who have any Money in their Hands, to account at the Quarter-Sessions, in such Manner as High Constables are directed to account by this Act; and in case such high Constables, or other Persons shall refuse to account, or pay the Money remaining in their Hands, when required; the Justices shall have the like Remedy against them, as they have against the High Constables by this Act, for not accounting, or paying as aforesaid; and the said Justices are impowered to order the Payment of the Money not disposed of, into the Hands of the Treasurers to be appointed by this Act; which shall be deemed Part of the Stock of the said Counties, &c. and to inquire what Sums of Money are owing for the Purposes aforesaid; and then to order the Payment of such Sums as shall appear, upon such Inquiry, to be due.

Ib. §. 18. No Suit shall be commenced against any Person employed in collecting any Money in Pursuance of the said recited Acts, or this Act, or any Rate which has been or shall be quashed on a *Certiorari* brought, or to be brought in any Court of Record at *Westminster*, or otherwise, for any Money collected, or to be collected on any such Rate, before such Writ of *Certiorari* was or shall be brought and allowed; but the several Sums of Money which appear to have been paid by any Persons on such Rate, more than they ought to have paid, shall be repaid, or allowed in the next Rate which shall be made pursuant to this Act, as if the same had been paid on such new Rate.

Ib. §. 19. Provided, That all Persons so employed shall account for, and pay the Money by them received, in the same Manner, and under the like Penalties for any Neglect or Refusal, as are to be inflicted on Persons refusing to account for, or pay over any Money which they have received in pursuance of this Act.

Ib. §. 20. The Justices *Com' Middlesex*, at their General Sessions of the Peace, shall have the same Powers to put this Act in Execution, as are given them at their General Quarter-Sessions.

Ib. §. 21. No Writ of *Certiorari*, to remove any Rates made in pursuance of this Act, or any Orders made by the General or Quarter-Sessions touching such Rates, shall be granted, but upon a Motion to be made in the first Week of the next Term after the Time for Appealing from such Rates or Orders is expired; and upon making it appear to the Court that the Merits of the Question will by such Removal come properly in the Judgment of the said Court; nor till 100*l.* Security be given to prosecute such Writ with Effect, and to pay the Costs to be ascertained by the Court, to which such Rates or Orders shall be removed, in case the same are confirmed; nor shall any such Rates or Orders be vacated for want of Form only; and all Charges attending such Removal shall be defrayed out of that, or any subsequent Rate.

Ib. §. 22. So much of the Act 14 *Eliz.* as relates to the Method of taxing Parishes for the Relief of Prisoners; and of the Act 43 *Eliz.* as relates to the Method of Raising Money for the *King's Bench* and *Marshalsea* Prisons, Hospital, and Alms-Houses; and of the Act 19 *Car. 2.* as relates to the Method of rating Parishes for providing Materials for setting poor Prisoners on work, is repealed.

Ib. §. 23. Provided, That such Sums as have been annually paid to the *King's Bench* and *Marshalsea* Prison, shall be paid out of the Money arising by this Act, at the Times, and in the Manner prescribed by an Act 11 *Geo. 2.* For the more effectual securing the Payments of certain Sums of Money directed by an Act made in the forty-third Year of the Reign of Queen Elizabeth, for Relief of the Poor, &c. and such Money as shall be judged necessary by the Justices in Sessions to be applied, in pursuance of the said Acts 14 *Eliz.* and 19 *Car. 2.* shall be paid out of the Money arising by this Act.

Ib. §. 24. Suits commenced against Persons for Things done in pursuance of this Act, shall be brought within three Months after the Facts are committed, and shall be laid in the County wherein the Cause of Action shall arise; and the Defendant may plead the General Issue, &c. and if Judgment shall be given against the Plaintiff, &c. the Defendant may recover treble Costs.

Justices of Peace for Liberties.
Where any Franchises in England have Commissions of Peace within themselves, and are not subject to the County Justices; the Justices of such Franchises shall exercise the same Powers and Authorities within the Limits of their Commissions as the Justices of Counties are impowered to do by the said Statute 12 *Geo. 2. cap. 29.*

It having been enacted by 1 *Ann. stat. 2. cap. 18.* that Persons employed in Woollen, ^{Manufactures,} Linen, Fustian, Cotton, or Iron Manufactures, imbezilling any Wafts, Ends of Yarn, ^{13 Geo. 2. c. 8. § 1.} or other Materials with which they were intrusted, should forfeit double the Value of the Damages done, for the Use of the Poor: And in case the Offenders should refuse to pay their Forfeitures, that then any Justice of Peace of the County where the Offence was committed, might send such Offenders to the House of Correction, until Satisfaction should be made. And if it should appear to the Justice, that any such Offender was not able to make Satisfaction, then he might be publickly whipped, and kept to hard Labour, not exceeding fourteen Days. And it being by the said Act further enacted, that Persons buying or receiving such Wafts, Ends of Yarn, &c. should suffer the like Penalties and Forfeitures as Persons convicted for imbezilling of the said Materials; which Act was made perpetual by an Act of 9 *Annæ*: And Doubts having arisen whether these Clauses extend to the imbezilling Woollen, Linen, Fustian, Cotton, and Iron Manufactures, actually made up into merchantable Wares, and whether the said Forfeitures should be applied for the Use of the Poor of the Parish where the Persons injured shall respectively live, or for the Use of the Poor of the Parish where the Offence is committed; to explain and amend the said Act, it is enacted by 13 *Geo. 2. cap. 8.* That if any Persons hired to work on any Woollen, Linen, Fustian, Cotton, or Iron Manufactures, shall imbezil, or any ways illegally dispose of any Materials they were intrusted to work up, or shall reel short or false Yarn; the Persons so offending, and convicted as prescribed by the said recited Act, shall forfeit double the Value of the Damages, which the Owners of such Goods (whether manufactured or not) shall sustain, with Costs of Prosecution for every Offence, as shall be judged reasonable by the Justice of the Peace before whom such Offenders respectively shall be convicted: And if immediate Payment of the Forfeitures, with Costs of Prosecution, shall be refused, that then the same Justice, before whom the Offenders were convicted, shall commit them to the House of Correction, to be whipt and kept to hard Labour for any Time not exceeding fourteen Days; and for every second or other subsequent Offence, to forfeit four Times the Value of the Damages, and Costs of Suit, to be settled by the Justice: And if immediate Payment be refused, then any Justice for the County, Riding, &c. shall commit such Offenders to the House of Correction, there to be kept to hard Labour for any Time not exceeding three Months, nor less than one Month, and publickly whipp'd at the Market-cross, once or oftner, at the Discretion of the Justice.

All Persons who shall buy, receive, take in Pawn, &c. from any the afore mentioned ^{Ib. §. 2.} Persons, any Woollen, Linen, Fustian, Cotton, or Iron Manufactures, whether before wrought or after, knowing the same to be purloined, &c. and being lawfully convicted, shall suffer the same Penalties as the said Purloiners or Imbezilers shall suffer by any former or this present Act.

The Forfeitures incurred by this Act, shall be divided, Half to the Use of the injured ^{Ib. §. 3.} Party, and Half to the Poor of the Parish where the Offence is committed.

Persons employed in manufacturing Gloves, Breeches, Leather, Skins, Boots, Shoes, ^{Ib. §. 4.} Slippers, Wares, or other Materials made use of in any of the said Trades, who shall imbezil, sell, pawn, or exchange any the aforesaid Goods or Materials which they are intrusted with, wrought or unwrought, and convicted on the Oath of the Master or Owner, or any other credible Witness, or Confession of the Party, before any Justice of the Peace of the County, &c. where such Offence is committed, or where the Party charged inhabits, the Offender shall pay double the Value of the Goods so imbeziled, &c. one Half to the Party grieved, and the other Half to the Use of the Poor of the Parish, together with full Charges attending such Conviction, to be levied by Distress and Sale of the Offender's Goods, returning the Overplus on Demand; but if there be no Goods sufficient to defray all Damages, or the Party refuse immediately to pay, then the Offender to be committed to Prison, and kept to hard Labour 14 Days, and be whipp'd at the Direction of the Justice; and for the second or any subsequent Offence, the Party offending shall forfeit four Times the Value of the Damage, with Costs, to be settled by the Justice, or be imprisoned and kept to hard Labour for any Time not exceeding three Months, or less than one, and publickly whipp'd once or oftner, at the Direction of the Justice.

Receivers shall be subject to the same Penalties and Punishments as the Offenders. ^{Ib. §. 5.}

Workmen shall be paid for their Labour in Money, and not in Truck, (except at their own Request) and all Goods delivered out to be wrought, shall be delivered with a Declaration, at the same Time, of the true Weight, Quantity or Tale, on Forfeiture of double the ^{Ib. §. 6.}

the Value, to the Workman of the Work to be done; and the Workman guilty of Fraud, Neglect, &c. shall forfeit double the Damages to the Owner.

Ib. §. 7. All Disputes relating to Wages, Frauds, Neglects, &c. as above, shall be heard and determined by any two Justices of the County, &c. where the Controversy shall arise, who have Power to examine Witnesses on Oath or Affirmation.

Ib. §. 8. Any Journeyman employed in making up Gloves, Breeches, Boots, Shoes, Slippers, &c. for any Master, neglecting the Performance, by working for any subsequent Master, before he shall have completed the Work he first undertook, such Offender being convicted on Oath or Affirmation of one or more credible Witnesses, before one or more Justices where the Offence shall be committed, shall be sent to the House of Correction, for any Time not exceeding a Month.

Ib. §. 9. If any Persons think themselves aggrieved by any Order of the Trustees, they may appeal to the Justices at their next General Quarter-Sessions (giving eight Days Notice of such Appeal to the Persons against whom such Appeal shall be brought) who shall hear and finally determine the same, and award the Costs as they shall think fit; but no Order of the Justices shall be appealed from, for Want of Form only.

Ib. §. 10. No Person shall suffer twice for one and the same Fact.

Ib. §. 11. The recited Act of 1 *Annæ*, (made perpetual, as aforesaid) and this present Act shall extend to *Scotland*, in as ample a Manner as in *England*.

Vagrants.
13 Geo. 2. c. 24. §. 1. The Number of Rogues, Vagabonds, Beggars, and other idle and disorderly Persons daily increasing, to the great Scandal, Loss and Annoyance of the Kingdom, it is enacted by 13 *Geo. 2. cap. 24.* that Persons threatening to leave their Wives and Children to the Parish, returning to a Parish from which they have been legally removed, without a Certificate from the Place or Parish to which they belong, living idly, and refusing to work for common Wages, or begging from Door to Door, or placing themselves in Streets, &c. to beg Alms in the Parish where they dwell, shall be deemed idle and disorderly Persons; and any Justice of the Peace may commit them to the House of Correction, to be kept to hard Labour, not exceeding one Month. Any Person may apprehend and take before a Justice, People going from Door to Door, or placing themselves in Streets, &c. to beg in Places where they dwell; and if they resist or escape, they shall be subject to Punishment by this Act, as Rogues and Vagabonds; and 5 s. for every Offender so apprehended, shall be paid by the Overseer, and allowed him in his Account; but if the Overseer refuse to pay the said Sum, it may be levied (by Justice's Warrant) by Distress and Sale of his Goods, and he shall not be allowed the same in his Account.

Ib. §. 2. All Patent Gatherers, or Gatherers of Alms, under false Pretences of Loss by Fire, &c. Collectors for Prisons or Hospitals, Fencers and Bearwards, Players of Interludes, &c. (having no legal Settlement at the Place where they act) without Letters Patent, (as by Act made 10 *Geo. II.* intitled, *An Act to explain and amend so much of an Act made in the twelfth Year of the Reign of Queen Anne, intitled, An Act for reducing the Laws relating to Rogues, &c.*) or without Licence from the Lord Chamberlain; all Minstrels, Jugglers, Gypsies, Pretenders to Physiognomy, Palmistry, or the like, Fortune-tellers, or Persons playing at unlawful Games, Persons run away from their Wives and Children, whereby they become chargeable to the Parish; all Petty Chapman or Pedlars, without Licence or other Authority, all Wanderers lodging in Barns or Out-houses, or pretending to be Soldiers, Mariners, or Seafaring Men, or pretending to go to Work in Harvest, and all wandering Beggars, shall be deemed Rogues and Vagabonds.

Ib. §. 3. This Act shall not extend to Soldiers wanting Subsistence, having Certificates from their Officers, or the Secretary at War, or Mariners or Seafaring Men licenced by some Justice of Peace, setting down their Time and Place of Landing, or Discharge, whither going, and limiting the Time of their Passage, and keeping in the direct Way to the Place whither they are going, or to any Persons going with Certificates abroad to work at Harvest, or otherwise.

Ib. §. 4. All End-gatherers offending against the Act 13 *Geo. 1.* intitled, *An Act for the better Regulation of the Woollen Manufactures, &c.* all Persons apprehended as Vagabonds, and escaping, or refusing to go before a Justice, or giving a false Account of themselves, after Warning of their Punishment, all Persons breaking Prison before the Expiration of the Term, or having been punished and discharged, commit a second Offence, shall be deemed incorrigible Rogues.

Ib. §. 5. Vagabonds, as above described, may be apprehended by any Parish-officer, or other Person dwelling near where the Offence is committed, to be conveyed before a Justice; and

and if any Officer refuse to use his best Endeavours to take such Offenders, he shall be punished as after directed: And if any other Person, being charged by any Justice so to do, shall refuse to apprehend and deliver such Offender to the Constable, &c. or to carry the same before a Justice, if an Officer cannot be found, being convicted on Oath, shall forfeit for every Offence ten Shillings, to be levied by Distress and Sale, and applied to the Use of the Poor: And if any such Inhabitant (not being an Officer) shall apprehend such Offenders, and deliver him or her to an Officer, or cause him or her to be conveyed to some Justice, as directed by this Act, the said Justice may make an Order in Writing upon such Constable, &c. where the Offender shall be apprehended, to pay ten Shillings to the Person who apprehended the Offender, within a Week after Demand, producing such Order, and giving his Receipt, which Money shall be repaid by the High Constable, who shall be allowed the same in his Account, by the Treasurer of the County, Riding, or Division; and the Justices at General or Quarter-Sessions shall allow it in the Treasurer's Accounts; and in Places where there are no High Constables, the Petty Constables and other Officers shall be allowed in their Accounts what they shall so pay, by Virtue of this Act: And if any Petty Constable or other Officer shall refuse to pay the ten Shillings, as aforesaid, then any such Justice may by Warrant levy twenty Shillings, by Distress and Sale of such Offender's Goods, ten Shillings to be paid to the Person intitled to the same, and such other Recompence for his Trouble, Loss of Time and Expences, as the said Justice shall think fit; and the Overplus (if any) to be returned to such Petty Constable, &c. on Demand: And if any such Petty Constable or other Officer, shall pay the said Ten Shillings to the Person intitled, and the High Constable shall refuse to pay him again, then the Sum of twenty Shillings shall be levied on his Goods, to be disposed of to the Petty Constables, &c. in Manner as is just before directed.

The Justices for every County, &c. or any two, shall meet four Times in the Year (or oftner, if Need be) in their respective Divisions, and by Warrant command the Constables or other Officers, with proper Assistance, to make a general privy Search in one Night throughout their several Limits, for apprehending of Vagabonds, which shall be brought before any Justice of the same County, Riding, &c. Ib. §. 6.

Whenever Vagabonds are apprehended, they shall be taken before a Justice, and examined on Oath, or by the Oath of any other Person, of the Circumstances of the Persons so apprehended, and the Parish to which they belong, which Examinations shall be written and signed by the Justice, and the Persons examined and transmitted to the next General or Quarter-Sessions, to be filed on Record; and if any legal Settlement is made appear, the Justice shall pass them thither, taking Notice of their Age, and the Reason of their being apprehended; but if no legal Settlement can be found, then they shall be conveyed to the Place of their Birth, if under 14 Years of Age, and have a Father or Mother living, then to the Place of their Abode; and if the Place of Birth or Parent's Abode cannot be known, then to the Parish or Place where they were last found Begging, and passed unapprehended, there to be delivered to some Officer of such Parish or Place: The Form of the Pass shall be as follows. Ib. § 7.

To the Constable of the Parish of _____ in the County of _____ or to the Tythingman or other Officer (as the Case shall be) and also to the Governor or Master of the House of Correction at _____ within the said County; and likewise to all Governors or Masters of all Houses of Correction, whom it may concern to receive and convey, and to the Church-wardens, Chapel-wardens, or Overseers of the Poor of the Parish, Place or Precinct (as the Case shall be) of _____ in the County of _____ or either of them, to receive and obey.

WHereas _____ was or were apprehended in the Parish of _____ or in the Town of _____ or other Place (*describing it*) as a Rogue and Vagabond, or as Rogues and Vagabonds, and brought before me, or us, one, two, or more of his Majesty's Justices of the Peace for this County, Riding, City, Borough, Town Corporate, Division or Liberty; and upon Examination of the said _____ taken before me (*or us*) upon Oath, it doth appear, that he, she, or they, is a Rogue and Vagabond, or are Rogues and Vagabonds, within the true Intent and Meaning of the Statute in that Case made and provided; and that his, her, or their last legal Settlement is at _____ in this County, or the County of _____ or that the said _____ was or were born in the Parish of _____ and hath not since obtained any legal Settlement, or that the said _____ is or are under the Age of fourteen Years, and hath or have a Father or Mother

ther living or abiding in the Parish or Town of _____ or other Place (*describing it*) or that the said _____ was or were last found Begging or Misordering him, herself or themselves, in the Parish or Town of _____ or other Place, (*describing it*) and pass'd through the same unapprehended, and the Place of his, her, or their legal Settlement, Birth, or Parents Abode, cannot be discovered: These are therefore to require you the said Constable, or other Officer, (*as the Case shall be*) to convey the said _____ in the next direct Way to the said Parish or Town of _____ or other Place within the said County, or next adjacent County (*as the Case shall happen, describing it*) and there deliver him, her, or them, to some Church-warden, Chapel-warden, or Overseer of the Poor of the same Parish, Town or Place, to be there provided for according to Law; and you the said Church-wardens, Chapel-wardens, and Overseers of the Poor, are hereby required to receive the said Person or Persons, and provide for him, her or them, as aforesaid; or in Case the said Place be not within the same, or next adjacent County, Riding, City, Borough, Town Corporate, Division or Liberty, then to convey the said _____ to the House of Correction at _____ in the said County or Place: And you the said Governor, or Master of the said House of Correction, to receive the said _____ into your Custody, and him, her or them to convey, or cause to be conveyed to the first House of Correction in the next County or Place, in the direct Way to the said Parish or Town of _____ or other Place; (*describing it*) and in like Manner every other Governor or Master of every House of Correction to whom it may belong, to convey the said _____ from House of Correction to House of Correction, until he, she or they shall arrive at the House of Correction belonging to the County, Riding, City, Borough, Town Corporate, Division or Liberty to which the said Parish, Town or Place doth belong; and the Master or Governor of the said House of Correction to convey and deliver, or cause to be conveyed and delivered the same to some Church-warden, Chapel-warden, or Overseer of the Poor of the said Parish or Town of _____ or other Place (*describing it*) to be there provided for according to Law: And you the said Church-wardens, Chapel-wardens, and Overseers of the Poor, are hereby required to receive the said Person or Persons, and provide for him, her or them, as aforesaid.

Ib. §. 8. The Justice shall sign a Duplicate of such Pass, and transmit it to the next General or Quarter-Sessions, there to be filed on Record; and the said Duplicate, or a Copy thereof, may be read as Evidence in any Court of Record.

Ib. §. 9. Any Persons herein before described to be Vagabonds being apprehended, the Justice before whom they are brought may commit them to the House of Correction till the next General or Quarter-Sessions, or any less Time as he shall think fit, according to the Nature of the Offence, and then pass them away as aforesaid.

Ib. §. 10. Where any incorrigible Rogue, as before described, shall be taken before a Justice, he may be sent to the House of Correction, and kept to hard Labour till the next General or Quarter-Sessions; and if the Justices in General or Quarter-Sessions assembled, shall adjudge the Person so committed to the House of Correction to be an incorrigible Rogue, they may order him to be detained for any Time not exceeding six Months, to be kept to hard Labour, and corrected by Whipping in such Manner, Times and Places within their Jurisdiction, as they shall think fit; and the said Offender shall be afterwards passed away as before directed: And if such Offender shall break Prison, or make his Escape before the Time of his Confinement shall be expired, and being duly convicted, he shall be judged guilty of Felony, and be transported for any Time not exceeding seven Years, according to an Act made 4 Geo. 1. intituled, *An Act for the further preventing Robbery, Burglary, and other Felonies, and for the more effectual Transportation of Felons*: And if any Offender to be transported shall escape before Transportation, or return from Transportation before his Time shall be expired (being convicted thereof) he shall be guilty of Felony, and suffer Death without Benefit of Clergy.

Ib. §. 11. If any Offender being deemed an incorrigible Rogue, and sent to any Parish or Place, shall afterwards be found Begging or Misordering himself in another Place, such Offender may be committed to the House of Correction to hard Labour for three Months, and to be publicly whipp'd in such Manner, and as often as such Justice shall think fit; and afterwards be pass'd to the Place to which he was first sent.

Ib. §. 12. The Justice who shall make any Pass, shall at the same Time give the Constable or other Officer a Certificate, ascertaining how they are to be conveyed, and what Recompence such Constable, &c. is to have, as follows.

WHereas by a Pass (*reciting the Substance or Effect of the said Pass*) I (*or we*) do hereby order and direct the said Person or Persons to be conveyed on Foot (or in a Cart or by Horse, &c. to the said Parish or Town of _____ in _____ or other Place (*describing it*) or to the House of Correction at _____ in the Way to such Parish, Town or Place (*as the Case shall be*) in _____ Days Time, for which the said Constable, &c. is to be allowed the Sum of _____ and no more.

Given under my Hand (or our Hands) this _____ Day of, &c.

The Constable or other Officer having such Pass and Certificate, shall convey the Persons named therein, in such Manner and Time as the Pass shall direct, the nearest Way to the Place where they are ordered to be sent, if such Place shall be in the same County, Riding or Division where the Persons were apprehended, or next adjoining thereto; but if the Place lies in some distant County, &c. the Constable or other Officer shall deliver them to the Governor or Master of the next House of Correction where they dwell, together with the Pass and Certificate, taking his Receipt for the same: And the said Master of such House of Correction is required to receive them, and give a Receipt, and convey them forward with all convenient Speed, and deliver them, with the Pass, to the Master of some House of Correction in the next County, &c. that lies nearest in the Way to the Place where such Persons are to be sent, who is hereby obliged to receive them, and give a Receipt, and shall without Delay apply to some Justice in the same County, &c. who shall make the like Certificate as before (*mutatis mutandis*) and deliver it to the Master of the last House of Correction, who shall convey the Persons named in the Pass, together with the former Pass, unto the House of Correction in the next County, &c. in the Way to the Place where such Persons are to be conveyed; and so in like Manner from the House of Correction in one County to the House of Correction in another, till they come to some House of Correction in the County, &c. wherein the Place is where they are to be sent, there to be kept to hard Labour, not exceeding one Month; and then such Persons shall be conveyed to such Place, and delivered to some Parish Officer, who is required to receive them and the Pass, and provide for them accordingly, and give the like Receipt on their Delivery.

All Constables and other Officers within the Counties of *Cumberland, Northumberland, Durham*, or Town of *Berwick upon Tweed*, and all Masters of Houses of Correction within the said Counties or Town, shall (upon any Person's being delivered to them by Pass, apprehended within the said Counties or Town, or brought to them, according to the Direction of this Act, whose Settlement is in *Scotland*) convey such Persons to the next adjoining Shire, Stewartry or Place, in that Part of the United Kingdom, and deliver them to any Officer of the next Parish, District or Place, within the said Shire, Stewartry or Place, taking his Receipt; and such Officer is to receive such Persons, give such Receipt, and dispose of them according to Law.

Any Justice of Peace in *Scotland* next adjoining to the Counties of *Cumberland, Northumberland, Durham* or Town of *Berwick upon Tweed*, may cause any Constable or other Officer, to convey any Persons apprehended within their Jurisdictions, or brought to them from that Part of the United Kingdom, as Vagabonds, &c. whose Place of Settlement shall appear to be in *England*, to the first House of Correction in the said Counties or Town, and deliver them to the Master of the said Workhouse, taking his Receipt, who is required to receive such Persons, give such Receipt and apply to some Justice in the same County or Town, who shall cause such Persons to be conveyed to the Place of their legal Settlement (if within the said Counties or Town) or else to be conveyed to the House of Correction in the next County in the most direct Way to the Place of their legal Settlement.

In case any Master of a Vessel shall bring into this Realm from *Ireland*, the Isle of *Man*, the Isles of *Jersey, Guernsey* or *Scilly*, or any of the Foreign Plantations any Vagabond or Person likely to live by begging, being a Native of the said Islands or Plantations, and they shall be apprehended wandering and begging, such Master shall forfeit 5*l.* for every Vagabond so brought over, besides the Charges of apprehending and reconveying them back, and any Officer where such Persons shall be found wandering and begging, may cause them to be apprehended and openly Whipped and put on board any Vessel to be reconveyed to the same Island or Place from whence they were brought, paying such Rate *per Head* for their Passage back as the Justices at their Quarter-Sessions shall appoint, and if such Constable or other Officer, shall make appear on Oath before

a Justice for the same County or Place what Expence he has been at, the Justice shall direct Payment of the Money, and the Penalty of 5*l.* and if the Master refuse to pay the same on Demand, the Justices by Warrant shall levy the same by Distress and Sale of the said Vessel, or any of the Goods therein while within the Jurisdiction of such Justice, and if the said Master or the Vessel be gone out of the said Justice's Jurisdiction, the said order may be removed by *Certiorari* into the King's Bench and there filed, and the Judges of the said Court shall direct Process for arresting the said Vessel till the Money mentioned in such order and the Charges of such Process be fully satisfied, or otherwise to award Process for levying the same by *Capias*. *Fieri Facias*, or *Elegit*, against the Master or Owners of the said Vessel, as the Court shall think proper.

But if the Master or Owners of the said Vessel shall shew in the said Court any ground of Grievance by the said Order, they may be permitted to traverse the same; giving Security in the Penalty of 50*l.* to answer the Charges of such Traverse, if it be determined against them.

Ib. §. 18.

All Masters of Ships bound for *Ireland*, the Isle of *Man*, *Jersey*, *Guernsey* or *Scilly*, shall, on Warrant of a Justice of the County, Town or Place where such Ship shall be, take on board such Vagrants as shall be named in the Warrant, and convey them to such Place in *Ireland*, the Isle of *Man*, *Jersey*, *Guernsey* or *Scilly*, as such Ship shall be bound to or arrive at, and the Person who serves him with the Warrant shall pay him such Rate *per* Head as the Justices at their Quarter-Sessions shall appoint for every Vagrant delivered to him, and the Master shall sign a Receipt on the Back of the Warrant for the Money so paid and the Vagrants so delivered, which Warrant shall be returned to the Justice who signed it, and upon his Allowance thereof under his Hand, the Money shall be repaid by the County in the Manner as this Act directs for passing Vagrants from County to County, and every Master of a Ship refusing to receive on board, or to transport such Vagrants or sign such Receipt as aforesaid, shall forfeit 5*l.* to the Use of the Poor, to be levied by Distress and Sale of the said Ship or Goods by Warrant of any Justice of the County, City or Town Corporate, returning the Overplus on Demand, after deducting the Penalty and Charges.

Ib. §. 19.

The Justices of Peace of any County, &c. at the General or Quarter-Sessions shall direct, what Rates *per* Mile or otherwise shall be made for passing Vagabonds, also make such Orders for the more regular acting therein, within their Limits as they shall think proper, and all Persons within the said Limits are to give due Obedience to the same.

Ib. §. 20.

If any Petty Constable or other Officer bring to the High Constable a Certificate given him by a Justice, ascertaining how, and for what Rates he shall be required to convey Vagabonds as aforesaid, with a Receipt from the Church-wardens, Overseers of the Poor or Master of any House of Correction, to whom the Persons so to be conveyed were delivered, the High Constable shall pay the Rates so certified and no more, taking the Certificate and a Receipt, and the High Constable shall be allowed the same in his Accounts by the Treasurer of the County, &c. delivering up the Certificate and Receipt and giving his own Receipt to the Treasurer, and the Justices at their General or Quarter-Sessions shall allow the same to the Treasurer in his Accounts on his producing the Vouchers aforesaid, and if any High Constable refuse to pay the Petty Constable the Rates aforesaid on Demand, any Justice may by Warrant levy double the Sum on his Goods by Distress and Sale, and thereout allow the said Petty Constable the Sum so certified, and other Expences and Loss of Time as the said Justice shall think fit, returning the Overplus on Demand, and in such Places where there is no High Constable the Petty Constable or other Officer shall be allowed what they shall so pay in their respective Accounts on producing their Vouchers.

Ib. §. 21.

The Treasurer of the County, &c. shall pay out of the publick Money in his Hands to the Master of the House of Correction within the said County, &c. all his Expences in passing Vagabonds, the said Master producing the Certificate with a Receipt from the Master of the House of Correction, or the Church-warden or Overseer to whom such Persons are delivered, and giving his own Receipt for the same, and the Justices in General or Quarter-Sessions shall allow the same to the Treasurer on producing his Vouchers.

Ib. §. 22

If any Petty Constable or other Officer or Master of any House of Correction counterfeit any Certificate, Receipt or Note, or permit any Alteration in the same he shall forfeit 50*l.* and if they do not convey the Persons to the Place where they ought to be conveyed, or shall refuse to receive any Persons sent to them, or give a Receipt as directed; in every such Case they shall forfeit the Sum of 20*l.* to be levied by Distress and

and Sale of the Offender's Goods, by Warrant of the Justices at their General or Quarter-Sessions, one Half to the Informer, and the other to the Treasurer, to be made Part of the publick Stock, the Overplus to be returned on Demand.

The Place where such Vagabonds shall be passed to, shall employ them in some Work-house or Alms-house, till they betake themselves to some Employment, and if they refuse to Work, or betake themselves to some Employment, the Parish Officers may take them before a Justice to be sent to the House of Correction to hard Labour. Ib. §. 23.

Lunaticks shall be apprehended by Warrant of two or more Justices, and locked up in some secure Place, or chained if Occasion be, if the last legal Settlement of such Lunaticks be within the County, but if such Settlement be not there, then the Lunatick shall be passed to their last Settlement, there to be locked up or chained as aforesaid; and the Charges of maintaining such Lunaticks shall be paid out of their Estates, if they have any over and above what shall be sufficient to maintain their Families (if any); and if they have no Estate, they shall be provided for as other Poor are, by the Laws in Being. Ib. §. 24.

If any Constable or other Officer, or Master of any House of Correction, shall refuse to apprehend or pass Vagabonds, or shall be otherwise remiss in his Duty, or if any Persons shall hinder the Execution of this Act, or rescue any Person apprehended or passing from Place to Place by Virtue thereof, or shall be advising or assisting in their Escape, and shall be thereof convicted on Oath of one or more credible Witnesses, before one or more Justices, they shall forfeit any Sum not exceeding 5*l.* or less than 10*s.* to the Use of the Poor, to be levied by Distress and Sale of the Offender's Goods, for want of which the Offender shall be committed to the House of Correction to hard Labour, for any Time not exceeding two Months. Ib. §. 26.

If any Person permits Vagabonds to Lodge in their Houses, Barns or Outhouses, and shall not apprehend and carry them before some Justice, or give Notice to some Constable or other Officer so to do, such Person upon Conviction, on Oath before two or more Justices, shall forfeit, not exceeding 40*s.* or less than 10*s.* Half to the Informer, and Half to the Poor to be levied by Distress and Sale, rendring the Overplus on Demand, and if any Charge be brought on any Place by Means of such Offence, it shall be levied by Distress and Sale as aforesaid, and for want of such Distress the Offender shall be committed to the House of Correction to hard Labour, not exceeding three Months. Ib. §. 27.

Church-wardens and Overseers may relieve Persons whilst in their Parishes, who by sudden Sickness, or other accidental Misfortune, may not be removed without Danger of their Lives, and their Expences shall be allowed in their Accounts, and all Masters of Hospitals may Provide for Sick and Impotent Persons according to their respective Foundations, or give Money for Relief of such casual Poor. Ib. §. 28.

Persons aggrieved by any Justice's Pass, may appeal to the next General or Quarter-Sessions. Ib. §. 29.

All Cities and Towns, where by special Acts of Parliament the Charge of passing Vagrants is to be otherwise defrayed than by this Act directed, or Passes managed otherwise, such Rules shall be followed as if this Act had never been made. Ib. §. 30.

If the Grand Jury at the Assizes held for any County or Liberty present, that there is no House of Correction, or not a sufficient Number, or that those already erected ought to be enlarged, or made more convenient; the Justices at their General or Quarter-Sessions may build or enlarge such Houses, to make them more convenient, and may raise Money sufficient for building, enlarging or purchasing Houses or Land for that Purpose. Ib. §. 32.

The Justices for any County, &c. are to take effectual Care that the Houses of Correction provided within their Jurisdictions (except they are erected and maintained by any particular Founders) shall be duly fitted up, and supplied with all Necessaries for relieving, setting to Work, and correcting all idle and disorderly Persons who shall be sent to the same, and any two Justices appointed at the General or Quarterly Sessions shall visit the same twice or oftner in every Year, and make their Report to the next General or Quarter-Sessions, that what is amiss may be reformed, and the said Justices shall have the same Power over the Houses newly erected, as they have over other Houses erected under former Laws, and if the Masters of Houses of Correction do not set to Work and punish such Vagabonds, or are otherwise negligent in their Duty, they may be fined by the Justices in their General or Quarter-Sessions as by the Act 7 *Jac.* 1. *cap.* 4. which Fines shall be paid to the Treasurer to be accounted for as Part of the publick Stock, Ib. §. 33.

and the said Justices may appoint or remove any Masters or other Officers of Houses of Correction, and make such Orders as they shall think fit for the better governing the said Houses, and for employing, relieving and punishing the Persons therein, or sending them to or from thence, and if any Persons shall refuse to quit Possession of such House of Correction, after having an Order so to do from the General or Quarter-Sessions for the Space of ten Days, any two Justices may by their Warrant to the Sheriff remove them out of such House in like Manner as upon a Writ of *Habere facias Possessionem*.

1b. §. 34. If Offenders are committed to Prison, and the Time and Manner of their Punishment is not limited by any Law in Being, the Justice shall commit them to the House of Correction to hard Labour, till the next General or Quarter-Sessions or till discharged by due Course of Law, and two Justices (one being the Justice who committed them) may discharge them before Sessions if they see Cause; but if they be not so discharged the Sessions may discharge them, or continue them if they think fit, not exceeding three Months.

1b. §. 35. All Money raised by Virtue of this Act, whether to pass or maintain Vagrants, Houses or Lands, or defray any other Expences concerning them, shall be paid to the Treasurer of the County, by an Act made last Sessions of Parliament, intitled an Act for the more easy Assessing, Collecting and Levying of County Rates.

1b. §. 36. The Defendant in any Actions prosecuted for Things done in pursuance of this Act, may plead the General Issue, &c. and if the Judgment be given against the Plaintiff, &c. may recover double Costs: And the 12 *Ann. cap. 23.* is hereby repealed, and all Acts therein mentioned to be repealed, are to continue repealed.

Foundlings.
13 G. 2. c.
29. §. 5. By the 13 Geo. 2. cap. 29. *For confirming and enlarging the Powers granted by his Majesty to the Corporation of the Governors and Guardians of the Hospital for the Maintenance and Education of exposed and deserted young Children*, it is enacted that no Church-warden, Overseer or other Person shall by Virtue of any Law in Being, for the Provision of the Poor, or for Bastard Children, Stop, Molest or Disturb any Person in bringing any Child to any Hospital or House provided by the said Corporation for the Reception of such Children, or in returning from the same; under the Penalty of 40 s. for every such Offence, Half to the Informer, and Half to the Use of the said Hospital, which Forfeiture shall be levied under the Hands and Seals of any two Justices of the Peace for the County or Liberty where such Offence shall be committed.

1b. §. 6. No Parish Officer shall have any Authority in any such Hospital or House to inquire about the Birth or Settlement of any such Child therein Maintained and Educated, or to place them out Apprentices, or to do any other Thing within such Hospital, &c. save only to collect such Taxes as they shall be empowered to do by Act of Parliament.

1b. §. 6. Children, Nurses or Servants, maintained or employed within any such Hospital or Place, shall not gain any Settlement thereby.

1b. §. 14. Inferior Officers or Servants refusing to account, or to produce Papers, Books, Vouchers, or other Effects which they shall be intrusted with by the said Corporation, any two Justices of the County, &c. where the Servant shall be found, may, on Complaint made on the Part of the said Corporation, commit any such inferior Officer or Servant to Gaol, without Bail, until they make a true Account and pay the Ballance in their Hands, and deliver up such Papers, &c.

Houses of Correction.
14 G. 2. c.
33. §. 2. The Justices of Peace of any County, City, &c. at their General Sessions or General Quarter-Sessions assembled, or the major Part of them, where there shall be no Assizes, Great Session or General Gaol-delivery held, upon the Presentment of the Grand Jury to such Justices at their General Sessions, or General Quarter-Sessions, shall have as full Power to repair and enlarge any House of Correction already built, or to purchase any Houses for Houses of Correction, or to build any Houses of Correction, or to purchase Land to erect such Houses of Correction upon, and to make convenient Backsides or Outlets thereto, as if such Presentment had been made at the Assizes, Great Session or General Gaol-delivery, in such Manner as is directed by 13 *Geo. 2. cap. 24.*

1b. §. 3. Justices may send any Person who shall be apprehended as a Rogue, Vagabond, &c. to the House of Correction in the County, Riding or Division where they dwell, or to any other House of Correction in the next County, &c. as shall be most convenient for passing such Persons.

Waggons not travelling for Hire.
15 & 16 G. 2. c. 2. vid. supra c. 21 & 50. By 15 & 16 *Geo. 2. cap. 2.* the Clause of 14 *Geo. 2. cap. 42.* which obliges Persons not travelling for Hire to make use of Waggons with Wheels bound with Streaks or Tyre of a certain Breadth, or the said Streaks to be fastened with Nails of a certain Size, is repealed.

By 15 & 16 Geo. 2. cap. 13. sect. 12. it is enacted, That if any Person shall forge, counterfeit, or alter any Bank Note, Bank Bill of Exchange, Dividend Warrant, or any Bond or Obligation under the common Seal of the said Company, or any Indorsement thereon, or shall offer or dispose of, or put away any such forged, counterfeit, or altered Note, Bill, Dividend Warrant, Bond or Obligation, or the Indorsement thereon, or demand the Money therein contained or pretended to be due thereon, or any Part thereof, of the said Company, or any their Officers or Servants, knowing such Note, Bill, Dividend Warrant, Bond or Obligation, or the Indorsement thereon, to be forged, counterfeited, or altered, with Intent to defraud the said Company, or their Successors, or any other Person, every Person so offending, and being thereof convicted, shall be guilty of Felony without Benefit of Clergy.

Forging Bank Bills, &c.
15 & 16 G. 2.
c. 13. §. 12.

Also if any Officer or Servant of the said Company being entrusted with any Note, Bill, Dividend Warrant, Bond, Deed, or any Security, Money, or other Effects belonging to the said Company, or having any Bill, Dividend Warrant, Bond, Deed, or any Security or Effects of any Person lodged or deposited with the said Company, or with him as an Officer or Servant of the said Company, shall secrete, imbezil, or run away with any such Note, Bill, Dividend Warrant, Bond, Deed, Security, Money, or Effects, or any Part of them, every Officer or Servant so offending, and being thereof convicted in due Form of Law, shall be deemed guilty of Felony, and shall suffer Death as a Felon without Benefit of Clergy.

Imbezilling, &c.
Ib. §. 13.

By 15 & 16 Geo. 2. cap. 24. it is enacted, That in all Cases where any Person liable by Law to be committed to the House of Correction, shall be apprehended within any Liberty, City or Town Corporate, whose Inhabitants are contributory to the Support and Maintenance of the House or Houses of Correction of the County, Riding, or Division, in which such Liberty, City, or Town Corporate is situate, it shall be lawful for the Justices of the Peace of such Liberty, City, or Town Corporate, to commit such Person to the House of Correction of the County, Riding, or Division, in which such Liberty, City, or Town Corporate is situate; which Person so committed, shall and may be received, dealt with, and be subject to the same Correction and Punishment to all Intents and Purposes, as if committed by any Justice of the Peace of the same County, Riding, or Division.

Justices of Peace of Cities, &c. when to commit to the House of Correction of the County.
15 & 16 G. 2.
c. 24.

By 15 & 16 Geo. 2. cap. 27. it is enacted, That in Case any Cloth or Woollen Goods remaining upon the Rack, or Tenters, or any Woollen Yarn, or Wool left out to dry, shall be stolen or taken away in the Night-time, it shall be lawful for any one Justice of the Peace of the same County or Place, upon Complaint made within ten Days after such Cloth, &c. shall have been so stolen, by the Owner of such Cloth, &c. by Warrant under his Hand and Seal, to authorize any Constable, or other Peace-Officer in the Day-time, to enter into and search the Houses, Out-houses, Yards, Gardens, or other Places belonging to the Houses of all and every Person whom the Owner of such Cloth, &c. shall, upon his Oath, declare to such Justice he suspects to have stolen or received the same; and in Case such Constable, &c. shall find any Cloth, &c. which he shall, from the Information of the Person making such Oath, have reason to suspect to be so stolen or received, he shall forthwith apprehend the Person in whose Custody or Possession such Cloth, &c. shall be found, and carry him before some Justice of the Peace of the same County, &c. and if the said Person so suspected, and carried before the said Justice, shall not then and there give a satisfactory Account how he acquired the Property or Possession of such Cloth, &c. or shall not, within some convenient Time to be set by the said Justice, produce the Party or Parties of whom he received the same, or some other credible Witnesses, to depose upon Oath such Property or Right to the Possession of the said Cloth, &c. that the said Person so suspected, nor producing any such Witness upon Oath to testify as aforesaid, shall be deemed convicted of the said Offence of stealing or taking away the said Cloth, &c. and shall for the first Offence forfeit to the Owner of such Cloth, &c. treble the Value thereof; and in Default of Payment thereof, such Justice of the Peace may issue forth his Warrant to levy the same by Distress and Sale of the Offender's Goods, returning the Overplus, if any be; and in Default of such Distress, shall commit the Offender to the common Gaol of the County, &c. where the said Offender shall be apprehended, there to remain for the Space of three Months without Bail, or until he pay the same; and if such Person shall again commit the said Offence, and be thereof convicted as before, then he shall, over and above the Forfeiture of treble the Value of the Cloth, &c. so found, to be recovered and levied as aforesaid, be committed to the common Gaol, there to remain for the Space of six Months

Stealing Woollen Goods off the Tenters in the Night-time.
15 & 16 G. 2.
c. 27. §. 1.

Months without Bail; and if such Person shall again commit the said Offence, and be thereof convicted as before, the Justice of the Peace, before whom such Person shall be so convicted, shall forthwith issue his warrant to commit the said Offender to the common Gaol as aforesaid, there to remain till the next Assises or Great Session, where the said Offender shall be tried for the said Offence; and in Case such Offender shall not, by producing the Party of whom he acquired the Property of such Cloth, &c. or otherwise, prove, to the Satisfaction of the Jury, that he lawfully obtained the Property of the same, he shall be adjudged to be guilty of Felony, and suffer Transportation for the Space of seven Years, and shall be liable to the same Punishment, &c. for returning from such Transportation as other Felons transported are liable unto by Virtue of the Laws now in Force.

Ib. §. 2. Persons apprehending themselves aggrieved may Appeal to the General Quarter-Sessions, whose Judgment shall be final.

Ib. §. 3. This Act shall not alter or repeal any Law now in Force, for the Punishment of any Person Stealing or Receiving such Cloth, &c. except in such Cases where the Proof is laid upon the Offender as aforesaid.

Counterfeiting the Coin.
By 15 & 16 Geo. 2. cap. 28. it is enacted, That if any Person shall wash, gild, or colour any *Shilling* or *Sixpence*, or any counterfeit or *false Shilling* or *Sixpence*, or add to or alter the Impression, or any Part of the Impression, of either Side of such lawful or counterfeit *Shilling* or *Sixpence*, with Intent to make such *Shilling* look like, or pass for a Guinea, or to make such *Sixpence* look like, or pass for an Half Guinea; or shall file, or any ways alter, wash or colour any *Halfpence* or *Farthings*, or add to or alter the Impression, or any Part of the Impression of either Side of an *Halfpenny* or *Farthing*, with an Intent to make an *Halfpenny* look like, or pass for a *Shilling*, or to make a *Farthing* look like, or pass for a *Sixpence*, the Person so offending in any of the Matters aforesaid, their Counsellors, Aiders, Abettors and Procurers, shall be adjudged to be guilty of High Treason.

Ib. §. 2. And if any Person shall utter or tender in Payment any false or counterfeit Money, knowing the same to be false or counterfeit, to any Person, and shall be thereof convicted, such Offender shall suffer six Months Imprisonment, and find Sureties for his good Behaviour for six Months more, to be computed from the End of the said first six Months; and if the same Person shall afterwards be convicted a second Time of the like Offence, he shall suffer two Years Imprisonment, and find Sureties for his good Behaviour for two Years more, to be computed from the End of the said first two Years; and if the same Person shall afterwards so offend a third Time, he shall be guilty of Felony without Benefit of Clergy.

Ib. §. 3. And if any Person shall utter or tender in Payment any false or counterfeit Money, knowing the same to be false or counterfeit, to any Person, and shall either the same Day, or within the Space of ten Days then next, utter or tender in Payment any more false Money, knowing the same, to the same Person, or to any other Person, or shall at the Time of such uttering or tendering have about him in his Custody one or more Piece or Pieces of counterfeit Money, besides what was so uttered or tendered, then such Person so uttering or tendering the same, shall be deemed and taken to be a common Utterer of false Money, and being thereof convicted, shall suffer a Year's Imprisonment, and shall find Sureties for his good Behaviour for two Years more, to be computed from the End of the said Year; and if any Person having been once so convicted, shall afterwards again utter or tender in Payment any false or counterfeit Money, &c. such Offender shall be adjudged guilty of Felony without Benefit of Clergy.

Ib. §. 4. The Blood of the Heirs of such Offender shall not be corrupted, nor shall his Wife lose her Dower.

Ib. §. 5. The Person guilty as aforesaid, shall be indicted, &c. in such Manner as is now used against any Offenders for Counterfeiting the lawful Coin; Provided that there shall be no Prosecution for any of the Offences made Treason or Felony by this Act, unless such Prosecution be commenced within six Months next after such Offence shall be committed.

Counterfeiting the Halfpenny, &c.
If any Person shall make, coin, or counterfeit any Copper Halfpenny, or Farthing, such Offender and his Aiders, Abettors and Procurers, being thereof convicted, shall suffer two Years Imprisonment, and find Sureties for his Good Behaviour for two Years more, to be computed from the end of the said first two Years.

Ib. §. 6.
Ib. §. 7. And whoever shall apprehend any Person who hath committed any of the Offences hereby made High Treason or Felony, or who shall have made or counterfeited any of the Copper Money aforesaid, and shall prosecute such Offender until Conviction, such

Prosecutor shall have from the Sheriff of the County or City where such Conviction shall be made, for every such Offender so convicted of any of the Treasons or Felonies aforesaid, the Sum of Forty Pounds; and for every Person convicted of Counterfeiting any of the said Copper Money, the Sum of Ten Pounds, without paying any Fee for the same, within one Month after such Conviction, and Demand thereof made, by tendering a Certificate to the said Sheriff for the Time being, or his Under-Sheriff, under the Hands of the Judge or Justices before whom such Conviction shall have been made, certifying such Conviction, and that the Offenders were apprehended and prosecuted by the Persons claiming the said Reward, and thereby directing in what Shares and Proportions the said Reward shall be paid and divided to and amongst such Prosecutors; which Certificate the said Judge or Justices are to give without Delay or Fee.

Any Offender being out of Prison, discovering two or more who have committed any of the said Offences, so as such two or more be thereof convicted, such Discoverer shall be intitled to the King's Pardon. Ib. §. 8.

And if any Person shall be convicted of uttering or tendering any false or counterfeited Money as aforesaid, and shall afterwards be guilty of the like Offence in any other County or City, the Clerk of the Assize, or Clerk of the Peace for the County or City where such first Conviction was so had, shall, at the Request of the Prosecutor, or any other on his Majesty's behalf, certify the same by a Transcript in few Words, containing the Effect and Tenor of such Conviction; for which Certificate two Shillings and Six-pence, and no more, shall be paid: And such Certificate being produced in Court, shall be sufficient Proof of such former Conviction. Ib. §. 9.

By the 15 & 16 Geo. 2. cap. 32. it is enacted, That no Person, not being a Dealer in Gunpowder, shall within the Cities of *London* or *Westminster*, or the Suburbs thereof, or within three Miles of the Tower of *London*, or within three Miles of the Palace of *St. James's*, or within two Miles of any Magazine of Gunpowder belonging to his Majesty, for the Use of the Publick, keep more than fifty Pounds of Gunpowder; and no Dealer in Gunpowder shall keep within the Limits aforesaid, for any longer Time than twenty-four Hours, more than two hundred Pounds of Gunpowder in any House, Yard, &c. or Houses, Yards, &c. or other Place or Places, either under the same Roof, or by dividing the same under divers Roofs, &c. or upon the River *Thames*, within the Limits aforesaid, except in Vessels passing or repassing, or detained by Tides or bad Weather, and except also in Carts or other Carriages, actually loading or unloading, or passing or repassing on the Highway, upon Pain of Forfeiture of all such Gunpowder, and the Value thereof with full Costs of Suit, to any who will sue for the same in any of his Majesty's Courts of Record at *Westminster*. Keeping dangerous Quantities of Gunpowder. 15 & 16 Geo. 2. c. 32. §. 1.

Any Justice of the Peace residing within the Limits aforesaid, upon Demand made by any Parish Officer, or by any one Householder, Inhabitant within the said Limits, assigning a reasonable Cause for the same, may issue his Warrant, for Searching in the Day-time, for dangerous Quantities of Gunpowder, within the Limits aforesaid, any Houses, or other Places whatsoever, or any Ships, or other Vessels on the River of *Thames*, (except as herein before is excepted) and for that Purpose to break open any such Houses, or other Places, or any Ships, or other Vessels, if there shall be Occasion; and upon any such Search, the Searchers may immediately seize, and at any Time within twelve Hours after such Seizure, remove all such Gunpowder so found within the said Limits, exceeding the Quantity allowed by this present Act, and may detain the same until it be determined in one of his Majesty's Courts of Record at *Westminster*, whether the same be forfeited by Virtue of this Act. Ib. §. 2.

Persons not being the Owners of Gunpowder, who shall permit others to lodge their Gunpowder with them, contrary to the Meaning of this Act, shall forfeit 1 s. for every Pound thereof, to be recovered as before. Ib. §. 3.

The 5 Geo. 1. cap. 26. and 11 Geo. 1. cap. 23. are to remain in Force. See the Appendix, Tit. Gunpowder. Ib. §. 7.

By the 15 & 16 Geo. 2. cap. 33. the 5 Geo. 2. cap. 33. and the 8 Geo. 2. cap. 20. mentioned before in Chap. 50. p. 123 of this Book, are revived, and are to continue in Force until the first Day of *June* 1747. The Act of 8 Geo. 1. cap. 18. (for which see here Chap. 33. p. 70.) is also continued to the said first of *June* 1747. Laws continued. 15 & 16 Geo. 2. c. 33.

By the same Act of 15 & 16 Geo. 2. it is also provided, That if any Person without the Consent of the Owner of *Starr* or *Bent* Hills, shall cut, pull up, or carry away any *Starr* or *Bent*, planted or set on the Sand-Hills or Banks, on the North-west Coasts of *England*, in order to preserve and to prevent the same from being blown upon the adjacent Cutting Starr or Bent. 15 & 16 Geo. 2. c. 33. §. 6.

jaçant Lands, it shall be lawful for any of his Majesty's Justices of the Peace of the County, Riding, City, Town Corporate, Liberty, or Division, where such *Starr* or *Bent* shall be cut, pulled up, or carried away, and such Justice is hereby impowered upon Complaint or Information, upon Oath made of such Offence, to summon the Party so complained of, and in Default of Appearance thereon, to issue out his Warrant to apprehend and bring before him the Person so complained of; and upon Proof thereof made, either by Confession of the Party, or upon the Oath of one Witness, to convict the Offender; and every Person offending, being thereof convicted as aforesaid, shall forfeit the Sum of Twenty Shillings, one Moiety thereof to the Informer, and the other Moiety to the Lord or Owner of such *Starr*, *Bent*, or *Sand-Hills*; the same to be levied by Distress and Sale of the Offender's Goods and Chattels, by Warrant, &c. of such Justice, together with the Charges of such Distress and Sale, rendering the Overplus, if any be, to the Owner; and for Want of sufficient Distress, the said Justice shall commit the Person convicted as aforesaid to the House of Correction, to hard Labour for three Months; and if any Person so convicted shall afterwards be guilty of a second Offence, and thereof lawfully convicted by such Justice, either by Confession, or upon the Oath of one Witness, such Person shall be committed to the House of Correction for the Space of one Year, there to be whipt, and kept to hard Labour.

Ibid. §. 7.

And if any *Starr* or *Bent* shall be found in the Custody or Possession of any Person within five Miles of any such *Starr*, *Bent* or *Sand-Hills* as aforesaid, such Person being convicted thereof before one or more such Justice or Justices, in Manner aforesaid, shall be deemed, adjudged and taken to be the Cutter and Puller of such *Starr* or *Bent* from such *Sand-Hills*, and shall forfeit and pay the Sum of Twenty Shillings, one Moiety thereof to the Lord or Owner of such *Starr*, *Bent*, or *Sand-Hills*; the same to be levied by Distress, &c. in Manner aforesaid; and for Want of sufficient Distress, such Person shall be committed in Manner aforesaid to the House of Correction, there to remain and be kept to hard Labour for the Space of three Months.

Word Cattle explained.

15 & 16 Geo. 2. c. 34.

By the 14 *Geo. 2. cap. 6.* (which see before in *Chap. 160. p. 364.*) it was enacted, That Driving away or Stealing of Sheep, or other Cattle, should be Felony, without Benefit of Clergy: And it being doubtful to what Sorts of Cattle besides Sheep this Act was meant to extend, it is now enacted by the 15 & 16 *Geo. 2. c. 34.* that the said Act shall extend to any Bull, Cow, Ox, Steer, Bullock, Heifer, Calf and Lamb, and to no other Cattle whatsoever.

A
T A B L E
O F T H E
G E N E R A L H E A D S

Contained in the following

A P P E N D I X,

B E I N G

A Compleat Summary of all the Acts of Parliament, shewing the various Penalties of Offences by *Statute*, and the particular Power of **One, Two, Three,** or more Justices, in their Proceedings and Determinations, under several distinct **H E A D S.**

A.

A *Bjuration, see Oaths.*
Agnus Dei, see Papists.
Almshouses and Lustrings.
Ale and Beer (Retailers of) see Excise.
Alehouses.
Alms-houses, see Rates in Title Poor.
Annuitant and Annuity.
Apprentices.
Arms.
Arms and Horses of Papists, see Papists and Popish Superstition.
Arrack, see Brandy in Excise.
Artificers.
Attornies and Solicitors.

B.

B Adgers.
Bail.
Bailiffs, see County-Courts.
Bakers and Bread.
Bankrupts.
Banks or other Inclosures, see Wood.
Bark, see Foresters, and Ingrossers, and Wood.
Bastards.
Bedford Level.
Beer and Ale.
Beer and Ale (Retailers of) see Excise.
Beggar, see Vagabonds and Vagrants.
Billets, see Fuel.
Blasphemous Words.
Boats, see Keels.

Bone-Lace, see Hawkers and Pedlars.
Books.
Boots, see Shoemakers and Tanner.
Boves, see Game.
Boys bound to Sea, see Apprentices.
Brandy and Spirits.
Bras.
Brewers, see Excise.
Bricks and Tiles.
Bridle-Cutters, see Tanner.
Bridges.
Buggery.
Buildings, see Fire.
Bullion.
Burials.
Burglars, see Watchman.
Burglary, see Stolen Goods.
Butcher.
Butter and Cheefe.
Buttons and Button-holes.

C.

C *Cards and Dice, see Titles Stamp-Duty, and Games not lawful.*
Callicoets.
Carriers and Carriages.
Cattle.
Cheefe, see Butter and Cheefe.
Certiorari.
Church.
Church-wardens, see Poor.

A Table of the General Heads.

Clerk of the Market, *see* Bakers, Bread, and Weights and Measures.
 Clothes.
 Clothes, Caps, or other Furniture of Soldiers and Deserters, *see* Officers and Soldiers.
 Cloth and Clothier.
 ————Woollen.
 ————Linen.
 Clothiers and Cloth-workers Servants, *see* Servants.
 Coaches and Chairs, and Coach-horses, *see* Hackney-Coaches and Chairs.
 Coals.
 Coin and Coining.
 Collar-makers, *see* Tanners.
 Collectors for Prisons, *see* Vagabonds and Vagrants.
 Commission of the Peace.
 Conies, and Cony-Dogs, *see* Game.
 Conformity.
 Conspiracies.
 Constables.
 Conventicles.
 Convicts.
 Coopers.
 Coppices, *see* Wood.
 Corn.
 Coroner.
 Cofts.
 Cottages.
 County-Courts.
 Counterfeit Letters, *see* False Tokens.
 Currier.
 Curriers Company, *see* Shoemakers.
 Cursing, *see* Swearing and Cursing.
 Custom-house Officers.
 Cyder-makers, *see* Excise.

D.

DEEF.
 Decr-stealers.
 Deserters, *see* Soldiers and Mariners.
 Dissenters.
 Dissenting Teachers, *see* Oath of Allegiance in Papists, &c.
 Distillers, *see* Brandy in Excise.
 Dogs, *see* Game.
 Drunkenness.
 Duty on Houses, *see* Windows.
 Dyers.

E.

E Streets, *see* Sheriffs.
 Examination.
 Excise.
 Brandy.
 Brewers.
 Cyder-makers.
 Distillers.
 Gaugers.
 Makers of Mead, Vinegar, Metheglin and Sweets.
 Inn-keepers and Victuallers.
 Low-wines.
 Malt.
 Retailers of Beer, Ale, Cyder, Perry, and Metheglin.

F.

Fairs.
 False Tokens.
 Fellers of Oak-Trees.
 Felons, *see* Transportation.

Felony.
 Fences, *see* Orchards and Wood.
 Fencers, *see* Vagabonds and Vagrants.
 Fines.
 Fire.
 Fireworks, *see* Squibs.
 Fish.
 Fish-ponds, *see* Title Fish.
 Flesh.
 Forcible Entry and Detainer.
 Foretallers and Ingrossers.
 Fortune-tellers, *see* Vagabonds and Vagrants.
 Fruit-trees, *see* Orchards.
 Fuel.
 Fullers Earth and Fullers Clay, *see* Brandy in Excise.

G.

GAMES not lawful.
 Game.
 Conies.
 Decr, Hare, Partridge, and Pheasant.
 Deer-Hayes, or Buckstalls.
 Eggs of Falcon, Goshawk, Lanner, or Swan.
 Game-keeper.
 Greyhounds, Bows, Setting-Dogs, Ferrets, and Snares.
 Guns.
 Hawks.
 Heron.
 Pigeon,
 Wild Duck, Teal, Widgeon, and Water Fowl.
 Gaol.
 Gaolers, *see* Sheriff.
 Gilding and Goldsmiths.
 Guns, *see* Guns in Title Game.
 Gunpowder.
 Gypsies, or Egyptians, *see* Vagabonds and Vagrants.

H.

Hackney Coaches and Chairs.
 Hare, *see* Game.
 Harvest-Workmen.
 Hawkers and Pedlars.
 Hawks, Hawkers, and Hawking, *see* Game.
 Hay.
 Hay and Oates.
 Hay and Straw.
 Hay-Market.
 Headboroughs, *see* Jurors.
 Heath, Furze and Fern.
 Hedges and Hedge-wood, *see* Highways, Orchards, and Wood.
 Hemp and Flax.
 Hides.
 High Constables, *see* Constables and Surveyors in Titles
 Highways, Jurors, and Vagabonds and Vagrants.
 Highway-men.
 Highways.
 Hops.
 Horses.
 Hospitals, *see* Rates in Title Poor.
 House-breakers, *see* Watchman.
 House of Correction.
 Hue and Cry, *see* Robbery.

I.

Jesuit and Priest, *see* Papists, &c.
 Informers.
 Ingrossers, *see* Foretallers and Ingrossers.

A Table of the General Heads.

Imm-keepers, see Alehoufe-keepers, and Excise.
 Journeymen Taylors.
 Jurors.
 Justices of Peace.

K.

KEELS.
Knights of the Shire, see Wages.

L.

LABOURERS, *see Servants and Wages.*
Lamps, see Lights.
Land-Carriage of Goods, see Waggon and Waggoner.
 Leather.
 Lights.
Linen Manufactures, see Cloth and Clothier, and Wages.
 London.
 Lotteries.
Low Wines, see Distillers in Title Excise.
 Lunaticks.

M.

MALT.
 Manufactures.
Markets, see Fairs.
Master and Mistress, see Servants and Apprentices.
 Matts.
Measures, see Weights and Measures.
Misdemeanors, see Informers.
 Money.
 Murder.

N.

NETS, *see Fish and Game.*
News-Papers, see Stamp-Duty.
 Nonconformity.
Norwich Stuffs.
Nuisances in or upon the Highways, see Constables and Surveyors in Title Highways.

O.

OATH.
Oath of Allegiance, see Papists, &c. and Title Recusancy.
Oats, see Hay and Oats.
Officers and Corporations, see Oath.
 Officers and Soldiers.
 Orchards.
Overseers of the Poor, see Poor.
Overseers of Cloth, see Cloth.

P.

PALES, *see Orchards and Wood.*
Pamphlets, see Stamp-Duty.
 Panels of Juries.
Paper, see Stamp-Duty, and Vellum and Parchment.
 Papists and Popish Superstition.
Agnus Dei, Crosses, Beads, and Pictures.
Arms and Horses.
Books and Relicks.
 Crucifix.
Feme Coverts.
Jesuit and Priest.
Impugning Supremacy.
 Licence.
Maintaining the Pope's Jurisdiction.
 Mafs.
Oath of Allegiance.

Reconciler and reconciled, see Oath of Allegiance supra.
 Recusancy.
Reputed Papists.

Parliament.
 Partition of Lands.
Partridge, see Game.
Party-Walls, see Fire.
Paste-board, see Vellum and Parchment.
Paving the Streets, and Pavements, see Constables and Surveyors, in Highways, and Scavengers.
 Perjury.
Perry (Retailers of) see Excise.
Petty Chapmen, see Hawkers and Pedlars.
Petty Constables, see Jurors, and Vagabonds and Vagrants.
 Pewter and Brads.
Pheasants, see Game, and Officers and Soldiers.
 Phyicians.
Pigeons, see Game.
 Pilchards.
 Plague.
 Players of Interludes.
 Poor.

Badge.
Boys bound to Sea, see Apprentices.
Costs.
Father, &c. to maintain Poor Children.
Overseers.
Rates.
Refusing to work.
Registering Notice.
Relief and Settlement.
Setting them to Work.
Settlement and Removal.
Popish Books and Relicks, and Pictures, see Papists, &c.
 Post and Post-master.
Posts, see Wood.
 Preachers.
 Pretended privileged Places.
Prison, see Gaol.
Prisoners, see Rates or Tax, in Title Poor.
Prison-Collectors, see Vagabonds and Vagrants.
 Process.
Proclamation against Rioters, see Riots and Rioters.
 Prophecies.
 Purveyors.

Q.

QUAKERS.
 Quarentine.
Quartering Soldiers, see Officers and Soldiers.
Quarter-Sessions of the Peace, see Justices.
Quicksets, see Wood.

R.

RAKERS, *see Scavenger.*
R. Recognizances, see Justices of the Peace.
 Recusancy.
 Rents.
 Riots and Rioters.
 Robberies.
Robbing Orchards, see Orchards.
Rockets, see Squibs.
Rogues, see Vagabonds and Vagrants.
Rum, see brandy, in Excise.
 Runaways.
Runners of foreign Goods, see Smuglers, &c.

A Table of the General Heads.

S.

Sacrament.
Sadlers Company, see Shoemakers.
 Salt.
 Scavenger.
Seamen, see Boys bound to Sea, in Apprentices.
Searchers and Sealers of Leather, see Leather.
 Servants.
Sessions of the Peace, see Justices of the Peace.
Setting-Dogs, see Game.
 Sewers.
Sheep, see Cattle.
Sheep-Skins, see Tanner.
Sheermen, see Cloth and Clothier.
 Sheriff.
 Ships.
Shoes, see Tanners.
 Shoemakers.
 Silk.
 Silk-throwers.
 Smuglers or Runners of foreign Goods.
Snares, see Game and Fish.
 Soldiers and Mariners.
South-Sea Company, see Felony.
 Spirits.
 Squibs.
 Stamp-Duty.
 Starch and Hair-powder.
Stewards of Franchises, see Sheriff.
 Stolen Goods.
Strong-Waters, see Brandy in Title Excise.
Strong-Waters (Retailers of) see Excise.
Sub-Commissioners of the Excise, see Weights and Measures.
 Subornation of Perjury.
 Sunday.
Surveyors of Highways, see Highways.
Swans Eggs, see Game.
 Swearing and Cursing.
Sweets, see Excise.
Swine, see Cattle.

T.

Tanner.
Tavern, see Alehouses.
Tawers, see Tanners.
Taylors, see Journeymen Taylors, Buttons and Button-holes, and Cloth and Clothier.
Timber Trees, see Wood.
Tiplers, see Alehouses.
 Tobacco.
Tobacco-pipe Clay, see Brandy in Title Excise.
Toll, see Hay-market.

Toll-Takers, see Fairs.
 Transportation.
Travelling on the Lord's Day by Water, see Sunday.
 Treasurer of the County.
Trees, see Wood.
Trespasles, see Informers.
 Trophy-Money.
 Turnpikes.
 Tythes.

V.

Vagabonds and Vagrants.
Vellum and Parchment, see Stamp-Duty.
Viſtuallers, see Alehouses, and Brewers, Inn-keepers, and Viſtuallers, in Title Excise.
Vinegar-makers, see Excise.
Vintners, see Alehouses.
 Under-Sheriffs.
Under-woods, see Orchards and Wood.
Unlawful Games or Plays, see Vagabonds and Vagrants.

W.

Wages.
Wages of Knights of the Shire.
Wages of Burgeſſes.
Walnut-tree Leaves, see Tobacco.
Warren, see Game.
 Watch.
Water-courses, see Highways,
Water-Fowl, see Game.
Water-Meaſure, see Weights and Meaſurers.
 Watermen.
Ways, see Highways.
Weavers, see Cloth and Clothier.
Weavers of Norwich Stuffs, see Norwich Stuffs.
 Weights and Meaſures.
White Herrings, see Salt.
Widening or enlarging Highways, see Sessions, in Title Highways.
Wild-Fowl, see Game.
 Windows.
 Wood.
Wool, see Brandy in Title Excise.
Woollen Manufactures, see Cloth and Clothier, and Wages.
 Words ſpoken againſt the Queen's Title.
Work, see Poor, and Vagabonds.
Workmen, see Harveſt Workmen.
 Wrecks.
 Wrought Plate.

Y.

Yarn, *see Brandy, in Title Excise, and Wool.*

N. B. Wherever the Words **One**, **Two**, **Three**, appear in the black Letter, it ſignifies that the Buſineſs is to be performed by One Juſtice, Two Juſtices, &c.

A N A P P E N D I X.

Offences.

Alamodes and Lustrings.

Penalties.

[One] **T**O grant a Warrant to search for, and seize, prohibited Alamodes and Lustrings, upon Oath of one or more credible Person or Persons, that they have Reason to suspect, or believe, that there are some of the said Silks fraudulently imported.

Stat. 9 & 10 W. 3. c. 43. §. 5.

Offences.

Alehouses.

Penalties.

[One] **A**lehouse-keepers, Inn-keepers, Vintners, or Victuallers, suffering any of the same Parish to sit tippling in their Houses.

Stat. 1 Jac. 1. c. 9. §. 2.

21 Jac. 1. c. 7. §. 2.

1 Car. 1. c. 4. §. 1.

One Witness, View or Confession; and after Confession his Oath may convict others.

Ten Shillings to be levied by Distress and Sale after Six Days, and for Want of Distress, to be committed until Payment.

Disabled for Three Years to keep any Alehouse.

If the Constables or Church-wardens do not levy the Penalty, or shall not certify the Want of Distress within Twenty Days, he forfeits 40 s. to be levied, *ut supra*, for the Poor.

Alehouse-keepers, Inn-keepers or Victuallers, selling less than one Quart for a Penny.

Stat. 1 Jac. 1. c. 9. §. 3.

21 Jac. 1. c. 7. §. 1.

Conviction *ut supra*.

Twenty Shillings, to be levied *ut supra*, and so employed.

And disabled *ut supra*.

Constable, &c. punished *ut supra*.

Suspended during the Continuance of the additional Excise.

Stat. 1 W. & M. c. 24. §. 8.

Alehouse-keepers, Inn-keeper, Vintner or Victualler, suffering any Person whatsoever to sit tippling in his House.

Stat. 1 Jac. 1. c. 9. §. 2.

21 Jac. 1. c. 7. §. 2.

1 Car. 1. c. 4. §. 1.

View, or Two Witnesses.

Ten Shillings to be levied, employed and disabled, *ut supra*.

Parishioners, or others, who sit tippling in any Alehouse, Inn, Tavern, or Victualling-house.

Stat. 4 Jac. 1. c. 5. §. 5.

21 Jac. 1. c. 7. §. 2.

View, or One Witness.

Three Shillings and four Pence, to be levied and employed *ut supra*, to be paid in a Week; if not able, to sit in the Stocks four Hours.

Alehouse-keepers, &c. disabled Three Years.

Constables, &c. neglect, 10 s. to be levied *ut supra*, and so employed.

Alehouse-keeper, convicted of Drunkenness.

Stat. 21 Jac. 1. c. 7. §. 4.

Conviction *ut supra*.

Prosecution to be in Six Months.

Disabled to keep an Alehouse for Three Years. Besides the Forfeiture of 5 s. &c. and Penalties inflicted on others.

Keeping an Alehouse without Licence.

Stat. 3 Car. 1. c. 3. §. 2.

View, Confession, or Two Witnesses.

The Offender punish'd by this Act, not to be punished by 5 & 6 Ed. 6. c. 25.

Twenty Shillings to the Poor, to be levied *ut supra*, and for Want of Distress, to be whipp'd, for the first Offence.

For the Second, to be committed to the House of Correction for a Month.

For the Third, not to be enlarged there, but by Order of Sessions.

The Officer neglecting his Duty, to be imprisoned without Bail, or pay 40 s. for the Poor.

N. B. Sub-Commissioners, or Collectors of Excise, are to provide a substantial Ale-Quart and Pint *Winchester* Measure, in their Divisions, on Pain of 5 l.

Mayors of Towns, &c. refusing to stamp Ale-Quarts and Pints, are liable to the Penalty of 5 l. by the

Stat. 11 & 12 W. 3. c. 15.

Persons

Not

A P P E N D I X.

Offences.

Alehouses.

Penalties.

Persons selling Ale and Beer in any Vessel not sign'd and mark'd with W. R. and a Crown, according to the Standard in the Exchequer, or City of London, and not full Measure.

Stat. 11 & 12 W. 3. c. 15. §. 1.

And Persons selling Brandy or other distill'd Liquors, without Licence.

Stat. 12 & 13 W. 3. c. 15. §. 1.

One Witness.

[Two] To license Alehouses, and take Recognizances, with two Sureties, for good Order in the same; for which take 12 d. and no more.

Stat. 5 & 6 Ed. 6. c. 25. §. 1.

Quorum 1.

All Mayors, Town-Clerks, and other Persons whom it may concern, shall make, or cause to be made out Ale-Licences duly stamp'd before new Recognizances are taken.

Stat. 6 Geo. 1. c. 21. §. 54.

To remove, discharge, and put away any Alehouse, as they shall think fit and convenient. Stat. 5 & 6 Ed. 6. c. 25. §. 1. Quor. 1.

Persons keeping Alehouses, or selling Beer and Ale without Licence.

Stat. 5 & 6 Ed. 6. c. 25. §. 4.

Quorum 1.

This extends not to Fairs.

[Du. Sess.] Persons selling Ale or Beer to an unlicensed Alehouse-keeper, save only for the Expence of his Household.

Stat. 4 Jac. 1. c. 4. §. 1.

The Officer who levies the Poor's Moiety, and does not deliver it to the Church-wardens and Overseers, and they not distributing it among the Poor. Stat. 4 Jac. 1. c. 4. §. 5.

No Inn-keeper or Victualler in London or Westminster, and the Weekly Bills of Mortality, shall sell any Beer or Ale by Retail, to be consumed out of their Houses, in any Pot, Cup, or other drinking Vessel belonging to such Retailer, which shall contain less than one Gallon in Ale-Measure, on Forfeiture of 40 s.

But Beer or Ale may be drunk at the Door, or in any Out-house, Shed, Arbour, Garden, or Yard belonging to such House.

If any Inn-keeper or Victualler shall not take out a Permission, or not pay his Composition, he shall forfeit 20 l. 12 Geo. 1. c. 12. §. 7, 8, 9.

All Fines are to be levied according to the Laws of Excise. Ibid. §. 11.

Offences.

Annuitant, &c.

Penalties.

[One] TO take an Oath, that the Nominee of the Annuitant was alive on the Day the Payment became due. Stat. 2 Ann. c. 3. §. 23.

To take an Affidavit of the due Execution of an Assignment, or a Will made of an Annuity, pursuant to Statute 4 Ann. c. 6. §. 28. 5 Ann. c. 19. §. 22. 6 Ann. c. 5. §. 15.

Offences.

Apprentices.

Penalties.

[One] Persons fit to make Apprentices, refusing to serve upon Demand. Stat. 5 Eliz. c. 4. §. 35.

To reconcile Differences between Masters and Apprentices: And if he cannot. Stat. 5 Eliz. c. 4. §. 35.

To be committed till they shall be willing to serve.

To bind over the Master to the Quarter-Sessions.

A P P E N D I X.

Offences.

Apprentices.

Penalties.

An Apprentice departing from his Master's Service into another Country. Stat. 5 *Eliz. c. 4. §. 47.*

To direct a *Capias* to the Sheriff, or Chief Officer, for his Apprehension; and being taken, to commit him till he gives good Security, that he will honestly serve out his Time.

To convey poor Parish-Boys bound Apprentices, or turned over to Seamen, to the Port to which their Master belongs, as Vagrants are to be sent by 11 & 12 *W. 3. c. 18.* Stat. 2 *Ann. c. 6. §. 10.*

[Two] To consent to the Binding Boys Apprentices till Twenty-four, or Girls till Twenty-one, or Marriage. Stat. 43 *Eliz. c. 2. §. 5.* *Quorum 1.*

Persons trusted with Monies to put out Apprentices, to account in *Easter-Week* yearly, before the Two next Justices. Stat. 7 *Jac. 1. c. 3. §. 6.*

Persons refusing to take an Apprentice put out by the Consent of Two Justices, according to 43 *Eliz.* Stat. 8 & 9 *W. 3. c. 30. §. 5.*

Ten Pounds to be levied by Distress and Sale to the Use of the Poor.
An Appeal lies to the Quarter-Sessions.

To consent to Church-wardens and Overseers of the Poor, binding and putting out to Sea-Service any Boy of ten Years of Age, who is chargeable, or whose Parents are chargeable to the Parish, or who shall beg for Alms, till he comes to Twenty-one, his Age to be mentioned in the Indenture, and Fifty Shillings to be given with him. Stat. 2 *Ann. c. 6. §. 1.*

Collectors of the Customs not entering the Indentures of Parish-Boys, bound to Sea, in a Book kept for that Purpose. Stat. 2 *Ann. c. 6. §. 6.*

Five Pounds to the Use of the Poor of the Parish whence the Boy was bound, to be levied by Distress and Sale.

To consent to the Turning over Parish-Boys, bound Apprentices, according to 43 *Eliz.* to Masters and Owners of Ships, by Indenture of Assignment. Stat. 2 *Ann. c. 6. §. 6.*

Every Master or Owner of a Ship of the Burden of Thirty to Fifty Tun, not taking one such poor Boy Apprentice, one more for the next Fifty Tun, one more for every 100 Tun above the first 100. Stat. 2 *Ann. c. 6. §. 8.*

Ten Pounds, for the Use of the Poor of the Parish whence such Boy was bound Apprentice, to be levied by Distress and Sale.

To inquire into, examine, hear and determine all Complaints of hard or ill Usage, from Masters to Parish-Boys bound Apprentice to Sea. Stat. 2 *Ann. c. 6. §. 12.*

Collectors of Customs not keeping an exact Register, containing the Number and Burden of all Ships and Vessels, and Masters and Owners Names, and the Names of Apprentices in each Ship, and from what Parishes and Places sent, and not transmitting true Copies thereof to the Quarter-Sessions, as often as they shall be required. Stat. 2 *Ann. c. 6. §. 13.*

Five Pounds, to be levied and disposed *ut supra.*

[Three] To certify, That Parents have 40 *s. per Ann.* and 3 *l. per Ann.* Freehold, to qualify their Children to be Apprentices to Merchants. Stat. 5 *Eliz. c. 4. §. 27.*

[Four] To discharge Apprentices under their Hands and Seals; and if the Master be in Fault, or the Apprentice be in Fault, to inflict such Punishment as they, in their Discretions, shall think fit. Stat. 5 *Eliz. c. 4. §. 35.* *Quorum 1.*

Note; The Practice now is, for one Justice to bind over the Master, at the Complaint of the Apprentice, to the next Sessions, and then Four Justices to discharge, under their Hands and Seals; and upon Complaint of the Master against the Apprentice, to send the Apprentice to the House of Correction, if he will not agree to appear at the Sessions; and at the Sessions such Order is to be made, under the Hands and Seals of Four Justices, as is just.

[Qu. Sess.] Persons taking Apprentices, otherwise than is limited by 5 *Eliz. c. 4.* except in *London* and *Norwich.* Stat. 5 *Eliz. c. 4. §. 40.*

Ten Pounds, and the Indentures void.

Offences.

Arms.

Penalties.

[One] ONE going or riding armed offensively, before the King's Justices, or other his Officers or Ministers, or elsewhere, by Night or Day. Stat. 2 *Ed. 3. c. 3. §. 3.* 7 *R. 2. c. 13. §. 1.* 20 *R. 2. c. 1. §. 4.* View or Complaint.

To be apprehended and bound to the Peace or Good Behaviour, and for Want of Sureties, to be committed, and his Arms to be taken away.

Artificers.

A P P E N D I X.

Offences.

Artificers.

Penalties.

[**One**] **M**AY bind over to Assises, or Sessions, Artificers, about to go beyond Sea, and those who endeavour to withdraw them thither.

For Want of Sureties to be committed to Gaol.

One Witness or Confession. Stat. 5 Geo. 1. c. 27. § 4.

[**Qu. Sess.**] Persons contracting with, enticing, endeavouring to persuade, or solicit any Manufacturer or Artificer in *Wool, Iron, Steel, Brasses*, or any other *Metal, Clock-maker, Watch-maker*, or any other Artificer of *Great Britain*, to go out of his Majesty's Dominions. On Conviction. Stat. 5 Geo. 1. c. 27. §. 1.

To be fined not exceeding 100 Pounds for the first Offence, Three Months Imprisonment, and until such Fine be paid.

For the second Offence to be fined at the Discretion of the Court, Twelve Months Imprisonment, and until such Fine be paid.

Prosecution in Twelve Months.

Artificer convicted of any Promise or Contract, or Preparation to go abroad beyond the Seas. Stat. 5 Geo. 1. c. 27. §. 4.

To find Sureties not to depart out of his Majesty's Dominions, as the Court shall think fit. And for Want of Sureties to be committed *Quousque*.

Offences.

Attornies and Solicitors.

Penalties.

[**Qu. Sess.**] **N**OTE; the Forfeitures and Penalties of the Statute 2 Geo. 2. c. 23. (*i. e.* 50 *l.* on any who shall sue or defend in any Cause as an Attorney or Solicitor, not being admitted and inrolled according to the Act) may be sued for and recovered, not only in *Westminster-Hall, &c.* but also at the Assises and *General Quarter-Sessions* where the Offence was, by any who sues within twelve Months, with treble Costs of Suit; and no *Essoin, Protection or Wager of Law*, and but one *Imparance*; and not to be removed before Judgment, or stayed by *Certiorari, &c.* Stat. 2 Geo. 2. c. 23. §. 23, 24.

And by 12 Geo. 2. c. 13. acting as an Attorney or Solicitor in any County Court, not being legally admitted according to 2 Geo. 2. c. 23. forfeits 20 *l.* to be recovered within twelve Months in any Court of Record.

Offences.

Badgers.

Penalties.

[**Two**] **P**urveyor, Badger, &c. bargaining for any Victual or Grain, in the Markets of *Oxford* or *Cambridge*, or in Five Miles of them. Stat. 2 & 3 P. & M. c. 15. §. 2. 13 Eliz. c. 21. §. 2.

Quadruple the Value thereof, and Three Months Imprisonment without Bail.

Except when the Queen is there, or within Seven Miles.

[**Three**] To license a married Man, Housholder, and of Thirty Years of Age at least, to be a Badger, Lader, Kidder, Carrier, Buyer or Transporter of Corn, Grain, Butter and Cheese. Stat. 5 Eliz. c. 12. §. 1. *Quorum* 1.

[**Qu. Sess.**] Badger, Lader, Kidder, Carrier, Buyer or Transporter of Corn, or Grain, Butter and Cheese without Licence granted in open Sessions of the County, where he hath dwelt Three Years, under the Hands and Seals of (at least) Three Justices. *Quorum* 1. Stat. 5 Eliz. c. 12. §. 7.

Five Pounds between the Queen and the Prosecutor.

The Queen's Moiety to be estreated according to the usual Manner, and the Prosecutor's levied, by *Fieri facias*, or *Capias*; but when the Suit is wholly the Queen's, the Whole to be estreated,

Inquisition, or Verdict, or upon Oath of Two Witnesses.

Badger, &c. buying of Grain out of open Fair or Market (to sell again) unless there be special Words in his Licence to warrant the same. Stat. 5 Eliz. c. 12. §. 7.

Five Pounds, to be divided *ut supra*.

The Conviction *ut supra*.

At their Discretions, to take Recognizances of Badgers, &c. that they shall not forestall, or ingross, or put in Practice any Act contrary to 5 & 6 Ed. 6. c. 14. Stat. 5 Eliz. c. 12. §. 6. *Vide Purveyor*.

Offences.

Bail.

Penalties.

[**Two**] **T**O Bail for Manlaughter, or Felony, or Suspicion thereof (beingailable by Law) and being both present at the Time of such Bailment: But they must first take the Examination of the Accused, and the Informations of the Accusers, and Witnesses. *London* and *Middlesex* Justices may bail, as before the Statute. Stat. 1 & 2 P. & M. c. 13. §. 6. *Quorum* 1.

A P P E N D I X

Offences.

Bail.

Penalties.

Criminals for Offences under Felony, one Justice may bail; and the Sureties and Sum are left to the Discretion of the Justice, where no certain Sum is appointed by Law; but if the Crime be Felony, they must take sufficient Persons for the Appearance of the Offender, and bind them in a large Sum.

Bailiffs. Vide Tit. County Courts.

Offences.

Bakers and Bread.

Penalties.

[One] Bakers, and others, making, baking, or exposing to Sale, Bread, not observing the Assise, or under Weight, or not duly marked, or breaking such Regulations and Orders as are made by the Justices from Time to Time. Stat. 8 *Ann. c. 18.* §. 3.

Confession or one Witness.

Prosecution within Three Days. §. 5.

Bakers, or Sellers of Bread, putting into any Bread, sold or exposed to Sale, any Mixture of any other Grain, than what shall be appointed by the Assise. Stat. 8 *Ann. c. 18.* §. 7.

40 s. to be levied by Distress and Sale, to be given to the Informer.

The Convictions to be certified to the next Quarter-Sessions. §. 4.

There lies an Appeal to the next Quarter-Sessions. §. 6.

Vide The Table of the Assise of Bread, annex'd to the Statute at large.

20 s. to be had and recovered *ut supra.*

Mayor, Alderman, Justice, on any Information made to him of any Offence against this Act, wilfully omitting the Performance of his Duty, forfeits 20 s. to be recovered by Action of Debt, Bill, Complaint, or Information.

In the Day-time, to enter into any House, Shop, Stall, Bake-house, Ware-house or Out-house of any Baker or Seller of Bread, to search for, view, weigh and try all or any the Bread there found; and if the Bread be wanting in the Goodness of the Stuff, or deficient in due Baking or Working, or wanting in Weight, or not truly marked, or any other Sort than what is allowed, the same Bread to be seized, and given to the Poor. Stat. 8 *Ann. c. 18.* §. 8.

Any Baker, or others, not permitting or suffering a Search; or opposing, hindring, or resisting the same. Stat. 8 *Ann. c. 18.* §. 8.

Forty Shillings, to be recovered and given *ut supra.*

The Penalty of 40 s. by 8 *Ann. c. 18.* on Bakers, for Want of Weight of Bread, is reduced to 5 s. *per* Ounce, for every Ounce wanting in Weight, and 2 s. 6 d. if under. The Bread to be weighed before a Magistrate or Justice in 24 Hours after baked or exposed to Sale in *London* and *Westminster*, and *Bills of Mortality*, and in three Days every where else. Stat. 1 *Geo. 1. c. 26.* §. 5.

Forfeiture to the Informer, to be adjudged, levied, and recovered as the 40 s. Penalty is by 8 *Ann. c. 18.*

Note; By this Statute no Mark seems now necessary; and Bakers may make and sell Peck, Half-peck, Quartern, and Half-quartern Loaves, if in Proportion to the Assise-Table in Weight and Price. Stat. 1 *Geo. 1. c. 26.* §. 6.

And the *Clerk of the Market* is to certify upon Oath to the chief Magistrate or Justices, the Price of Grain, Meal and Flour, every Time the Assise is altered. Stat. 1 *Geo. 1. c. 26.* §. 7.

Note; The Act 8 *Ann. c. 18.* was continued by an Act 12 *Geo. 2. c. 13.* to 24 June 1748. and to the End of the next Sessions, and shall extend to *Scotland.*

[Two] In Towns and Places where there is no Mayor, Bailiffs, Aldermen or Chief Magistrates, from Time to Time, to set, ascertain, and appoint the Assise and Weight of all Sorts of Bread, having Respect to the Price Grain, Meal or Flour, bears in the publick Markets, and to make a reasonable Allowance to the Bakers, for Charges, Pains and Livelihoods: The Assise according to Avoirdupois, and not Troy-Weight. Stat. 8 *Ann. c. 18.* §. 1.

May license and allow the Bakers to bake and sell such Sorts of Bread as they shall think fit. Stat. 8 *Ann. c. 18.* §. 1.

To direct and appoint how, and in what Manner, each Sort of Bread shall be marked, for knowing the Baker, or Maker, Price, Weight, and Sort thereof; and to make, and set down any other reasonable Rules and Orders, for the better regulating the Mystery of baking Bread, and the Sorts, Assise, Price and Weight thereof, and all Things concerning the same, as in their Judgments they shall find necessary and convenient. Stat. 8 *Ann. c. 18.* §. 3.

[Du. Sess.] Upon an Appeal by Bakers, or others, convicted for Making, Baking, or Exposing to Sale, Bread, contrary to Statute 8 *Ann. c. 18.* the Sessions to hear, and finally determine the same; and if the Appellant be not relieved, to pay reasonable Costs, and be committed to the common Gaol, till he pay the Penalty

A P P E N D I X.

Offences.	Bakers and Bread.	Penalties.
Penalty and the Costs. If he be relieved upon his Appeal, the Informer to pay reasonable Costs. Stat. 8 Ann. c. 18. §. 6.		
<i>Note</i> ; The Stat. 8 Ann. c. 18. does not extend to prejudice any Right or Custom of <i>London</i> , or the Practice there used, nor Lords of <i>Leets</i> , nor <i>Clerk of the Market</i> . §. 10.		
And the Justices in their Charges are to enforce and press the Execution of the said Statute. §. 12.		

Offences.	Bankrupt.	Penalties.
[One] UPON Application may grant his Warrant for the Taking and Apprehending a Person certified a Bankrupt, and may commit such Person to the common Gaol of the County where apprehended. Stat. 5 Geo. 2. cap. 30. §. 14. Continued by 9 Geo. 2. c. 18. to 29 Septem. 1743, &c.		

May take the Oath of a Bankrupt, who is to deliver all his Books of Accounts and Writings not seized by the Messenger of the Commission, or not before delivered to the Commissioners.

A Bankrupt not surrendering himself upon Notice given, and within the Time limited by the Act, or not delivering up to the Commissioners all his Goods, Wares, Books, &c. (necessary wearing Apparel of himself, his Wife and Children, excepted) or concealing or imbezilling to the Value of 20*l.* or any Books of Account, with Intent to defraud his Creditors, (and being thereof convicted by Indictment or Information) is guilty of Felony without the Benefit of Clergy. *Ibid.* §. 1.

Offences.	Bastards.	Penalties.
[One] ONE who is suspected, or charged to be the Father of a Bastard-Child, which is likely to become chargeable to the Parish. The Woman to be examined, and her Examination put in Writing.	Is either before or after the Birth to be bound to the Good Behaviour, till Order be made by Two Justices, according to 18 Eliz. c. 3.	

Such Person as shall have any Hand by Perswasion, Procurément, or otherwise, in conveying or sending away a putative Father.

To be bound to the Good Behaviour, and so to the next Gaol-Delivery, (before the Judges of Assise) or to the next Quarter-Sessions.

[Two] After a Bastard-Child is born, which is, or is likely to become chargeable to the Parish. Stat. 18 Eliz. c. 3. §. 2. 7 Jac. 1. c. 4. §. 7.
Two next Justices. *Quorum* 1.

In or next to the Limits of such Parish-Church, to examine the Cause and Circumstances, and to make an Order for the Relief of the Parish, in Part, or in all, and Keeping the Child, by charging the Father or Mother with weekly Payments, or other Relief, as also for Punishment of Father and Mother.

Leud Women having Bastard-Children which may be chargeable to the Parish. Stat. 7 Jac. 1. c. 4. §. 7.

To be committed to the House of Correction, there to be punished, and set to Work one whole Year; for the second Offence, to be committed, till they find good Security for their Good Behaviour, not to offend again.

To order Church-wardens and Overseers, to seize Goods and Profits of Lands of a putative Father, and leud Mother of a Bastard-Child, towards Discharge of the Parish, to be confirmed at the Sessions. Stat. 13 & 14 Car. 2. c. 12. §. 19.

[Qu. Sess.] To do all Things concerning a Bastard, begot out of lawful Matrimony, that by Justices of Peace, in their severall Counties, are by the Stat. of 18 Eliz. c. 3. limited to be done. Stat. 3 Car. 1. c. 4. §. 15.
See 6 Geo. 2. Chap. 31. In *Dalton*, Chap. 11. Tit. *Bastardy*.

Offences.	Bedford Level.	Penalties.
[Two] Breaking down, or any ways hindring, or laying open the Inclosures in Bedford Level. Stat. 15 Car. 2. c. 17. §. 13. Two Witnesses.		Twenty Pounds, to be levied by Distress and Sale.

Offences.	Beer and Ale.	Penalties.
[Qu. Sess.] THE Rates and Prices of Beer and Ale to be set by the Justice, at their Discretions. Stat. 23 H. 8. c. 4. §. 5.		

A P P E N D I X.

Offences.	Beer and Ale.	Penalties.
Brewers selling their <i>Beer</i> at other Prices than set by Justices. Stat. 23 <i>H. 8. c. 4. §. 5.</i>	Six Shillings for every Burrel, 3 <i>s.</i> 4 <i>d.</i> for every Kilderkin, 2 <i>s.</i> for every Firkin, and 10 <i>s.</i> for every larger Vessel, and lesser 1 <i>s.</i> to be divided between the King and Prosecutor.	

Offences.	Blasphemous Words.	Penalties.
[One] T O take an Information of Blasphemous Words, within Four Days after the Words spoken, and not afterwards. The Prosecution to be in Three Months after the Information. Stat. 9 & 10 <i>W. 3. c. 32. §. 2.</i>		

Offences.	Bone-Lace.	Penalties.
[One] U PON Information given, to issue his Warrant to Constables, &c. to search for foreign Bone-Lace, Cut-work, Embroidery, Fringe, Band-strings, Buttons, or Needle-work of Thread or Silk, and to seize them. The Person selling or offering them to Sale, forfeits 50 <i>l.</i> and the Goods: And the Person importing, 100 <i>l.</i> and the Goods; one Moiety to the King, the other to him that sues in any Court of Record. Stat. 13 & 14 <i>Car. 2. c. 13. §. 3.</i>		

Repealed as to Lace made of Thread in all Places, but the Dominion of the *French* King and the Duke of *Anjou*, by Stat. 5 *Ann. c. 17.*

Offences.	Books.	Penalties.
[One] T O grant a Warrant to search for any Book, taken out of any Parochial Library, and, if found, to restore it. Stat. 7 <i>Ann. c. 14. §. 10.</i>		

Offences.	Brandy and Spirits.	Penalties.
[One] O fficers of Customs neglecting to seize Vessels, Horses, &c. forfeited for running of Brandy. 6 <i>Geo. 2. c. 17. §. 10.</i>		50 <i>l.</i> between the King and Informer, to be levied by Distress and Sale. For want of Distress, to be committed for six Months.
None to sell, or expose to Sale, Brandy, Strong-Waters, &c. about the Streets, or on the Water, or on any Bulk, &c. or any where but in the Party's Dwelling-house. <i>Ibid. §. 11.</i> And on Refusal of Payment		10 <i>l.</i> Oath of one Witness. Complaint within one Month.
		Commitment to the House of Correction for three Months.

[Two] Brandy imported without Entry, is forfeited by 15 *Car. 2.* and may be adjudged against the Importer, or Proprietor, by two Justices. Stat. 15 *Car. 2. c. 11. §. 17.*

To take the Oaths of Distillers, and others, That Brandy or Strong-Waters, intended to be exported, was drawn from Drink brewed from malted Corn, without any Mixture; and that the same is not mixed with Low-Wines, nor drawn a second Time, nor with any other Spirits, or Brandy, made from any other Materials; and that the Duties of the same are enter'd and paid; and that the same are exported for Merchandize. Stat. 2 *W. & M. c. 9. §. 6.*

May take the Oath of Exporters of Spirits, that the same are drawn from Corn of *Great Britain*, without any Mixture with other Materials, and that the Duties are paid, and that the same are Merchandize to be spent beyond the Seas. 6 *Geo. 2. c. 17. §. 7.*

[Du. Sess.] Sellers of Brandy, &c. to be licensed, and subject to the same Penalties as Alehouse-keepers. 2 *Geo. 2. c. 28. §. 10.*

See 9 *Geo. 2. Chap. 23.* commonly call'd the *Gin-Act*; as also 11 *Geo. 2. Chap. 26.* in *Dalton, Chap. 38.* Tit. *Brandy.*

See also Title *Brandy* in Title *Excise infra.*

Offences.	Brafts.	Penalties.
[Du. Sess.] A T their <i>Michaelmas</i> Sessions, yearly to appoint Searchers of Brafts and Pewter. Stat. 19 <i>H. 7. c. 6. §. 15.</i>		

APPENDIX.

Offences.

Ticks and Tiles.

Penalties.

THE Justices of Peace have Power to hear and determine Offences against the Statute 17 *Edw.* 4. c. 4. intituled, *The Preparation of Earth for making Tile.* They may fine the Offender for every 1000 Plain Tile 5 s. for 100 Roof Tile 6 s. 8 d. for 100 Corner Tile or Gutter Tile 2 s. if sold contrary to the Act.
N. B. The 12 *Geo.* 1. c. 35. & 2 *Geo.* 2. c. 15. are expired.

Offences.

Bridges.

Penalties.

Justices in their Sessions may inquire, hear and determine the Annoyances of *Bridges*, and of Highways adjoining within 300 Foot, and may charge those who ought to repair the same. Stat. 22 *H.* 8. c. 5.

[**Qu. Sess.**] To assess towards the Repair of Bridges, every Town, Parish, and Place, as they have been usually assessed, to be collected by the Constables, or such Treasurer, and in such Manner as the Justices shall appoint. The Assessments to be levied by Distress and Sale, upon Persons not paying in ten Days after Demand. Stat. 1 *Ann. Sess.* 1. c. 18. §. 2.

But see 12 *Geo.* 2. c. 29. for the more easy levying County Rates, in *Dalton*, Chap. 196.

The Justices may purchase Lands not exceeding one Acre, for enlarging or more convenient Rebuilding County Bridges. See 14 *Geo.* 2. c. 33. in *Dalton*, Chap. 16.

Constable, &c. neglecting to collect Monies assessed for Repair of Bridges: Or to pay the Money collected to the High Constable in Six Days after Receipt of the same. Stat. 1 *Ann.* c. 18. §. 5.

Forty Shillings.

Treasurer, paying Money assessed for Repair of Bridges, except by Order of Sessions. Stat. 1 *Ann. Sess.* 1. c. 18. §. 6.

Five Pounds.

Have Power to allow Persons concerned in the Execution of the Stat. 1 *Ann. Sess.* 1. c. 18. Three Pence per Pound. *Ibid.* §. 9.

Note; No Fine for not repairing Bridges and Highways shall be returned into the Exchequer, &c. But to be returned to the Treasurer, and applied by the Justices towards the Repair of Bridges and Highways.

Offences.

Buggery.

Penalties.

[**One**] Buggery, by Stat. 25 *H.* 8. c. 6. Revived and made perpetual 5 *El.* c. 17.

Felonv without Clergv.

Buildings. See Tit. Fire.

Offences.

Bullion.

Penalties.

[**One**] Persons having unlawful Bullion, if they cannot prove on Oath, that the said Bullion before the Melting thereof, was not current Coin, or Clippings.

To be committed to Prison, in order to be tried upon an Indictment for Melting the Current Coin of this Realm. And in Case they do not make such Proof, to be committed for Six Months.

[**Two**] To enter the House, &c. of any Person suspected, and to search for unlawful Bullion, and, with the Assistance of a Constable, to break open the Door, Box, Trunk, Chest, &c. to search for, and discover the same, which if they find, they are to seize; and to carry the Person in whose Custody it is found before the next Justice. Stat. 6 & 7 *W.* 3. c. 17. §. 8.

Offences.

Burials.

Penalties.

[**One**] WHEN any Person is buried, if no Person doth, within Eight Days after Interment, bring an *Affidavit* to the Minister, &c. that the Person was buried in Woollen, upon a Certificate of this from the Minister. Stat. 30 *Car.* 2. c. 3. §. 4.

Five Pounds, to be levied by Distress and Sale of the Party's Goods; if he has none, of the Person where the Party died, or of any other who put the Party into the Coffin.
 Master's Goods liable for the Servants.
 Parents for Children.
 One Moiety to the Poor, the other to the Informer

APPENDIX

Offences.

Burials.

Penalties.

Affidavits of Burying in Woollen to be taken by one Justice of the Peace ; but where no Justice of Peace shall reside, or be to be found in any Parish where the Party is to be interred, there the Parsons, Vicars, and Curates, (other than of the Parish or Place where the Party is interred) may take such Affidavits. Stat. 30 Car. 2. c. 3. §. 5. 32 Car. 2. c. 1. §. 3.

[Du. Sess.] To give in Charge the Act for Burying in Woollen. Stat. 30 Car. 2. c. 3. §. 8.

Offences.

Butcher.

Penalties.

[One] Butcher killing or felling any Victual upon the *Lord's Day*.
View, Confession, or Two Witnesses. Stat. 3 Car. 1. c. 1. §. 3. Six Shillings and eight Pence, to be levied by Distress, &c.
A Third to the Informer, the Rest to the Poor.

Butchers are not allow'd by Law to buy fat Cattle and sell them again alive : And if they sell Swines Flesh mearled, or Cattle dying with the Murrain, &c. they shall for the first Offence be subject to the Amercement ; for the second, stand in the Pillory ; and for the third be fined. Stat. 15 Car. 2. c. 8.

[Two] Butcher, or other Person, wilfully or negligently gashing, slaughtering, or cutting the raw Hide of any Ox, Bull, Steer, or Cow, or the Skin of any Calf, or being so gash'd, &c. offering the same to Sale.
To summon the Party accused, and the Witnesses on either Side, Party appearing or not, to examine Witnesses on Oath, and determine.
Prosecution in Three Months.
An Appeal lies to next Sessions.
No *Certiorari* to be allowed, but Justices Determination to be final.
Stat. 9 Ann. c. 11. §. 11, 36.

2 s. 6 d. for every Hide, 1 s. for every Calf's Skin.
One Moiety to the Poor, the other to the Informer, to be levied by Distress and Sale, if not redeemed in Six Days, rendering the Overplus, if any.
Justices may mitigate, so as the reasonable Costs and Charges in prosecuting be allowed over and above such Mitigation, and so as the Penalty be not reduced to less than one fourth Part.

[Du. Sess.] If any Butcher in *London*, or *Westminster*, or in Ten Miles thereof, buy fat Cattle, and sell them again, alive or dead, to another Butcher. Stat. 22 & 23 Car. 2. c. 19. §. 3.
Prosecution in Six Months.

Forfeits the Value of such Cattle, to be divided between the King and Prosecutor ; the King's Moiety to be estreated, the Prosecutor's to be levied by *Fieri fac'* or *Cap'*.
May proceed, notwithstanding any *Certiorari*.

Butcher gashing any Hides. Stat. 1 Jac. 1. c. 22. §. 2.

20 d. for every Hide, to be divided ; one Third to the King, one to the Prosecutor, and the other to the City, Borough, Town, or Lord of the Liberty where the Offence is committed.

Butcher watering of Hides, except in *June*, *July* or *August*, or putting them to Sale, being putrified. Stat. 1 Jac. 1. c. 22.

3 s. 4 d. a Hide, to be divided *ut supra*.

Vide Tanner.

Offences.

Butter and Cheese.

Penalties.

[One] Importers of Butter and Cheese out of *Ireland*. Stat. 32 Car. 2. c. 2. §. 9.

Liable to the Seizure and Penalties, as Importers of Cattle.
Vide Title Cattle.

Persons exchanging, or opening a Cask of Butter, sealed or marked by the Factor, or Buyer, or the Cask exchanged, or bad Butter packed up and mixed with good ; and every Fraud committed by the Seller.
Confession, or one Witness. Stat. 4 & 5 W. & M. c. 7. §. 3.

Twenty Shillings for every Firkin, and Offence, to be levied by Distress and Sale.
One Half to the Poor, the other to the Informer.

Warehouse-keepers, Weighers, Searchers, or Shippers, in any Port, refusing to receive Butter or Cheese, or to take Care thereof, or to ship the same successively. *Ibid.* §. 4.
Conviction *ut supra*.

Ten Shillings for every Firkin of Butter, and Two Shillings for every Weigh of Cheese.
To be levied by Distress and Sale, and employed *ut supra*.

A P P E N D I X.

Offences.

Butter and Cheese.

Penalties.

Warehouse-keepers, &c. not keeping Books, and making Entries of Butter and Cheese, or making untrue Entries, or refusing in the Day-time to produce the Books to be searched. Stat. 4 & 5 W. & M. c. 7. §. 5.
Conviction *ut supra*.

2 s. 6 d. for every Firkin of Butter. The same for every Weigh of Cheese, and every other Offence. To be levied by Distress and Sale, and employed *ut supra*.
For Want of Distress to be committed till Payment.

Masters of Vessels coming to lade Butter and Cheese, or their Servants refusing to take on Board any Butter and Cheese, as shall be tender'd to be shipped, by any Warehouse-keeper, &c. before their Vessels be laden. Stat. 4 & 5 W. & M. c. 7. §. 6.

Five Shillings for every Firkin of Butter, and Two Shillings and six Pence for every Weigh of Cheese. To be levied and employed *ut supra*.
Note; This extends not to the Counties of *Chester* and *Lancaster*, or the City of *Chester*.

Upon an Appeal, the Appellant is to give Bond of Twenty Pounds, with one or more Sureties, to the Liking of a Justice, to pay such Costs as the Court shall award, in one Month, after the Appeal is heard. *Ibid.* §. 10.

[*Du. Sess.*] May restrain the Retailers of Butter and Cheese. Stat. 21 Jac. 1. c. 22. §. 7.

The Retailer, during the Time of that Restraint, is under the Penalties of 3 & 4 Ed. 6. c. 21. and 5 & 6 Ed. 6. c. 14. against Forestallers, &c.

Where the Kilderkin of Butter weighs less than One hundred and twelve Pounds, 16 Ounces to the Pound; Firkin less than 56, Pot less than 14, besides Casks and Pots, or where old and corrupt Butter is put up with new and sound, or Whey-Butter with Butter made of Cream, or Butter is salted with great Salt, or more Salt than will preserve it. Stat. 13 & 14 Car. 2. c. 26. §. 2.

The Value of the Butter false pack'd, and six Times the Value of every Pound wanting.
One Moiety to the Poor where the Offence is committed, the other to the Informer, besides his double Costs.

Prosecution in Four Months.

[*Du. Sess.*] Sellers of Butter, not delivering the Quantities aforesaid in every Kilderkin, &c. *Ibid.* §. 3.

To make Satisfaction at the Price for which it was sold.
Prosecution in Four Months.

Repackers of Butter for Sale. Stat. 13 & 14 Car. 2. c. 26. §. 4.
Prosecution *ut supra*.

Double the Value to be divided *ut supra*.
And to pay Costs *ut supra*.

If Butter for Sale be not pack'd in Casks of sound, dry, well-season'd Timber, mark'd with the Weight of the empty Cask, and the first Letters of their Christian Names, and Surnames at length, with an Iron Brand. Stat. 13 & 14 Car. 2. c. 26. §. 5.
Prosecution *ut supra*.

Ten Shillings for every 100 Weight, and so for greater or lesser Quantities.
To be divided, and pay Costs *ut supra*.

[*Du. Sess.*] Potters exposing to Sale Pots for packing Butter without the Weight of it, and without the first Letter of the Christian Name, and Surname at length. Stat. 13 & 14 Car. 2. c. 26. §. 6.
Prosecution *ut supra*.

One Shilling for every Pot.
To be divided and pay Costs *ut supra*.

Persons exposing Butter to Sale in Pots not mark'd *ut supra*. Stat. 13 & 14 Car. 2. c. 26. §. 6.
Prosecution *ut supra*.

Two Shillings for every Pot.
To be divided and pay Costs *ut supra*.

For the Power of Justices of Peace, relating to the Sale of Butter within the City of *York*, see 8 Geo. 1. c. 27.

Offences.

Buttons and Button-holes.

Penalties.

[*Du.*] Importers, Barterers, Sellers, or Exchangers of foreign Buttons, made of Hair, or other foreign Buttons whatsoever. Stat. 4 & 5 W. & M. c. 10. §. 2.

Forfeit them, and are liable to the Penalties in 14 Car. 2. c. 13. for importing Bone-lace.
Vide Title Bone-lace.

Tailors, or others, making, felling, setting on, using, or binding, on any Clothes, Buttons, or Button-holes, made, used, or bound with Cloth, Serge, Drugget, Frize, Camlet, &c.

Forfeit Forty Shillings for every Dozen of such Buttons and Button-holes so made, &c. or in Proportion for any lesser Quantity.

A P P E N D I X

Offences.

Buttons and Button-holes.

Penalties.

One Witness. Stat. 4 Geo. 1. c. 7. §. 1.
Not to extend to Clothes made of Velvet. §. 2.

Between the Poor, where, &c. and the Informer. And if not paid in fourteen Days, to be levied by Distress. And if no Distress, to be committed to hard Labour for Three Kalendar Months. §. 5.

Persons being in Gaol, or within the Rules or Liberties of any Gaol, or House of Correction, or inhabiting in privileged Places, or Liberties of the same, committing any Offence against Stat. 4 Geo. 1. c. 7. §. 3.

Subject to the same Penalties *ut supra*.

Clothes made with Buttons and Button-holes of the same Cloth, &c. exposed to Sale in Fairs, Markets, Shops, Warehouses, or Dwelling-houses.

Forfeited, and may be seized and applied *ut supra*. Stat. 4 Geo. 1. c. 7. §. 8.

Taylor, or others, causing his or their Apprentice, or Servant, to make any Clothes with Cloth-Buttons and Button-holes, if intitled to the Monies for making them. Stat. 4 Geo. 1. c. 7. §. 9.

Liable to the same Penalties *ut supra*.

Note; All Offences against the Stat. 4 Geo. 1. c. 7. to be prosecuted in Three Months after committed or discovered. §. 4.

No Person whatsoever in Great Britain, to use or wear on any Clothes, Garments, or Apparel whatsoever, any Buttons or Button-holes made of or bound with Cloth, Serge, Drugget, Frize, Camlet, or any Stuffs whereof Clothes or wearing Garments are usually made.

On Forfeiture of Forty Shillings for every Dozen of such Buttons or Button-holes so used or worn; or in Proportion for every lesser Quantity. §. 1.

One or more credible Witnesses, or Confession. Stat. 7 Geo. 1. c. 12. §. 1.

To be levied by Distress and Sale: One Moiety to the Person on whose Oath any Person shall be convicted, the other to the Poor where the Offence was committed. §. 2.

Note; One or more Justices to summon the Party accused, and upon his Appearance or Confession to proceed to examine the Matter of Fact, and determine the same. *Ibid.* §. 2.

The Prosecution must be in one Month after Offence is committed. §. 4.

Note; An Appeal lies to the next General Quarter-Sessions, (giving Eight Days Notice at least to the Prosecutor) whose Judgment is final. *Ibid.* §. 3.

The above Statute does not extend to Velvet. §. 5.

[Two] Taylor, or other Person making, selling, setting on, using, or binding, on any Clothes, Buttons, or Button-holes, made with Serge, Stuff, Drugget, or any other Stuff, or causing them so to be made. Stat. 8 Ann. c. 6. §. 1.

Five Pounds for every Dozen so made, &c. to be levied; one Moiety to the Queen, the other to him who sues by Action of Debt, &c. But *Quere*, For that Act says only, That they shall levy the Penalty, but does not direct the Manner.

May appeal to Quarter-Sessions.

[Qu. Sess.] Upon an Appeal against the Order of Two Justices upon Complaint made against Taylors for making, &c. Cloth-Buttons, &c. to order the Appellant to pay reasonable Costs, if he be not relieved upon his Appeal. Stat. 8 Ann. c. 6. §. 2.

Persons aggrieved by the Order of one Justice, on Conviction for Offences against the Stat. 4 Geo. 1. c. 7. may on giving sufficient Notice, appeal, &c. §. 6.

Sessions to allow such Costs and Charges to the Party aggrieved, as they shall think reasonable, to be levied and paid as in other Cases of Appeals. Their Award is final.

Offences.

Cards and Dice.

Penalties.

[One] TO take the Affidavit of any Person or Persons, declaring the Grounds of his or their Knowledge, or Suspicion, That playing Cards or Dice are made, or caused to be made, in any House or Place in Great Britain, without Notice thereof in Writing given to the Commissioners of the Stamp-Duties at their head Office. Stat. 6 Geo. 1. c. 21. §. 57.

Upon Affidavit, as aforesaid, to grant his Warrant, directed to an Officer of the Duties on Cards and Dice, to empower him in the Day-time, and in Presence of a Constable, to break open the Door, or any Part of such House or Place where Cards or Dice are so as aforesaid

Cards, Dice, Tools, and Materials, are forfeited, unless claimed or replevied by the Owner in Five Days after Seizure.

To be sold by Direction of the Commissioners.

A P P E N D I X.

<i>Offences.</i>	Cards and Dice.	<i>Penalties.</i>
foreſaid ſuſpected to be made, or making, and to enter ſuch Houſe or Place, and to ſeiſe all ſuch Cards, Dice, Tools or Materials for making the ſame; and to detain and keep the ſame in ſuch Houſe or Place as the Commiſſioners of the Stamps ſhall direct. Stat. 6 <i>Geo.</i> 1. c. 21. §. 57.		One Moiety to the King, the other to the Party who diſcovers the ſame.

<i>Offences.</i>	Callicoos.	<i>Penalties.</i>
<p>[One] NO Perſon whatſoever to uſe or wear in <i>Great Britain</i>, in any Garment or Apparel whatſoever, any printed, painted, ſtained, or died Callico.</p> <p>Confefſion, or one or more credible Witneſſes. Proſecution in Six Days. Stat. 7 <i>Geo.</i> 1. ſt. 1. c. 7. ſeſſ. 1. §. 1.</p> <p>Perſons wearing or uſing in Apparel, Houſhold-Stuff, or Furniture, any Stuff made of Cotton, or mixed therewith, which ſhall be printed with any Colour or Colours, or any Callico chequered or ſtriped, or any Callico ſtitched or flowered in foreign Parts with any Colour or Colours, or with coloured Flowers made there, Muſlin Neckcloths and Fuſtians excepted. <i>Ibid.</i> §. 10.</p>		<p>Five Pounds for every Offence to the Informer.</p> <p>To be levied by Diſtreſs and Sale, &c.</p> <p>Are liable to the Penalties for uſing or wearing printed, painted, ſtained, or dyed Callicoos.</p>

[**Qu. Seſſ.**] An Appeal lies to the next Quarter-Seſſions, (giving the Proſecutor Six Days Notice) whoſe Judgment is final. *Ibid.* §. 1.

<i>Offences.</i>	Carriers and Carriage.	<i>Penalties.</i>
<p>[One] TRavelling with <i>Waggon, Wain, Cart,</i> or <i>Carriage</i>, with above Six Horſes, Oxen, or Beaſts. Stat. 6 <i>Ann.</i> c. 29. §. 3.</p> <p>This extends not to ſuch as carry Hay, Straw, Corn, Coal, Chalk, Timber, Materials for Building, Stone of all Sorts, Ammunition, or Artillery.</p>		<p>Five Pounds, to be levied by Diſtreſs and Sale of any of the ſaid Beaſts, in Three Days.</p> <p>One Moiety to the Highways, the other Moiety to the Proſecutor, ſo as he be an Inhabitant of the Town, Village, or Place.</p>

Any Perſon or Perſons may diſcover and proſecute Perſons drawing with more than Six Horſes, &c. contrary to Stat. 6 *Ann.* c. 29. and ſeiſe and diſtrain all or any the Horſes, &c. the ſame to be deliver'd to the Surveyors of the Highways, or other Officer of the Place, where, &c. and if the Five Pounds be not paid in Three Days, the Diſtreſs to be ſold, and the Money to be delivered to the Juſtice, to be diſtributed, as by the ſaid Act is directed. Stat. 9 *Ann.* c. 18. §. 1.

Perſons reſuſing or neglecting to carry Horſe, &c. diſtrained for Driving with above Six Horſes, to the Surveyor, or other Pariſh-Officer. Stat. 9 <i>Ann.</i> c. 18. §. 2.	20 <i>l.</i> to be levied by Diſtreſs and Sale; for Want of Diſtreſs, to be committed to the common Gaol, till Payment. One Moiety to the Informer, the other to be laid out in the Repair of the Highways.
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Surveyors of the Highways, or other Pariſh-Officer, reſuſing or neglecting to deliver the Sum of Money, or Penalty by him received, to the Juſtice. Stat. 9 <i>Ann.</i> c. 18. §. 2.	Twenty Pounds, to be levied and diſpoſ'd <i>ut ſupra</i> .
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Perſons employed by any Carrier, or other Perſon ſubject to the Penalties in the ſaid Acts of 6 & 9 <i>Ann.</i> driving, or aſſiſting in the Driving, with more than Six Horſes, &c. Stat. 9 <i>Ann.</i> c. 18. §. 3.	Five Pounds, to be levied and diſpoſed <i>ut ſupra</i> .
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No travelling Waggon, Wain, Cart, or Carriage, wherein Goods ſhall be carried, other than according to the Stat. 6 <i>Ann.</i> c. 29. to be drawn, or go in any publick Highway or Road, with above five Horſes, Oxen, or Beaſts, at length. Stat. 1 <i>Geo.</i> 1. c. 11. §. 1.	Upon the like Forfeitures, in the 6 <i>Ann.</i> c. 29. or in the 9 <i>Ann.</i>
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Carter, Drayman, Carman, Waggoner, or other Perſon, riding in any Cart, &c. not having another on Foot to guide it in the Streets of <i>London</i> and <i>West-</i>	Forfeit 10 <i>s.</i> to be levied by Diſtreſs and Sale. One Moiety to the Informer, the other to the Poor of the Pariſh where, &c.
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A P P E N D I X

Offences.

Carriers and Carriage.

Penalties.

*Westminster, *Southwark, or other Streets within the Bills of Mortality.*

In Default of Payment to be committed to the House of Correction, for Three Days, to hard Labour.

One Witness. Stat. 1 *Geo. 1. Sess. 2. c. 57. §. 8.*

No Waggon travelling for Hire shall go, or be drawn with more than Six Horses, either at Length, or in Pairs, or Sideways. Stat. 5 *Geo. 1. c. 12. §. 1.*

Owner or Driver forfeits all the Horses above Six, and all Geers, Bridles, &c. to the Use of the Person who shall seize the same.

The Horse or Horses, or other Thing so seized or distrained, to be delivered to the Constable, or other Parish-Officer of the Place where, &c. till Proof upon Oath be made before some Justice, of the Offence, who is to issue his Precept to such Constable, &c. to deliver the Horse or Horses so forfeited, to the Person who seized or distrained the same, and to allow reasonable Charges for keeping and securing the Horse, &c. 5 *Geo. 1. c. 12. §. 2.*

No Cart travelling for Hire shall go, or be drawn with more than Three Horses. 5 *Geo. 1. c. 12. §. 1.*

Owner, or Driver, forfeits all the Horses above Three, and all Geers, &c. and to be seized, distrained, and applied *ut supra.*

No Waggon travelling for Hire, having the Wheels bound with Streaks, or Tire of less Breadth than Two Inches and an Half, when worn; or being fet or fastned on with Rose-headed Nails, shall go or be drawn with more than Three Horses. 5 *Geo. 1. c. 12. §. 3.*

Forfeits *ut supra.*

Persons hindring, or with Force attempting to hinder or obstruct the Seizures, &c. made by Virtue of this Act, or who shall rescue, or use any Violence to Persons concerned in making such Seizure, &c. 5 *Geo. 1. c. 12. §. 4.*

To be committed to the common Gaol for Three Months, without Bail or Mainprise.

And also forfeit Ten Pounds for every Offence.

To be levied by Distress and Sale, if the Penalty be not paid within Three Days.

One Witness.

Note; This Act extends not to Waggons, Wains, Carts, or Carriages, employed in and about Husbandry, or manuring Land, and carrying of Cheese, Butter, Hay, Straw, Corn unthreshed, Coals, Chalk, or any one Tree, or Piece of Timber, or any one Stone, or Block of Marble, Carravans, and covered Carriages of Noblemen and Gentlemen, for their own private Use, or Timber, Ammunition, or Artillery for the King's Use. 5 *Geo. 1. c. 12. §. 5.*

Persons carrying at any one Load, in the Cities of London and Westminster, or within Ten Miles thereof, in Waggons or Carts, having their Wheels shod or bound with Tire or Streaks of Iron, more than twelve Sacks of Meal, each containing five Bushels, and no more; or more than twelve Quarters of Malt, or more than seven Hundred and an Half of Bricks; or more than one Chalders of Coals. Stat. 6 *Geo. 1. c. 6. §. 1.*

Forfeit one of the Horses, together with the Geers, Bridles, &c. to any Person that shall seize or distrain the same: In such Manner, and to such Uses, as the Penalties and Forfeitures are to be levied and applied by the Stat. 5 *Geo. 1. c. 12.*

One Witness.

Waggoners or Carriers, taking more for Land-Carriage of Goods than the Justices have assessed. Stat. 3 & 4 *W. & M. c. 12. §. 24.*

Five Pounds, to be levied by Distress and Sale, for the Use of the Party grieved.

Prosecution in Six Months.

[*Du. Sess.*] To assess yearly at *Easter* Sessions, within their Jurisdiction, the Prices of Land-Carriage of Goods, by Waggoner or Carrier. Stat. 3 & 4 *W. & M. c. 12. §. 24.*

Justices of *Wilts, Gloucester, &c.* to assess yearly at *Easter* Sessions the Carriage of Goods upon the *Thames* and *Isis.* See *Dalton*, Chap. 21.

Offences.

Cattle.

Penalties.

[*One*] Cattle, dead or alive, imported, except for Provision for the Vessel, to be made appear in 48 Hours. Stat. 18 *Car. 2. c. 2. §. 1.*

Forfeited; one Moiety to the Poor, the other to him who seizes.

Two Witnesses.

Master and Mariner of the Vessel wherein Cattle are imported. Stat. 20 *Car. 2. c. 7. §. 5.*

To be committed for Three Months.

Seifors

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A P P E N D I X.

Offences.

Cattle.

Penalties.

Seizors of Cattle, Sheep, and Swine, imported out of *Ireland*, not giving Notice in Six Days after Conviction to Church-wardens and Overseers of such Seizure, and they not distributing all but the Hides and Tallow to the Poor. Stat. 32 *Car. 2. c. 2. §. 6.*
View, Confession, or one Witness.

40 s. for every of the great Cattle.
Ten Shillings for every Sheep or Swine.
One Moiety to the Poor, the other to the Informer, to be levied by Distress and Sale.
And in Default, to be committed for three Months without Bail or Mainprife.

[Three] To enquire by the Oaths of Twelve Men, Examination of Witnesses, or any lawful Means, of the malicious Maiming, or otherwise Hurting any *Horses, Sheep,* or other Cattle. And for that Purpose to issue Warrants to summon Jurors, suspected Persons, and such as give Evidence. Stat. 22 & 23 *Car. 2. c. 7. §. 6.*
Quorum 1.

Offences.

Certiorari.

Penalties.

[Qu. Sess.] **N**O *Certiorari* is to be allowed, unless the Indicted will become bound with sufficient Sureties (such as the Justices of the Peace in Sessions shall like of) to pay to the Prosecutor, in a Month after Conviction, such Costs and Damages as the Justices shall assess. Stat. 21 *Jac. 1. c. 8. §. 2.*

See 5 *Geo. 2. c. 19.* in *Dalton*, Chap. 195. Tit. *Certiorari.*

Cheese. *Vide* Title **Butter** and **Cheese.**

Offences.

Church.

Penalties.

[One] **P**ersons not repairing to Church according to the 1 *Eliz. c. 2.* Stat. 23 *Eliz. c. 1. §. 5.*
This is not to be extended to Protestant Dissenters, by Stat. 1 *W. & M. Sess. 1. c. 18.*

Twenty Pounds a Month, and if forbear for Twelve Months after Certificate made by the Ordinary into the *Queen's Bench.*

To be bound with Two sufficient Sureties in 200 Pounds at least, to be of the Good Behaviour, until they shall repair to Church.

Church-wardens to see that the Parishioners come to *Church* every Sunday; and if they find any in an Ale-house, &c. Stat. 1 *Jac. 1. c. 5.*

The Person to forfeit 3 s. 4 d. and the Master of the House 10 s. as in Case of Tippling.

Making a Disturbance in a Church or Congregation, or misusing the Preacher. Stat. 1 *W. & M.*
Two Witnesses.

The Offender to enter into a Recognizance with Two Sureties, in 40 l. Penalty for his Appearance at the next Quarter-Sessions: In Default thereof, may be committed till then, and upon Conviction shall forfeit 20 l.

Persons not repairing to some Church or Chapel. Stat. 3 *Jac. 1. c. 4. §. 27.*

Confession, or one Witness.

This is not to be extended to Protestant Dissenters, by Stat. 1 *W. & M. Sess. 1. c. 18.*

Twelve Pence for the Poor.

To be levied by Distress and Sale.

In Default of Distress to be committed.

The Prosecution to be in one Month.

Persons above Sixteen, absenting from Church above one Month, impugning the Queen's Authority in Causes Ecclesiastical, *frequenting Conventicles,* or persuading others so to do, under Pretence of Exercise of Religion. Stat. 35 *Eliz. c. 4. §. 1.*

This is not to be extended to Protestant Dissenters, by Stat. 1 *W. & M. Sess. 1. c. 18.*

To be committed till they conform themselves, and make Submission: He may require them to conform and submit, and if they refuse, they must abjure the Realm in open Assise or Sessions.

Every Person not resorting to their Parish-Church, or upon Let thereof, to some other, every *Sunday* and Holy-Day. Stat. 1 *Eliz. c. 2. §. 14.*

This affects not Protestant Dissenters.

Twelve Pence for the Poor.

To be levied by the Church-wardens by Distress and Sale.

[Two] Incumbents not reading Divine Service once a Month. Stat. 13 & 14 *Car. 2. c. 4. §. 3.*
Confession, or Two Witnesses.

Five Pounds for every Offence.

To be levied in Ten Days by Distress and Sale.

Persons disturbing Episcopal Congregations in *Scotland,* or misusing, &c. any Minister or Pastor thereof, on Proof by Two Witnesses. 10 *Ann. c. 7. §. 9.*

To be bound in a Recognizance of 50 l. for their Appearance at the next Assises, &c. or to be committed to Prison in Default.

A P P E N D I X.

Offences.	Church.	Penalties.
<p>[Du. Sess.] Every Person not repairing to Church according to 1 Eliz. c. 2. Stat. 23 Eliz. c. 1. §. 5. This extends not to Protestant Dissenters, nor where Divine Service is read in their Houses.</p>		<p>Twenty Pounds a Month; Two Thirds to the Queen, one to her own Use, the other for the Poor, the Third to the Profecutor.</p>
<p>Persons above Sixteen, convicted of Absence from Church for above a Month, without lawful Cause, impugning the Queen's Authority in Causes Ecclesiastical, or frequenting Conventicles, or persuading others so to do, under Pretence of Exercise of Religion. Stat. 35 Eliz. c. 1. §. 1. This extends not to Protestant Dissenters.</p>		<p>To be committed to Prison, till they conform themselves, and submit. And if within Three Months after they refuse to conform and submit, being requir'd by a Justice of Peace, they shall in open Sessions abjure the Realm, and the Justices are to certify the same at the next Assize or Gaol-Delivery.</p>
<p>Keeping a School-master, who absents himself from Church, or is not allowed by the Bishop or Ordinary. Stat. 23 Eliz. c. 1. §. 6.</p>		<p>Ten Pounds a Month, to be divided <i>ut supra</i>.</p>
<p>Persons keeping or retaining any Person in their House (Servant, or other) which shall forbear to come to Church for a Month together. Stat. 3 Jac. 1. c. 4. §. 32. This extends not to Protestant Dissenters.</p>		<p>Ten Pounds a Month. Children may relieve their Father or Mother, and Guardians their Wards or Pupils.</p>
<p><i>Note</i>; None shall be punished for any of his Wife's Offences against Stat. 3 Jac. 1. c. 4. Neither shall any married Woman be chargeable with any Penalty or Forfeiture of that Act.</p>		
<p>To receive the Letters of Orders of Episcopal Ministers in Scotland, before they officiate as Pastors of Congregations, and to order the same to be entred on Record by the Register or Clerk of the Peace, whose Fee is 1 s. Stat. 10 Ann. c. 7. §. 2.</p>		<p>Persons disturbing such Congregations, &c. and convicted by Two Witnesses. Forfeit One Hundred Pounds, Half to the Informer, and Half to the Poor.</p>
<p>And if any Magistrate having or pretending Authority in Scotland, shall forbid or hinder their Meeting or Assembling within their Jurisdiction, or cause the Doors of the House where they meet to be shut up. <i>Ibid.</i> §. 9.</p>		<p>On Conviction, <i>ut supra</i>, he forfeits One Hundred Pounds. To be disposed <i>ut supra</i>.</p>

Offences.	Clothes.	Penalties.
<p>[One] Willfully and maliciously to assault any Person in the publick Streets or Highways, with an Intent to tear, spoil, cut, burn, or deface, and who shall tear, spoil, cut, burn, or deface the Garments or Clothes of any Person. If convicted. Stat. 6 Geo. 1. c. 23. §. 11.</p>		<p>Felony, and to be transported for Seven Years.</p>
<p>(Wollen)</p>	<p>Cloth and Clothiers.</p>	<p>Penalties.</p>
<p>[One] Clothiers not paying their Workfolks their Wages in ready Money. Stat. 4 Ed. 4. c. 1. §. 6.</p>		<p>Treble Damages, and to be committed till Payment.</p>
<p>Carders, Spinsters, Weavers, Fullers, Sheermen, and Dyers, not performing their Duty. Stat. 4 Ed. 4. c. 1. §. 6.</p>		<p>Double Damages, and to be committed till Payment.</p>
<p>The Justice not doing his Duty, about seising Ropes, and other Things, used for unlawful Stretching Northern Cloths, and other Matter, according to Stat. 39 Eliz. c. 20. §. 9.</p>		<p>Five Pounds, to be divided into Three Parts: One to the Queen, another to the Informer, and the Third to the Poor.</p>
<p>Mix'd or Medley Broad-Cloth (after 'tis milled, &c.) to be measured at the Fulling-Mill by the Master or Occupier thereof, who is to make Oath, <i>That he will well and truly perform such Measuring</i> (before some neigh-</p>		<p>If the Buyer refuse to take the Cloth according to the Measure so mark'd on the Seal, he forfeits 20 s. for each Cloth. As doth the Master for refusing or neglecting to fix such Seal.</p>

And

A P P E N D I X.

Offences.

Cloth and Clothiers.

Penalties.

neighbouring Justice, who is to give him a Certificate thereof) and affix a Seal to each Cloth, with his Name, and (in Figures) the Length and Breadth, before 'tis fold. Stat. 10 Ann. c. 16. §. 1, 2.

One Witness, &c. *Vide infra.*

And every Person who shall alter such Seal before the Cloth is fold, forfeits 20 s.

Clothiers, &c. stretching or straining any such Cloth above a Yard in Twenty Yards Length, or above One Nail in a Yard in Breadth. Stat. 10 Ann. c. 16. §. 3.

One Witness, &c. *Vide infra.*

Forfeits 20 s. for every Offence, if convicted before 'tis fold, or exposed to Sale.

Mill-men, Owners or Occupiers of Fulling-Mills, to have a Table twelve Foot long, and three Foot wide, whereon the Cloth shall be doubled, or creased, and laid plain, and one Inch more instead of a Thumb's Breadth, viz. 37 Inches, to prevent any Dispute in respect of Measuring by the Yard. Stat. 10 Ann. c. 16. §. 4.

One Witness, &c. *Vide infra.*

In Default of such Table provided, and constantly kept and used, every Person forfeits 10 l.

Clothiers, or others, concerned in the Woollen Manufacture, shall make Payment in Money to the Persons employed for all Work done in relation thereto, and not (in Lieu of Payment) impose or deliver any Sort of Goods, or Wares for such Work. Stat. 10 Ann. c. 16. §. 6.

One Witness, &c. *Vide infra.*

To forfeit for every Offence 20 s.

Note; All Offences against this Act may be heard and determined by *one Justice*, not concerned in the Matter of the Complaint, and upon the Oath of one Witness; and all the Penalties, &c. are Half to the Informer, and Half to the Poor. And if not paid within fourteen Days after Conviction, the Justice may cause it to be levied by Distress, &c. And if no Distress, commit to the Gaol, or House of Correction, to hard Labour, not exceeding Three Months for each Offence; and all Offences to be prosecuted within thirty Days after committed, or Discovery made.

But an Appeal lies to the Sessions. §. 9. Also this Act is not to extend to *Yorkshire*, or to invalidate the Act 7 Ann. c. 13. for the Length and Breadth of Cloths made there. Stat. 10 Ann. c. 16. §. 7, 8, 11.

Mixed and Medley Broad-Cloths to contain the Quantity mentioned in the Seals set by the Master or Occupier of the Fulling-Mill. Stat. 1 Geo. 1. c. 15. §. 1.

Owners and Occupiers, &c. refusing the Oath, *That he will well and truly perform such Measuring*, or not fixing a Seal, or others taking off, defacing or counterfeiting it.

One Witness. Stat. 1 Geo. 1. c. 15. §. 2.

Clothier, Cloth-worker, Cord-maker, and all Persons concerned in the Woollen Manufacture, not paying their Servants, Labourers, &c. Wages in Money, or imposing on them Goods, &c. in Lieu thereof.

Mixed or Medley Broad-Cloths, to be sealed and stamped with the Watch-Measure on the Seal of the Master, Owner, Occupier, or Mill-man, by whom wetted, fulled, and milled; and every Clothier, selling or putting to Sale such Broad-Cloth before sealed. Stat. 1 Geo. 1. c. 15. §. 5.

Note; All Offences against this Act may be heard and determined by One Justice, not concerned in the Matter of the Complaint, upon the Oath of one or more Witnesses or Witnessesses. And all the Penalties, &c. are in *London* to *Christ's Hospital*; and in all other Places to the Poor. And if not paid in thirty Days after Conviction and Demand, or in Case the Owner, &c. refuse or neglect to pay the Forfeiture for Want of sufficient Length or Breadth of Admeasurement, the Justice may cause the Penalties, &c. to be levied by Distress, &c. And if no Distress, commit to the Gaol, or House of Correction to hard Labour for Three Calendar Months. Stat. 1 Geo. 1. c. 15. §. 7.

Or Seller forfeits a sixth Part of the Value of every Cloth under Measure to the Poor of the Parish.

To be paid by the Buyer, and deducted out of the Price of the Cloth.

Twenty Pounds in Lieu of Twenty Shillings per Cloth, by 6 Ann. c. 29.

40 s. for every Offence. Stat. 1 Geo. 1. c. 15. §. 12.
Sec 12 Geo. 1. c. 34. *infra.*

Forfeits a sixth Part of such Cloth.

A P P E N D I X

Offences.

Cloth and Clothiers.

Penalties.

All Offences against the Stat. 1 Geo. 1. c. 15. (saving where Owner, &c. refuse Repayment of the Forfeitures for Want of sufficient Length or Breadth in Admeasurement) to be prosecuted within forty Days after committed or discovered. Stat. 1 Geo. 1. c. 15. §. 8.

[One] On Information on Oath, that any Person is guilty, or suspected of the ill Practices in the Cloathing Trade, (mentioned §. 1, 2, 3.) may authorize Constable, &c. to enter Houses, &c. by Day, and search for and examine Warping-Bars, Weights, &c. Stat. 13 Geo. 1. c. 23. (See Two Justices *infra*.)

End-Gatherers buying or carrying Ends of Yarn, Thrums, Refuse, &c. a Constable, or other Peace Officer, may by a Warrant search them; and if he finds any Ends, Thrums, &c. carry him before a Justice. *Ibid.* §. 8.

On Conviction by Oath of one, or Confession, to be adjudged an incorrigible Rogue, and punished as 12 Ann. directs. *Ibid.* §. 8.

(Linen)

Linen-Cloth made in *Scotland*, to be of well sorted Yarn, and equally wrought, and fine from one End of the Piece to the other, and made by the *Standard Yard-Wand*. And all St. *Johnstons*, or other Plain, Brown, or Green Cloth, made for Whitening, one Yard and a Nail, or Three Quarters and a Nail broad, that when whited, it may be a full Yard, or full Three Quarters broad; and in Length the whole Piece 84 Yards, the Half-Piece 42 Yards, &c. that so whited it may be 80, or 20 Yards, &c. and all other Sorts of plain Cloth a full Yard in Breadth, and in Length 40 Yards the Piece, 20 Yards the Half-Piece, &c. And see, *ibid.* other Measures appointed for Linen Checks, striped Linen, Neckcloths, Ticken, &c. Stat. 10 Ann. c. 21. §. 1.

And for Dornick, Towelling, or Plain Linen, see 12 Ann. *Seff.* 1. c. 20. §. 1, 2.

And all Cloth to be sold in *Scotland* to be made up in Folds of One Yard and Half each Fold, and not rolled or battered. Stat. 10 Ann. c. 21. §. 1.

The Owners of *Scotch* Linen Cloth, before exposed to Sale, to bring it to some Borough-Town, or Place, where Stamps are appointed, there to be stamped. Stat. 10 Ann. c. 21. §. 3.

And if any other Person shall in *Scotland*, buy, export, transport, or carry to the Water-Side for that Purpose, *Scotch* Linen Cloth not stamped as aforesaid. *Ibid.* §. 4.

If any Person counterfeits any Stamp, or affix it without Authority. *Ibid.* §. 4.

No Stamp-Master, for himself, or any other, to buy or dispose of any Linen Cloth, or stamp any that is not made of well-sorted Yarn, equally wrought, and of equal Fineness, from one End to the other, and of the said Lengths, Breadths and Foldings. *Ibid.* §. 4.

Making use of Lime or Pigeons Dung for whitening or bleaching Linen Cloth in *Scotland*, and convicted by Two Witnesses, or Confession. *Ibid.* *stat.* 10 Ann. c. 21. §. 5.

Note; All the Forfeitures and Penalties of this Act are Half to the Informer, and Half to the Poor.

If any make Linen Cloth in *Scotland* otherwise, and thereof convicted by Oath of any Overseer or Searcher, or Two credible Witnesses,

He forfeits for every Inch less than Measure in Breadth, and every Yard less in Length, Five Shillings.

And for every Piece not made of well-sorted Yarn, and equally wrought, and fine, Five Shillings.

And if any shall buy or expose to Sale, or bring to any Town or Place in *Scotland* for Sale, any Linen Cloth not made or not folded as aforesaid, if convicted within Six Months, forfeits for each Piece Five Shillings.

See also 13 Geo. 1. c. 26. relating to the Linen and Hempen Manufacture in *Scotland*.

And if exposed to Sale, or carried to the Water-side for Exportation before stamp'd, and thereof convicted *ut supra*,

Forfeits for each Piece Five Shillings.

If convicted, *ut supra*, in *Scotland*,

He forfeits for each Piece 5 s.

He forfeits 50 l. Sterling, or a Year's Imprisonment, if insolvent.

On Forfeiture of Five Shillings for each Piece, and incapacitated of his Office for the future.

Forfeits for each Piece 20 l. and in Default of Payment, to levy it by Distress, &c. And if no Distress, commit to the House of Correction, or Gaol, to hard Labour, not exceeding twelve Months.

(Woollen)

[Two] To appoint once a Year Overseers for the well-ordering of Cloth. Stat. 3 & 4 Ed. 6. c. 2. §. 9.

Faulty Cloths exposed to Sale by Retail. Stat. 5 & 6 Ed. 6. c. 6. §. 43.

To be divided into three Parts, one to the King, another to the Justice, the third to the Prosecutor.

A P P E N D I X.

Offences.

Cloth and Clothiers.

Penalties.

Logwood may be imported and used in Dying. 13 & 14 Car. 2. c. 11. §. 26.

To appoint Overseers to make Search once a Month, at least, for Defects of Northern Cloths. Stat. 39 Eliz. c. 20. §. 4.

Sorters, Carders, Kembers, Spinsters, or Weavers of Wool or Yarn, who shall imbezil, or detain any Part from the Owner. Stat. 7 Jac. 1. c. 7. §. 2.

Either to make Satisfaction, or be whipp'd, and put in the Stocks.

Makers of deceitful Cloth. Stat. 21 Jac. 1. c. 18. §. 3.

Five Pounds, to be certified under Hand and Seal to the Church-wardens and Overseers of the Poor of the Parish where the Offence is committed.

Confession, or Two Witnesses.

To be levied by Distress and Sale, &c.
And for Want of Distress, Imprisonment.

[**Three**] If any Means be used whereby Linen Cloth shall be deceitful, or made worse for Use. Stat. 1 Eliz. c. 12. §. 1. *Quorum 1.*

The Cloth is forfeited, and the Person to be committed for a Month, and fined.

[**Qu. Sess.**] Persons stretching or straining any Cloths made on the North-side of *Trent*. Stat. 39 El. c. 20. §. 12. *Vide Stat. 10 Ann. c. 16.*

Five Pounds; one Third to the Queen, another to the Informer, and another to the Poor of the Place where the Offence is committed.

Persons using any Engine, or stretching or straining Cloths. Stat. 39 Eliz. c. 20. §. 2.

Twenty Pounds, to be divided *ut supra.*

If a Seal of Lead be not set on Northern Cloths. Stat. 39 Eliz. c. 20. §. 3.

The same is forfeited, and 4 s. for every Yard it wants of due Length; and 2 s. for every Pound it wants of due Weight, to be divided *ut supra.*

If any, save the Overseers, set or take away a Seal, to or from the said Cloths, without Warrant. Stat. 39 Eliz. c. 20. §. 7.
Two Witnesses.

Ten Pounds for the first Offence, Twenty Pounds for the Second. To be divided *ut supra.*
And besides suffer the Pillory.

Servants to Clothiers, &c. refusing to serve for the Wages limited, according to the Statute; and being retained, departing his or their Service, without a Quarter's Warning, or some lawful Cause. Stat. 5 Eliz. c. 4. §. 9.

To be imprisoned, without Bail; but upon Submission to perform the Service, to be enlarged without Fee.

Woollen Cloth Weavers taking an Apprentice, or teaching any their Art, save their own Children, or such whose Parents have three Pounds *per Annum* Freehold. Stat. 5 Eliz. c. 4. §. 29.

Twenty Pounds for every Month.

Every *Cloth-worker, Fuller, Sheerman, Weaver, Taylor, and Shoemaker*, who does not keep one Journeyman for every Three Apprentices; and for every Apprentice above Three, another Journeyman. Stat. 5 Eliz. c. 4. §. 33.

Ten Pounds.

Not to extend to *Norwich* and *Norfolk*.

Persons aggrieved by the Order of one Justice, on a Conviction touching *Mixed Broad-Cloth*, may, on giving sufficient Notice, appeal to the Quarter-Sessions, whose Determination is final. Stat. 10 Ann. c. 16. §. 9. 1 Geo. 1. c. 15. §. 10.

If the Sessions confirm or disannul the Order, they shall allow such *Costs* and *Charges* to the Party grieved, as they think reasonable.

To be levied and paid as in other Cases of Appeal.

Note; Stat. 1 Geo. 1. c. 15. does not extend to any Factor or his Agent employed in Selling of *Mixed* or *Medley Broad-Cloth*. §. 11.

Nor to any Cloth made in *Yorkshire*, or to invalidate the Act 7 Ann. c. 13. for the Length and Breadth of Cloths made there. §. 14.

In *Scotland*, to appoint *Stamps*, to be kept at proper Places, where Linen Cloth is sold, for the Stamping or Marking thereof, and to appoint qualified Persons for Stamping it, who are to take an Oath *de Fidei*, and find Sureties for the faithful Execution of the Office in such Sum as the Sessions shall appoint. Stat. 10 Ann. c. 21. §. 4.

Persons aggrieved by the Order of one Justice on a Conviction touching *Mixed Broad-Cloth*, on the Stat.

To allow such *Costs* and *Charges* to the Party grieved, as they think reasonable.

A P P E N D I X.

Offences.

Cloth and Clothiers.

Penalties.

1 *Geo. 1. c. 15.* may, on giving sufficient Notice, appeal, &c. to the Quarter-Sessions, whose Determination is final. §. 10.

To be levied and paid as in other Cases of Appeals.

See the Act for the better regulating the Manufacture of Cloth in the West-Riding of the County of York.
11 *Geo. 1. c. 24.*

All Contracts, Covenants, or Agreements, and all By-Laws, Ordinances, or Orders in unlawful Clubs and Societies made between Persons brought up in the Mystery of a Wool-comber or Weaver, for Regulating the Trade, or Settling the Prices of Goods, or for Advancing their Wages, or lessening their usual Hours of Work, shall be illegal and void; and if any Wool-comber or other Person concerned in the Woollen Manufactures, shall keep up any Contract or Combination by this Act declared illegal, being convicted on Oath before any Two or more Justices, on Information within Three Kalendar Months after the Offence committed, shall be committed either to the House of Correction not exceeding Three Months, or to the common Gaol without Bail.

If any Person retained as a Wool-comber or Weaver shall depart from his Service before the End of the Term for which he shall be hired, or shall return his Work before it is finished according to Agreement, unless it be for some reasonable Cause, he shall be committed to the House of Correction not exceeding Three Months; and if any Person hired shall wilfully damnify his Work, he shall forfeit to the Owner double the Value, or be committed to the House of Correction.

Every Clothier shall pay the full Prices agreed on in Money, and not in Goods; and any Two Justices, on Complaint, may summon the Party offending, and for Non-payment of Wages may issue their Warrants for Levying thereof by Distress, and for Want of Distress may commit the Party to the common Gaol for Six Months, or till he shall pay the Wages.

If any Clothier shall pay the Persons employed by him either in Goods, or by Way of Truck, he shall forfeit 10*l.* Moiety to the Informer, Moiety to the Party aggrieved.

Persons aggrieved by Order of the Justices may appeal to the next Quarter-Sessions, giving reasonable Notice of such Appeal; and if it shall appear to them that reasonable Notice was not given, they shall adjourn the Appeal to the next Quarter-Sessions, and then finally determine the Matter, and may award reasonable Costs to either Party.

If any Persons shall assault a Master Wool-comber or Weaver, whereby he shall receive any bodily Hurt, for not submitting to any illegal By-Laws; or shall write or send any Letter or Message threatening Hurt to a Master, or to burn, or pull down his House, or to cut down his Trees, or maim his Cattle, for not complying with their Demands, being thereof convicted upon any Indictment to be found within Twelve Kalendar Months next after the Offence, he shall be adjudged guilty of Felony, and shall be transported for Seven Years to one of the Plantations in *America*.

If any Person shall break into a Shop by Day or Night to destroy any Woollen Goods in the Loom, or any Tools employed in making thereof, or shall cut or destroy any such Goods in the Loom, or on the Rack, or shall destroy any Rack, or Tools, he shall be adjudged a Felon, and suffer Death without Benefit of Clergy.

This Act and all the Provisoes therein shall extend to Combers of Jersey and Wool, to Frame-work Knitters or Makers of Stockings, and to all Persons concerned in any of the said Manufactures. 12 *Geo. 1. c. 34.*

[Two] No Maker of Mixed or Medley Woollen Broad-Cloth, shall use any long Warping-Bars, but such as are three Yards and three Inches in Length. And round ones to be four Yards and four Inches round, and no more; and the Thrums at each End of the said Bars, are not to exceed 18 Inches long. Stat. 13 *Geo. 1. c. 23. §. 1.*

Ten Pounds, to be levied by Distress and Sale; one Moiety to the Informer, the other to the Poor; and if no Distress, Commitment for three Months, or till Payment, &c. *Ibid. §. 1.*

And *Note*; All Disputes relating to Work, Wages, &c. betwixt Clothiers, Combers, Weavers, &c. are to be heard by two or more Justices, who are to summon the Parties, examine on Oath, adjudge such Satisfaction, and give such Costs to the Party grieved, as in their Discretion shall seem reasonable, and levy the same by Distress, &c. or in Default, commit, &c. not exceeding three Months. An Appeal lies to the Quarter-Sessions. Proceedings not removable by *Certiorari*. Stat. 13 *Geo. 1. c. 23. §. 5, 6.*

All Wool, Yarn, &c. for making such Cloth, to be given out and received by Weight, at 16 Ounces to the Pound. Stat. 13 *Geo. 1. c. 23. §. 2.*

On Penalty of 5*l.*

Clothiers, &c. interrupting the Search of Constables on a Justice's Warrant. *Ib. §. 7.*

Forfeit 5*l.*

Clothiers to pay their Weavers according to the Number of Yards that Chains are laid on the Warping-Bar. *Ibid. §. 9.*

Forfeit 5*l.*

Owners of Tenters or Racks in *Gloucestershire, Wilts* and *Somerset*, to measure such Tenters, &c. and mark in

On Forfeiture of 5*l.* for every Tenter or Rack not so numbred and marked.

Inspectors

APPENDIX.

Offences.

Cloth and Clothiers.

Penalties.

in large Figures their Length of Yards, (beginning N^o 1. on the Foreside of the Top Bar) each Yard to contain 36 Inches, and one Inch more for the over Measure usually allowed in Cloths. *Ibid.* §. 10.

[**Qu. Sess.**] After *Easter*, are yearly to appoint Inspectors, and may allow each not exceeding 30 *l.* *per Ann.* who are to take an Oath, well and truly to execute their Office, and at all reasonable Times enter and inspect every Mill, Shop, Out-house, and Tenter-ground of Clothiers, Mill-men, &c. and Measure the Length of Tenters, and the Length and Breadth of Cloth there, stamp their Names on a Lead Seal furnished by the Maker, and affix it at the Head of every Cloth; keep a Register of the Clothier or Millman's Name, and Number, Length and Breadth of every Cloth, and deliver a true Copy of such Register at every Quarter-Sessions. Stat. 13 *Geo.* 1. c. 23. §. 10.

A Clothier or Mill-man, &c. refusing an Inspector Entrance, &c. *Ibid.* §. 11.

A Mill-man sending home Cloths before inspected, &c. for every Piece of Cloth so sent. *Ibid.* §. 14.

Inspectors acting against their Oath, &c. forfeit 20 *l.* *Ibid.* §. 12.

Forfeits 40 *l.*

Forfeits 40 *s.*

Every Maker of such Broad-Cloth to pay the Inspector 2 *d.* for every Cloth he makes before sent from the Mills; and Inspectors are every three Months to pay the Money to the County-Treasurer, to be applied by Direction of the Justices at their Sessions, towards the Salaries of Inspectors, &c. *Ibid.* §. 13.

Coaches. Vide Hackney-Coaches.

Offences.

Coals,

Penalties.

[**One**] Persons having a Hand in removing or altering the Marks upon Keels and other Boats, Carts and Wains for Carriage of Coals, in the Port of *Newcastle upon Tyne*. Stat. 30 *Car.* 2. c. 8. §. 6. 6 & 7 *W.* 3. c. 10. §. 7.
One Witness.

Ten Pounds, to be levied by Distress and Sale; and on Default to be committed for Three Months.

See *Dalton*, Chap. 24. Tit. *Coals* for 3 *Geo.* 2. c. 26.

Coffee. See *Chap.* 20. 10 *Geo.* 1. c. 10. 11 *Geo.* 1. c. 30. 5 *Geo.* 2. c. 24. in *Dalton*.

Offences.

Coin and Coining.

Penalties.

[**One**] Sheriff or other Officer refusing any lawful Coin in Payment. Stat. 19 *H.* 7. c. 5. §. 6.

May compel him to take it, and otherwise punish him at Discretion.

Where any Tools or Instruments for Coining, or counterfeiting Gold or Silver Monies, are found. Stat. 8 & 9 *W.* 3. c. 26. §. 5.

The Instruments and the Persons in whose Custody they are found, to be seized and carried before a Justice. And the Persons' and Instruments to be secured, and Instruments to be produced as Evidence, and afterward defaced and destroyed.

Counterfeit Money given in Evidence to be cut in Pieces afterwards, and then given to the Party.

Offences.

Commission of the Peace.

Penalties.

[**Qu. Sess.**] IN every Commission of the Peace this Clause is to be inserted, *viz.* That the Justices of Peace in their Sessions shall have Power to inquire of Watches, and to punish them who shall be found in Default, according to the Statute of *Winchester*. Stat. 5 *H.* 4. c. 3.

See **Justices of the Peace.**

A P P E N D I X

Offences.

Conformity.

Penalties.

[Qui. Sess.] TO take the Oath of Persons having Offices, &c. convicted of *Non-Conformity*, That they have *conformed for a Year past*, and received the Sacrament Three Times within the Year. Stat. 10 Ann. c. 2. §. 4 & 5.

None to suffer, unless Oath be made of the Offence within ten Days, before a Justice.
And Prosecution thereupon within Three Months after the Offence committed.
And Conviction by the Oath of Two Witnesses.

Offences.

Conspiracies.

Penalties.

[Qui. Sess.] Butchers, Brewers, Bakers, Poulterers, Cooks, Coster-Mongers or Fruiterers, who conspire, or promise together, that they will not sell their Victuals but at certain Prices. Stat. 2 & 3 Ed. 6. c. 15. §. 1.

First Offence, 10 *l.* to the King, and if not paid in six Days after Conviction, twenty Days Imprisonment, with Bread and Water.
Second Offence, 20 *l.* and if not paid in six Days, Pillory.
Third Offence, 40 *l.* and if not paid in six Days, Pillory again, Loss of an Ear, and infamous.

Offences.

Constables.

Penalties.

[One] Constables, &c. neglecting their Duty in putting the Vagrant Act in Execution, &c. Stat. 13 Geo. 2. c. 24.

Forfeit for every Offence not exceeding 5 *l.* or less than 10 *s.* for the Use of the Poor, to be levied by Distress.

[Two] Constables neglecting to put the Acts of Parliament in Force against unlicensed Alehouse-keepers. Stat. 3 Car. 1. c. 3.

To forfeit 40 *s.* for the Use of the Poor.

If Constables, Headboroughs, or Tithing-men die, or go out of the Parish, may swear new ones, till the Lord of the Manor holds a Court-Leet, or till the next Quarter-Sessions. Stat. 13 & 14 Car. 2. c. 12. §. 9.

See 13 Geo. 2. c. 24. in *Dalton*, Chap. 196.

Offences.

Conventicles.

Penalties.

[One] Persons of the Age of Sixteen or upwards, Subjects of this Realm, who shall be present at any Conventicle, under Pretence of Exercise of Religion, in other Manner than according to the Church of *England*, to the Number of Five, or more, besides those of the Household.

To record the Offence, which is a Conviction, and set a Fine of Five Shillings, for the first Offence; which Record must be certified to the next Quarter-Sessions.

Confession, Two Witnesses, or notorious Evidence of the Fact. Stat. 22 Car. 2. c. 1. §. 1.

Second Offence Ten Shillings, to be levied by Distress, &c. or in Case of Poverty, on the Goods of others then convicted of the like Offence at the same Conventicle, not exceeding Ten Pounds on any one Person.

Protestant Dissenters are exempt from the Penalties of this Act, by Stat. 1 W. & M. c. 18. §. 4.

Penalties to be levied by Constables, &c. per Warrant of a Justice; and delivered to the Justice, and he to pay one Third for the King's Use into the Quarter-Sessions.

Another Third to the Poor of the Parish where, &c.
The other Third to the Informer, and to such as he shall think fit.

Persons convicted of Preaching at any such Meeting. Stat. 22 Car. 2. c. 1.

Not to extend to Protestant Dissenters, by Stat. 1 W. & M. c. 18. §. 8.

Forfeit for first Offence 20 *l.*

And if a Stranger, and his Name or Habitation not known, or he can't be found, or unable to pay.

Penalty to be levied on any Persons that were present.

Second Offence 40 *l.* to be levied and disposed *ut supra*.

Person convicted of wittingly suffering any such Meeting to be held in his House, Yard, &c. Stat. 22 Car. 2. c. 1. §. 4.

Twenty Pounds, to be levied and disposed *ut supra*.
And in Case of Poverty upon Persons present.

Constables, &c. knowing, or being informed of such Meetings within their Precinct, and who shall not inform

Forfeit Five Pounds, to be levied and disposed *ut supra*.

A P P E N D I X.

Offences.

Conventicles.

Penalties.

inform a Justice or Chief Magistrate, &c. but shall wilfully omit their Duty, on Conviction. Stat. 22 Car. 2. c. 1. §. 12.

Note; Justices and Chief Magistrates, &c. omitting their Duty, forfeit One hundred Pounds: One Moiety to the Informer, to be recovered in any of the Courts at *Westminster*. *Ibid.*

[Two] Or Constables, &c. by Warrant from them, may with what Assistance they think fit, break and enter any House where they shall be informed any such Conventicle is, within Liberties and without, and take into Custody the Persons so assembled: And the Lieutenants, Deputy-Lieutenants, or any commissioned Officer of the Militia, or other the King's Forces with Horse and Foot, and the Sheriffs and other Ministers of Justice, with such Assistance as they shall think fit, on Certificate under Hand and Seal of any Justice of Peace or Chief Magistrate, of such Meeting, that he is not able to suppress, may dissolve such Meetings, and take the Persons present into Custody. Stat. 22 Car. 2. c. 1. §. 9.

Not to extend to Protestant Dissenters.

No Dwelling-house of a Peer, where he or his Wife shall be resident, to be searched but by Warrant under the Sign Manual, or in the Presence of the Lieutenant, or one Deputy-Lieutenant, or Two Justices of Peace. *Quorum* 1. Stat. 22 Car. 2. c. 1. §. 10.

[Qu. Sess.] To deliver the King's Third of the Penalties incurred by this Act to the Sheriff, and to make a Record of such Payment and Delivery, which shall discharge the Justices, and charge the Sheriff, both which are to be certified into the *Exchequer*. Stat. 22 Car. 2. c. 1. §. 2.

Where the Sum charged upon any Offender exceeds Ten Shillings, he may, within a Week, appeal in Writing to the Quarter-Sessions, to whom the Justices, &c. shall return the Money levied, and certify under Hand and Seal the Evidence, with the whole Record and the said Appeal, whereupon such Offender may plead, and have his Trial by a Jury, and if he prosecute not with Effect, or be not acquitted, or Judgment pass not for him, he shall pay treble Costs; such Appeal is final. Stat. 22 Car. 2. c. 1. §. 6.

Note; All Prosecutions upon the Stat. 22 Car. 2. c. 1. to be within Three Months after the Offence.

Vide Title **Church.**

Offences.

Convicts.

Penalties.

[Two] ANY Person having the Benefit of his Clergy, and being committed to the House of Correction, and escaping out of Prison, and being retaken. Stat. 5 Ann. c. 6. §. 3. *Quorum* 1. To be committed to some House of Correction, or publick Workhouse, in the Place where retaken, without Bail or Mainprize, for not less than twelve Months, and not exceeding four Years, to be set to work, and kept to hard Labour.

Offences.

Coopers.

Penalties.

Brewers not putting their Drink in a Vessel marked by a *Cooper*. Stat. 23 H. 8. c. 4. Three Shillings and four Pence a Barrel.

[Qu. Sess.] The Rates and Prices which *Coopers* are to sell their Vessels at, to be set in Sessions after *Easter* yearly. Stat. 8 Eliz. c. 9. §. 5.

Offences.

Corn.

Penalties.

[Qu. Sess.] AFTER *Michaelmas* and *Easter*, yearly, they are, by the Oaths of Two or more Persons of the respective Counties, where foreign Corn or Grain shall be imported, not concerned in importing it, and of 20 l. *per Annum* Freehold, or 50 l. *per Annum* Leasehold, or by such other Means as they shall think fit, to determine the Market-Prices of midling *English* Corn, and to certify the same with Two such Oaths to the Officer of the Customs, to be hung up in the Custom-house there. Stat. 1 Jac. 2. c. 19. §. 3.

To be done in *London*, in *October* and *April*, by the Lord Mayor, Aldermen, and Justices of Peace there.

Vide Title **Ochard.**

See 2 Geo. 2. c. 18. 5 Geo. 2. c. 12. 11 Geo. 2. c. 22. in *Dalton*, Chap. 27. Tit. *Corn*.

Offences.

Coroner.

Penalties.

[Qu. Sess.] Coroner not doing his Duty without Fee, where a Person is slain by Misadventure. Stat. 1 Hen. 8. c. 7. §. 1. Forty Shillings.

A P P E N D I X.

Offences.

Costs.

Penalties.

WHERE *Costs* are given upon an Appeal, from an Order of Settlement of the Poor determin'd; or where Notice is given, and the Person order'd to pay such *Costs*, dwells out of the Jurisdiction of the Court, which gave the *Costs*. Stat. 8 & 9 *W. 3. c. 30.*

Producing a true Copy of the Order for *Costs*, on Oath of one Witness.

The *Costs* to be levied by Warrant of one Justice of the County where the Party dwells, by Distress and Sale; and for Want of Distress, the Party to be committed to the common Gaol for Twenty Days.

Note; Upon an Appeal, the Appellant is to give Bond of 20 *l.* with one or more Sureties to the Liking of a Justice, to pay such *Costs* as the Court shall award, in one Month after the Appeal is heard. Stat. 4 & 5 *W. & M. c. 7.*

Offences.

Cottages.

Penalties.

[*Du. Sess.*] **E**recting a Cottage for Habitation, without Four Acres of Freehold.

Continuance of it. Stat. 31 *Eliz. c. 7. §. 1.*

Ten Pounds to the Queen.

Forty Shillings a Month to the Queen.

Owner or Occupier of a Cottage, suffering any more Families than one to dwell there. Stat. 31 *Eliz. c. 7. §. 3.*

Ten Shillings a Month to the Lord of the Leet.

Note; The Stat. 31 *Eliz. c. 7.* extends not to Cottages in Cities, Boroughs, or Markets-Towns, or provided for Labourers in Mines or Quarries, within one Mile of them; or for Sea-faring Men within a Mile of the Sea, or a navigable River; or for Keeper, Warrener, Shepherd, or Herdsman; or an impotent Person; or to Cottages, which by Order of Justices of Assise, or Justices of Peace in Sessions, shall be decreed to continue for Habitation. Stat. 31 *Eliz. c. 7. §. 4.*

Offences.

County-Courts.

Penalties.

[*One*] **S**heriff, Under-Sheriff, or Sheriff's Clerk, entering in the *County-Court*, any Plaint in the Absence of the Plaintiff or his Attorney, or having above one Plaint for one Cause. Stat. 11 *H. 7. c. 15.*

Forty Shillings, to be divided between the King and the Prosecutor.

To examine this Matter; and if the Party be found guilty, to certify the Examination into the *Exchequer* within three Months, on Pain of Forty Shillings.

The Certificate is a Conviction.

The Officer who collects the *Estreats* out of the *County-Court*, if he levies more than is contain'd in them. *Ibid.*

Forty Shillings; the Matter to be examined and certified *ut supra.*

The Defendant in the *County-Court* not having lawful Summons, the Bailiff being found Faulty.

Forty Shillings, upon Examination, &c. *ut supra.*

[*Two*] To view the *Estreats* of Sheriffs before they issue them out of the *County-Court*; and there are to be Two Parts of them indented and sealed by the Justices and Sheriff; and one Part is to remain with the Justices, and the other with the Sheriff. Stat. 11 *H. 7. c. 15.*

Vide Title Sheriffs.

Offences.

Currier.

Penalties.

[*Du. Sess.*] **C**urrier currying Hide or Skin insufficiently tann'd and dried, or out of his own House, in some Corporate or Market-Town, or gashing or spoiling them. Stat. 1 *Jac. 1. c. 22. §. 22.*

Six Shillings and eight Pence a Skin or Hide, besides the Value of the same.

To be divided; one Third to the King, one to the Prosecutor, and the other to the City, Borough, Town, or Lord of the Liberty where the Offence is committed.

And to the Party grieved, twice so much as he impairs.

Persons in *London*, or Three Miles, putting any Leather to be curried to any but Freemen of the Curriers Company. *Ibid.* §. 23.

Forfeit the same, or the Value.

To be divided in Thirds; one to the Seisor, another to the Chamber of *London*, the Third to the Poor.

Within the Jurisdiction of *London*, Persons putting into made Wares any curried Leather, before it be searched and sealed. *Ibid.* §. 24.

Six Shillings and eight Pence a Hide or Skin, and the Value of every such Hide or Skin, to be divided in *London*, *ut supra.*

APPENDIX.

Offences.

Currier.

Penalties.

Currier using the Art of a *Tanner, Cordwainer, Shoemaker, Butcher,* or any other who useth cutting of Leather. *Ibid.* §. 25.

Six Shillings and eight Pence for every Hide or Skin he cutteth during the Time.
To be divided *ut supra.*

Currier (sufficient Stuff being tender'd unto him) refusing sufficiently to curry Leather within Eight Days in Summer, and Sixteen in Winter, after he takes it in Hand. *Ibid.* §. 24.

Ten Shillings for every Hide or Piece not curried.

Currier in *London* not currying his Leather sufficiently, other Artificers (using tanned and curried Leather) putting into his Wares Leather insufficiently tanned or curried. *Ibid.* §. 44.

The Wares, and, the just Value, to be divided in Thirds in *London,* *ut supra.*

See Tit. **Leather, Shoemakers, and Tanners.**

Curfing. *Vide* Title **Swearing and Curfing.**

Offences.

Custom-house Officer.

Penalties.

[One] Persons resisting, abusing, beating, &c. *Custom-house* Officers, or their Deputies, in the Execution of their Office. Stat. 13 & 14 *Car.* 2. c. 11. §. 6.

To be committed till the next Quarter-Sessions, and fined then, not exceeding One hundred Pounds, and to remain in Prison till discharged by Order of *Exchequer,* or discover who set them on Work.

Carman, or other Person, assisting in taking up, landing, shipping, or carrying away any Goods, &c. without a Warrant, or in the Presence of one or more *Officers of the Customs.* Stat. 13 & 14 *Car.* 2. c. 11. §. 7.

First Offence, to be committed till he find Sureties for the Good Behaviour, or be discharged by the Lord Treasurer, Chancellor, Under-Treasurer, or Barons of the *Exchequer.*

Two Witnesses.

Second Offence, to be committed for Two Months, or till he pay five Pounds to the Sheriff, for the King's Use, or be discharged by the Lord Treasurer, &c.

Persons armed with Clubs, or any Manner of Weapon, tumultuously assembled in the Day or Night, to the Number of Eight or more, their Aiders and Assistants forcibly hindring, wounding or beating *Custom-house Officers* in the due Execution of their Office. Stat. 6 *Geo.* 1. c. 21. §. 33.

Being convicted, shall by Order of Court be transported for such Term as the Court shall think fit; not exceeding seven Years, in the same Manner as Felons are by 4 *Geo.* 1. c. 11.

Such Offender returning into *Great Britain* or *Ireland,* before the Expiration of the said Term. Stat. 6 *Geo.* 1. c. 21. §. 34.

Felony without Benefit of Clergy.

See Tit. **Smuglers,** and *Dalton,* Chap. 33.

Cyder-maker. *Vide* Title **Excise.**

Offences.

Deer.

Penalties.

[One] Persons courfing, killing, hunting or taking away *Red* or *Fallow Deer,* in any Ground where Deer are kept, without Consent of the Owner, or Persons chiefly intrusted therewith, or are aiding therein. Stat. 13 *Car.* 2. c. 10. §. 2.

20 *l.* to be levied by Distress and Sale; for Want of Distress, to be committed to the House of Correction for Six Months, or to the common Gaol for a Year, not to be discharged but upon Security for the Good Behaviour for a Year, after Enlargement.

Confession, or one Witness.
Prosecution within Six Months.

Persons unlawfully courfing, hunting, taking in Toils, killing, wounding, or taking away any *Red* or *Fallow Deer,* in any Forest, &c. without the Consent of the Owner, or be aiding therein. Stat. 3 & 4 *W. & M.* c. 10. §. 2.

Twenty Pounds for the Offence of Hunting, &c.
And for every Deer taken or killed 30 *l.* to be levied by Distress and Sale.

Confession, or Oath of one Witness.

One Third to the Informer, the other to the Poor, and the Rest to the Owner.

Prosecution to be in Twelve Months; and where the Offence is committed, or Party apprehended,

For Want of Distress twelve Months Imprisonment, and to be set in the Pillory for an Hour, in some Market-Town next to the Place.

A P P E N D I X

Offences.

Deer.

Penalties.

To grant a Warrant to Constables, Headboroughs and Tithing-men, when Deer are stolen, to search as for stolen Goods. Stat. 3 & 4 *W. & M. c. 10. §. 3.* See Stat. 9 *Geo. 1. c. 22. §. 11.*

If upon Search any Venison, or Skins of Deer, or Toils be found, and the Persons can give no good Account how they came by them, nor in some convenient Time produce the Person of whom they bought them, or prove such Sale upon Oath. Stat. 3 & 4 *W. & M. c. 10. §. 3.*

Confession, or Oath of one Witness.

The same Penalties with the Deer-Stealer. And to be levied and employed *ut supra.*

Persons in the Night-time, pulling down or destroying the Pales or Walls of any Park, Forest, &c. or other Ground inclosed, where *Red* or *Fallow Deer* shall be kept. Stat. 3 & 4 *W. & M. c. 10. §. 9.*

Oath of one Witness.

Three Months Imprisonment.

[*Qu. Sess.*] Unlawfully entering into any Park, Woods, or other Grounds inclosed, and there killing or chasing the Deer. Stat. 5 *Eliz. c. 21. §. 7.*

Three Months Imprisonment, to be bound to the Good Behaviour for Seven Years.

Treble Damages to the Party grieved.

Upon the Offender's Acknowledgment in Sessions, and Satisfaction to the Party, the Behaviour may be released.

Vide Title Deer, &c. in Title Game.

Offences.

Deer-Stealers.

Penalties.

[*Que*] **K**eepers or other Officers of any Forest, Chase, Purlieu, Paddock, Wood, Park, or Place where Deer are usually kept, convicted of Killing or Taking away any *Red* or *Fallow Deer*, or being aiding therein without the Consent of the Owner, or Person chiefly intrusted with the Custody of such Forests, &c. Stat. 5 *Geo. 1. c. 15. §. 5.*

50 *l.* for each Deer. To be levied by Distress, and distributed as Forfeitures are, by 3 & 4 *W. & M. c. 10.*

For Want of Distress Three Years Imprisonment, without Bail or Mainprize, and to be set in the Pillory for Two Hours on the Market-Day.

Persons pulling down, or destroying, or causing to be pulled down or destroyed, the Pales or Walls of any Park, Forest, &c. where *Red* or *Fallow Deer* shall be then kept without the Owner's Consent.

One Witness. Stat. 5 *Geo. 1. c. 15. §. 6.*

Subject to the like Forfeitures and Penalties as for killing Deer.

May on Confirmation of any Conviction of *Deer-stealing*, by Superior Courts at *Westminster*, and Delivery of the Rule, proceed against the Party convicted in the same Manner as if a *Procedendo* had been granted. Stat. 5 *Geo. 1. c. 15. §. 2.*

Convicts before discharged, to be bound to the Person offended in Fifty Pounds for their Good Behaviour, and not to offend in like Manner, and on Failure or Refusal, to be committed to the County-Gaol till so bound. And if afterwards convicted on the Stat. 3 & 4 *W. & M. c. 10.* the Penalty of the Bond is forfeited, to be recovered with full Costs of Suit in any of the Courts at *Westminster*, and likewise liable to the Penalties and Forfeitures in the said Statute. Stat. 5 *Geo. 1. c. 15. §. 4.*

Penalties to be distributed in the same Manner as Forfeitures are by 3 & 4 *W. & M.*

No *Certiorari* for removing Convictions of *Deer-stealing*, or other Proceedings upon the Stat. 3 & 4 *W. & M. c. 10.* to be allowed, unless he first give Securities to the Justices who convicted him in Sixty Pounds for each Offence, to prosecute it, and to pay the Justice the Forfeitures due, &c. or render the Party convicted to the Justice in a Month after Conviction confirmed, or *Procedendo* granted. Stat. 5 *Geo. 1. c. 15. §. 1.*

In Default of Rendering, &c. the Justice may proceed to execute the Conviction, as if no *Certiorari* had been.

[*Qu. Sess.*] Justices of Gaol-Delivery by Order of Court to transport, for Seven Years to his Majesty's Plantations in *America*, Persons convicted upon Indictment of Entering Parks, &c. with armed Force, and wilfully wounding or killing *Red* or *Fallow Deer* there. Stat. 5 *Geo. 1. c. 28. §. 1.*

Offenders punished by this Act, not punishable by any other.

A P P E N D I X.

Offences.

Deer-Stealers.

Penalties.

Persons being armed with Swords, &c. and having their Faces blacked, or otherwise disguised, shall appear and unlawfully hunt, kill, or steal any *Red or Fallow Deer*, &c. being thereof lawfully convicted, shall suffer Death as a Felon. 9 *Geo. 1. c. 22. §. 1.*

Where any Venison or Skin of a Deer shall be found in the Custody of a Person, and it shall appear the Person bought it of One who might be justly suspected to come by it unlawfully, and he doth not produce the Party of whom he bought it, or prove on Oath his Name and Place of his Abode, then the Person who bought it shall be convicted of such, by One or more Justices.

Shall be subject to the Penalties inflicted for killing a Deer, by the Act 3 & 4 *W.*

Offences against the Act 3 & 4 *W.* shall be commenced within Three Years from the Time of the Offence, but not after. 9 *Geo. 1. c. 22. §. 13.*

This Act, commonly called the *Black-Act*, is continued by 10 *Geo. 1. c. 32.* to 1st of *Septem. 1744, &c.*

Deferters. *Vide* Soldiers and Mariners.

Offences.

Dissenters.

Penalties.

(Protestant.)

[One] Dissenters refusing to make and subscribe the Declaration in 30 *Car. 2.* and to take the Oaths, which came in the Room of the Oaths of Allegiance and Supremacy. Stat. 1 *W. & M. sess. 1. c. 18. §. 12.*

Vide 10 *Ann. c. 2. §. 7, 8.*

Persons refusing the Oath when tender'd. Stat. 1 *W. & M. sess. 1. c. 18. §. 12.*

Vide 10 *Ann. c. 2. §. 7, 8.*

To be committed without Bail, and their Names to be certified to the Quarter-Sessions.

To enter into a Recognizance with two Sureties of 50 *l.* for their producing a Certificate under the Hands of Six of the Protestant Congregation, whereof he is one; Two Protestant Witnesses, or a Certificate under the Hands of Four Church of *England* Protestants, that he is a Protestant.

May require Dissenting Teachers, preaching in any Congregation in such Counties where they have not qualified themselves as the Toleration-Act directs, to take the Oath and Declaration of Allegiance and Fidelity. Stat. 10 *Ann. c. 2.*

[Qu. Sess.] Disturbing any Protestant Dissenting Teacher. Stat. 1 *W. & M. c. 18.*
Two Witnesses.

Twenty Pounds.

The Acts of 10 *Ann. c. 2.* in Part, and 12 *Ann. c. 7.* excluding Dissenters from Offices, repealed by 5 *Geo. 1. c. 4.* But Magistrates knowingly or willingly resorting to, or being present at Meetings in *England, Wales, Berwick upon Tweed*, or the Isles of *Jersey* or *Guernsey*, with the *Insignia* or Habits of Office, are disabled, &c. §. 2.

Offences.

Drunkenness.

Penalties.

[One] ONE convicted for being drunk. Stat. 4 *Jac. 1. c. 5. §. 2.* 21 *Jac. 1. c. 7. §. 3.*

View, one Witness, or Confession.
The Prosecution to be within Six Months.

Five Shillings, for the Poor, where, &c. for the First Offence, within a Week, or to be levied by Distress and Sale after six Days.

And for Want of Distress, to sit in the Stocks Six Hours.

For the Second Offence, to be bound in Two Sureties in Ten Pounds to the Good Behaviour.

Alehouse-keeper convicted of Drunkenness. Stat. 21 *Jac. 1. c. 7. §. 4.*
Conviction *ut supra.*

Disabled to keep an Alehouse for Three Years.

Dyers. See 13 *Geo. 1. c. 24. Dalton, Chap. 35.*

Offences.

Examination.

Penalties.

[One] ONE accused of Manslaughter or Felony, who for Want of Bail is to be sent to the Gaol, must be examined before he send him; and the Accusers must be bound over to give Evidence, whose Information must be taken in Writing. Stat. 2 & 3 *Phil. & Mar. c. 10.*

Examinations

A P P E N D I X.

Offences.

Examination.

Penalties.

Examinations must be several, and given in Writing; and if it be a large Felony, they are to be certified to the next Assises; and if a small Felony, then to the Sessions; or the Justice may be fined by the Judge. If a Felon upon Examination confesseth the Fact, the Justice must take his Name subscrib'd to his Confession.

Offences.

Excise.

Penalties.

[**One**] ALL Informations, Complaints, and other Proceedings before Justices, by Virtue of the Stat. 6 Geo. 1. c. 21. or any other Act or Acts whatsoever, relating to the Duties of Excise, or any other Duty under the Management of the Commissioners of Excise, to be entred and inrolled in *English*. §. 23.

[**Two**] Persons opposing, molesting, or obstructing the Officers of Excise in the due Execution of the Powers or Authorities given by the Stat. 6 Geo. 1. c. 21. or any other Act or Acts relating to the Duties of Excise. §. 7.

Forfeit Ten Pounds, to be sued for, recovered and levied, or mitigated by such Ways and Means and Methods, as Penalties, &c. may by any Law of Excise.

(Brandy.)

All Distillers, Makers or Sellers of, or Dealers in Brandy, Arrack, Rum, Strong-Waters, or Spirits, by Wholesale or Retail, to make true Entry in Writing of all Ware-houses, Store-houses, Rooms, Shops, Cellars, and Vaults, made Use of for keeping Brandy, &c. for Sale, at the next Excise-Office. Stat. 6 Geo. 1. c. 21. §. 11.

On Penalty of forfeiting 20*l.* for every such Warehouse, &c. so made Use of without Entry.

To be sued for, recovered and levied, or mitigated, in the same Manner as any Penalty or Forfeitures may by any the Laws of Excise.

One Moiety to the King, the other to the Informer. §. 14.

Vide Title Brewers.

All Persons who shall become Distillers, Makers or Sellers of, or Dealers in Brandy, &c. to make like Entry of Warehouses, &c. before they take into their Custody or Possession any Brandy, &c. Stat. 6 Geo. 1. c. 21. §. 12.

On the like Penalty of 20*l.* for every such Warehouse, &c. so made Use of without Entry.

To be levied, mitigated and divided, *ut supra*.

No Brandy, &c. to be brought into such Warehouse, &c. by Distillers, &c. without first giving Notice to Excise-Officer, and producing to, and leaving with him, an Authentick Certificate, that the Duties of such Brandies, &c. have been actually paid or condemned as forfeited, or was Part of the Stock of some Importer, Distiller or Maker, who paid the Duty. Stat. 6 Geo. 1. c. 21. §. 13.

On Penalty of forfeiting the Brandy, &c. so brought in without Notice or Certificate, together with the Cask and Vessel.

Distiller, Maker, Seller or Dealer in Brandy, &c. hindring or refusing Officers of Excise to enter into their Warehouses, &c. to take an Account of Brandy, &c. or shall let, hinder or obstruct Officers in executing Powers given them by the Stat. 6 Geo. 1. c. 21. Stat. 6 Geo. 1. c. 21. §. 14.

50*l.* for every Offence.

To be sued for, levied, mitigated and divided, *ut supra*.

No Brandy, &c. to be sold, uttered, or exposed to Sale by Wholesale or Retail, but when the same shall be in some or one of the said Warehouses, &c. so entred. Stat. 6 Geo. 1. c. 21. §. 15.

On Penalty of 40*s.* for every Gallon, &c.

To be levied, mitigated and divided, *ut supra*.

No Brandy, &c. exceeding a Gallon, to be removed or carried from any Part of *Great Britain* to another, by Land or Water, without a Permit or Certificate from one of the Officers of Excise. Stat. 6 Geo. 1. c. 21. §. 17.

On Penalty of forfeiting the Brandy, &c. so removed, together with the Cask or Vessel.

Note; Persons who shall have in their Custody any Brandy, &c. exceeding the Quantity of Sixty-three Gallons, are deemed Sellers of Brandy, &c. and are subject to the Survey of the Officers of Excise. Stat. 6 Geo. 1. c. 21. §. 18.

Justices residing near the Place where a Seizure of Brandy, &c. clandestinely imported, shall be made, to summon the Person in whose Custody such Brandy, &c. was found, to appear before them, and upon the Appearance or Default of such Person so summoned, may in a summary Way proceed upon, hear, examine into, determine, and give Judgment for the Condemnation of such Brandy, &c. And if it shall be found to be forfeited,

A P P E N D I X.

Offences.

Excise.

Penalties.

(Brandy.)

seized, to issue out their Warrant for Sale of such Brandy, &c. together with the Cask or Vessel. Stat. 6 Geo. 1. c. 21. §. 20.

Judgment of the Justices is final, and not liable to *Appeal* or *Certiorari*.

When Brandy, &c. is seized as aforesaid, and no Claim made in twenty Days, the Officer must cause publick Notice to be given by Proclamation the next Market-Day after the said twenty Days, of the Day and Place when and where the Justices will proceed to examine into the Cause of such Seizure, and to give Judgment for the Condemnation of such Brandy, &c. so seized.

Judgment final, and not liable to Appeal or *Certiorari*. Stat. 6 Geo. 1. c. 21. §. 21.

Note; In both the last Cases, Justices have no Jurisdiction within the Limits of the Chief Excise-Office in London. Nor in Cases where the Seizure is made for unlawful Importation, and the whole Quantity of Brandy, &c. at any one Time for that Cause seized, doth exceed 63 Gallons. Stat. 6 Geo. 1. c. 21. §. 20.

Master and Purser of any Ship who shall suffer any Brandy, &c. or other uncustomed or prohibited Goods, to be put out of his Ship or Vessel into any Hoy, Lighter, Boat, or Bottom, to be laid on Land; or shall suffer any Wool, Woolfells, Mortlings, Shortlings, Yarn made of Wool, Woolstocks, Fullers-Earth, Fulling-Clay, or Tobacco-pipe Clay, to be put on board such Ship to be carried beyond Sea. Stat. 6 Geo. 1. c. 21. §. 32.

If convicted, shall (besides the Penalties and Forfeitures to which they will be liable by any Law now in Being) suffer six Months Imprisonment without Bail or Mainprife.

(Brewers.)

[**One**] To take the Oath of two able Artifts to compute the Contents and Gauge of all Brewing-Vessels. Stat. 15 Car. 2. c. 11. §. 7.

[**Two**] Brewers not making true Entries once a Week. Stat. 12 Car. 2. c. 23 & 24. §. 16, 17. 1 W. & M. Sess. 1. c. 24.

One Witness, or Confession.

The Prosecution must be within three Months.

Five Pounds; and ten Pounds more, to be levied by Distress and Sale, if not redeemed in fourteen Days; and for want of Distress, to be imprisoned till Satisfaction made.

The Forfeiture may be mitigated, so as it be not less than double the Duty of Excise, besides Costs and Charges.

Three Fourths to the King, and one to the Informer, after Charges deducted.

Note; The first Warrant must be returned, that there is no Distress, before a second Warrant can issue, to take the Body.

Brewers not paying within a Week, and Retailers within a Month after making their Entries. Stat. 12 Car. 2. c. 23. §. 17. c. 24. §. 31.

Prosecution and Conviction *ut supra*.

Double the Duty, to be levied and mitigated *ut supra*.

Brewers, Victuallers, and Distillers, refusing Gaugers to enter; and being forbid by Gaugers to sell, felling, or delivering out any Liquors, not having paid the Duty. Stat. 12 Car. 2. c. 23. §. 19. c. 24. §. 32.

1 W. & M. Sess. 1. c. 24.

Prosecution and Conviction *ut supra*.

Five Pounds; and ten Pounds more, over and above the double Value. To be levied, mitigated and divided, *ut supra*.

Brewers making false Entries. Stat. 12 Car. 2. c. 23. §. 23.

Prosecution and Conviction *ut supra*.

Over and above the said Penalties, forfeits his Allowance for Waste and Leakage for six Months.

Brewer, or Retailer, without giving Notice at the next Excise-Office, setting up, altering or enlarging any Tun, Fat, Back, Cooler, or Copper, and using them, or keeping any private Store-house for laying such Liquors in Cask. Stat. 15 Car. 2. c. 11. §. 1. 1 W. & M. Sess. 1. c. 24.

Two Witnesses.

Informations to be brought in three Months, and Notice given in a Week after Information brought.

Fifty Pounds for every Tun, &c. to be levied by Distress and Sale; and for want, to be committed to the County-Gaol for three Months.

One Third to the King, one Third to the Poor, and one Third to the Informer. Two hundred Pounds by Stat. 8 W. 3. c. 19. §. 8.

A P P E N D I X.

Offences.

Excise.

Penalties.

(Brewers.)

Persons in whose Occupation the House, &c. is, where a concealed Tun, &c. shall be discovered. Stat. 15 Car. 2. c. 11. §. 1.

Prosecution and Conviction *ut supra*.

Note; There must be an Adjudication of this specific Forfeiture before the Justices, before a Sale for the Use of the Poor, or a Distribution amongst them.

Brewers delivering, or carrying out Ale, or Beer, to his Customers in any City, &c. before Notice, unless between three in the Morning and nine in the Evening, from March 25 to September 29, unless between five in the Morning and seven in the Evening, from 29 Sept. to 25 March. Stat. 15 Car. 2. c. 11. §. 11.

Conviction, and Prosecution, *ut supra*.

Brewers converting small Drink into strong, by Mixture, after the Gauge taken, without Notice to a Gauger, or hiding, or concealing Drink ungauged. Stat. 15 Car. 2. c. 11. §. 12.

Conviction, and Prosecution, *ut supra*.

Brewers not shewing to the Gaugers all the Beer, Ale, or Worts of every Guile. Stat. 1 W. & M. Seff. 1. c. 24. §. 10.

Conviction, and Prosecution, *ut supra*.

Brewers or Victuallers cleansing before the whole Guile is brewed off. Stat. 7 W. 3. c. 30. §. 21.

Brewers or Victuallers, refusing Gauger to enter and stay in his Brewhouse, to see the Guile brewed off. Stat. 7 W. 3. c. 30. §. 22.

Brewer or Inn-keeper, upon carrying out Drink, or after carried out, mixing any Small with Strong, upon the Dray, or in the Victualler's Cellar. Stat. 7 W. 3. c. 30. §. 23.

Brewer, Distiller, or any other, obstructing the Officer in searching for private Tun, Back, Cask, &c. Stat. 7 W. 3. c. 30. §. 27.

Brewer refusing to declare his Length. Stat. 8 & 9 W. 3. c. 18. §. 2.

Brewer making any Increase, or found laid off, after the Length declared. Stat. 8 & 9 W. 3. c. 18. §. 2.

Brewer's Servant concerned in making such Increase. Stat. 8 & 9 W. 3. c. 18. §. 2.

Brewer keeping any private Pipe or Conveyance, &c. or Hole in any Tun, &c. Stat. 8 & 9 W. 3. c. 18. §. 4.

Brewer, or other Person obstructing the Officer in searching for such Pipes. Stat. 8 & 9 W. 3. c. 18. §. 6.

Brewers carrying out, and delivering any Wash, Tilts, &c. to any Distiller, or Vinegar-Maker, without Notice. Stat. 8 & 9 W. 3. c. 18. §. 9.

Fifty Pounds, to be levied and employed *ut supra*.
Or he to be punished *ut supra*; and also such Tun, &c. with the Beer, &c. to be seized and delivered to the Overseers of the Poor, to be sold for their Use, or distributed amongst them.

Twenty Shillings a Barrel, to be levied and employed, and the Party punished *ut supra*.

Twenty Shillings a Barrel, to be levied and employed, and the Party punished *ut supra*.

To have no Benefit of the *Proviso* in 15 Car. 2. touching Mis-entry, and incurs all the Penalties imposed by the former Acts.

Forty Shillings a Barrel, to be recovered and employed *ut supra*.

Twenty Pounds, to be recovered and employed *ut supra*.

Five Pounds, to be recovered and employed *ut supra*.

Twenty Pounds, to be recovered and employed *ut supra*.

Twenty Shillings a Barrel for the whole Guile; to be recovered and employed *ut supra*, and to be charged strong.

Five Pounds a Barrel, to be recovered and employed *ut supra*.

Twenty Shillings, to be recovered and employed *ut supra*.

One Hundred Pounds, to be recovered and employed *ut supra*.

Fifty Pounds, to be recovered and employed *ut supra*.

Twenty Shillings a Barrel, to be recovered and employed *ut supra*.

A P P E N D I X.

Offences.

Excise.

Penalties.

(*Brewers.*)

Brewer, Innkeeper, &c. using or mixing any Sugar, Honey, foreign Grains, Guinea Pepper, *Essentia Bine*, *Coculus India*, or any other unwholesome Ingredients in brewing Beer, or Ale, &c. Stat. 1 *Ann. Sess.* 2. c. 3. §. 29.

Twenty Pounds, to be recovered and disposed *ut supra*.

Brewers who conspire to sell their Drink but at certain Prices. *Vide Title Conspiracies.*

(*Cyder-Makers.*)

[Two] Makers of *Cyder* concealing it. Stat. 7 *W.* 3. c. 30. §. 16.

40 s. a Hoghead, and so proportionably, to be levied and employed *ut supra*.

Makers of *Cyder*, &c. refusing Gauger to enter and take Account. Stat. 7 *W.* 3. c. 30. §. 16.

Fifteen Pounds, to be levied and employed *ut supra*.

Makers of *Cyder* delivering any Wash, or *Cyder* to any Distiller, or Vinegar-Maker, without Notice. Stat. 8 & 9 *W.* 3. c. 18. §. 9.

Twenty Shillings a Barrel, to be recovered and employed *ut supra*.

(*Distillers.*)

[One] Persons making or keeping any Wash, *Cyder*, or other Materials fit for Distillation; and having in his or their Possession or Occupation any Still, or Stills, containing twenty Gallons or upwards, shall be deemed a common Distiller. Stat. 8 & 9 *W.* 3. c. 18. §. 11.

Liable to the several Rates and Duties of Excise, and subject to the Penalties and Forfeitures of this and all other Acts in Force.

Conviction upon the Oath of one or more credible Witnesses.

When any Person is suspected to conceal any Still, Back, or other Vessels, Spirits, Low-Wines, or other Materials for Distillation. Stat. 10 & 11 *W.* 3. c. 4. §. 7.

Upon an Affidavit declaring the Grounds of such Suspicion, to grant a Warrant to search for, and seize such Still, &c. And if not claimed by the Owner in 20 Days, to be sold by the Commissioners of Excise.

[Two] Distillers of Low-Wines, removing them after Account taken by the Gauger without drawing them off a second Time. Stat. 1 *W. & M. Sess.* 1. c. 24. §. 3.

Five Shillings a Gallon, to be levied by Distress and Sale.

Conviction by two Witnesses.
Prosecution in three Months; Notice in a Week, as against Brewers: And so for all other Offences.

Distillers, on Request of a Gauger in the Day-time, or in the Night, in Presence of a Constable, refusing to permit Gauger to enter his Dwelling-house. Stat. 1 *W. & M. Sess.* 1. c. 24. §. 9.

Double the Value, and Five Pounds and Ten Pounds, and no Need of proving Sale, &c. before Duty paid, &c. to be levied and employed *ut supra*.

Conviction *ut supra*.

To hear and determine Complaints of Over-charges upon Oath, or other due Proof. Stat. 1 *W. & M. Sess.* 1. c. 24. §. 13.

Distillers setting up, making use of, or altering any Tun, Cask, &c. for the Brewing, or making any Wash, Low-Wines, or Spirits for Sale; or making use of any private Warehouse, Cellar, or other Place for laying any Wash, &c. without first giving Notice at the next Office of Excise: And the Persons in whose Occupation such Tun, &c. shall be found. Stat. 3 & 4 *W. & M. c.* 15. §. 1.

Twenty Pounds, to be levied *ut supra*.
One Moiety to the King, the other to the Informer.

Distillers hiding, concealing, or conveying any Low-Wines, Spirits, or Strong-Waters, from the Sight of the Gauger. Stat. 3 & 4 *W. & M. c.* 15. §. 2.

Five Shillings a Gallon.
To be recovered, as by 12 & 15 *Car.* 2. and employed *ut supra*.

Distillers preparing any Wash, or other Material, before he has drawn off all the Liquors made from Corn. Stat. 7 *W.* 3. c. 30. §. 8.

Five Pounds a Barrel, to be levied *ut supra*.
One Moiety to the King, the other to the Informer.

A P P E N D I X.

Offences.

Excise.

Penalties.

(*Distillers.*)

Distillers refusing Gaugers to stay in the Still-house, to see the Stills wrought off, &c. Stat. 7 *W.* 3. c. 30. §. 12.

Twenty Pounds, to be levied and employed *ut supra*.

Distillers carrying out Spirits, or working Stills, at other Hours than from *Michaelmas* to *Lady-Day*, between five in the Morning and eight at Night; and from *Lady-Day* to *Michaelmas*, between three in the Morning and nine at Night. Stat. 7 *W.* 3. c. 30. §. 15.

Ten Pounds, to be levied and employed *ut supra*.

Distiller, or any other, obstructing the Officer in Searching for private Tun, Back, Cask, &c. Stat. 7 *W.* 3. c. 30. §. 27.

Twenty Pounds, to be recovered and employed *ut supra*.

Distiller keeping any private Pipe, Hole, or other Conveyance, &c. from one Vessel to another. Stat. 10 & 11 *W.* 3. c. 4. §. 3.

One hundred Pounds, to be recovered and disposed *ut supra*.

Distiller, or other Person, obstructing the Officer in Searching for private Pipe, &c. Stat. 10 & 11 *W.* 3. c. 4. §. 5.

One hundred Pounds, to be recovered and disposed *ut supra*.

Distiller keeping any private Still, or other Vessel, he or other hindering the Officer in Searching for the same; and Person in whose Custody such Still or Vessel shall be found. Stat. 10 & 11 *W.* 3. c. 4. §. 7.

Two hundred Pounds, to be recovered and disposed *ut supra*.

Distiller receiving Cyder or Perry into his Custody, and not giving Notice to the proper Officer 48 Hours before he puts it into the Still, &c. forfeits 5 *l.* Stat. 11 *Geo.* 2. c. 1. §. 12. See *Dalton*, Chap. 61. Tit. *Malt*.

(*Gaugers.*)

[Two] *Gaugers* who do not weekly deliver to Brewers a true Copy, under their Hands, of the Return he charges them with. Stat. 15 *Car.* 2. c. 11. §. 5.

40 *s.* for every Neglect, to be levied by Distress and Sale; and for Want, to be committed to the County-Gaol for three Months.

Two Witnesses.

One Third to the King, one Third to the Poor, one Third to the Informer.

Informations to be brought in three Months, and Notice given in a Week after Information brought.

Gauger taking a Bribe to make a false Return, and the Party who gives the Bribe. Stat. 15 *Car.* 2. c. 11. §. 16.

Ten Pounds for every Offence, to be levied and employed, or the Party punished, *ut supra*.

Gaugers not leaving Notes with Brewers of the last Gauges. Stat. 1 *W.* & *M.* *sess.* 1. c. 24. §. 12.

Forty Shillings, to be levied *ut supra*.

To adjudge what Satisfaction the *Gaugers* and Officers of the Excise shall make, where any Door or House is broken open, and no private or concealed Back, Still, or other Vessel, Spirits, Low-Wines, Wash, or other Materials for Distillation shall be found. Stat. 10 & 11 *W.* 3. c. 4. §. 8. *Quorum* 1.

(*Makers of Mead, Vinegar, Metheglin, and Sweets.*)

[Two] Makers of *Vinegar*, *Mead*, *Metheglin*, or *Sweets* for Sale, concealing them. Stat. 7 *W.* 3. c. 30. §. 16.

Forty Shillings for every Barrel of *Vinegar* or *Sweets* so hid, and so proportionably. And Five Shillings for every Gallon of *Mead* or *Metheglin*.

To be levied *ut supra*.

One Moiety to the King, the other to the Informer.

Makers of *Vinegar*, &c. refusing *Gauger* to enter and take Account. Stat. 7 *W.* 3. c. 30. §. 17.

15 *l.* to be levied and employed *ut supra*.

Makers of *Vinegar* and *Sweets*, carrying them out without Notice, at other Hours than from *Michaelmas* to *Lady-Day*, between five in the Morning and eight at Night; and from *Lady-Day* to *Michaelmas*, between three in the Morning and nine at Night. Stat. 7 *W.* 3. c. 30. §. 18.

40 *s.* a Barrel, to be recovered and employed *ut supra*.

A P P E N D I X.

Offences.

Excise.

Penalties.

(Makers of Vinegar, &c.)

Sweet-makers setting up, or using any private Steeping-Tub, Tun, &c. without Notice, &c. Stat. 8 *W.* 3. c. 21. §. 12.

50 *l.* to be recovered and employed *ut supra*.

Vinegar-makers receiving Liquors in, or delivering Vinegar out at other Hours than from 29 *September* to 25 *March*, between seven in the Morning and five in the Evening; and from 25 *March* to 29 *September* between five in the Morning and seven in the Evening Stat. 10 & 11 *W.* 3. c. 21. §. 12.

50 *l.* to be recovered and disposed *ut supra*.

Vinegar-maker taking in Liquors, and mixing them with other Liquors, before he shews them to the Gauger. Stat. 10 & 11 *W.* 3. c. 21. §. 13.

Twenty Pounds, to be recovered and disposed *ut supra*.

Vinegar-maker keeping a private Store-house, Cellar, &c. Stat. 10 & 11 *W.* 3. c. 21. §. 14.

Fifty Pounds, to be recovered and disposed *ut supra*:

Sweets made for Sale, for which the Duty is paid, or charged by the Excise-Officer, not to be removed from one Place to another, without Certificate under the Hand of the Officer of Excise of the Place from whence such Sweets are so to be sent or removed. The Maker who shall send or remove such Sweets, and Vintner who shall receive or take them without Certificate. Stat. 6 *Geo.* 1. c. 21. §. 22.

Forfeit respectively 10 *s.* per Gallon, together with the Casks and Vessels containing the same. To be seized by Officers of *Excise*.

And to be proceeded upon, heard and examined into, adjudged and determined by the same Ways and Means, and in the same Manner and Form as is prescribed to be done upon Seizures of Brandy, &c.

The Judgment is final, and liable to no *Appeal* or *Certiorari*.

Vide Title Brandy and Brewers antea.

Note; Justices have no Jurisdiction within the Limits of the chief Office of *Excise* in *London*. Stat. 6 *Geo.* 1. c. 21. §. 22.

(Inn-keeper or Victualler.)

[Two] Inn-keepers, not making true Entries once a Month. Stat. 12 *Car.* 2. c. 16, 23, 24. §. 30. 1 *W.* & *M. Sess.* 1. c. 24.

Five Pounds, and Five Pounds more, to be levied, mitigated and divided in the same Manner as the Penalty on Brewers, not making true Entries once a Week.

One Witness, or Confession.

The Prosecution must be within three Months.

Vide Brewers antea.

Inn-keeper or Victualler refusing Gauger to enter their Cellars and taste the Drink. Stat. 7 *W.* 3. c. 30. §. 23.

Five Pounds, to be levied by Distress and Sale. One Moiety to the King, the other to the Informer.

(Low-Wines.)

[Two] Low-Wines or Spirits brought by Sea coastwise from any Port or Place in this Kingdom to another, without a Certificate from the Officer of Excise, that the Duty has been paid. Stat. 3 *Geo.* 1. c. 4. §. 17.

Forfeited, and may be seized by the Officers of the Customs of Excise.

To be sued for, recovered, determined and mitigated, as Penalties may by any the Laws of Excise.

One Moiety to the King, the other to the Person that shall sue or inform.

(Malt.)

[Two] Malster or Maker of Malt for Sale, or Exportation, who shall cause, or permit any Barley, or other Corn or Grain making into Malt, to be steeped, wetted, or watered, upon the Couch or Floor, or in any other Place, but in Cisterns or Uting-Vats duly entred at the Office of Excise of the Division or Place where such Malt shall be wetted. Stat. 6 *Geo.* 1. c. 21. §. 1.

Forfeits 2 *s.* 6 *d.* for every Bushel of Malt so steeped, wetted, or watered.

To be sued for, recovered, and levied or mitigated, by such Ways, and Means and Methods, as Penalties or Forfeitures may by any Laws of Excise. §. 9.

Malster or Maker of Malt for Sale, or Exportation, who shall cause, or permit any Corn or Grain by him making into Malt, to be worked or made in such Manner, that the same shall acespire, that is to say,

Forfeits 5 *s.* for every Bushel.

To be recovered, levied or mitigated, *ut supra*.

A P P E N D I X

Offences.

Excise.

Penalties.

(Malt.)

run out, grow, or sprout at that End of the Corn or Grain from which the Blade proceeds. Stat. 6 Geo. 1. c. 21. §. 2.

Excise-Officer discovering such acriepired Corn, or Grain making into Malt, to give Notice thereof in Writing within 48 Hours to the Malster, or Maker of such Malt, or his Servant. Stat. 6 Geo. 1. c. 21. §. 3.

Person or Persons shipping, or who shall cause, or procure to be shipped, Malt mixed with unmalted Oats or Barley. Stat. 6 Geo. 1. c. 21. §. 4.

Exporter of Malt to give 48 Hours Notice in Writing to the Officer of Excise, of the Day and Hour when Malt intended to be shipped, or put on Board for Exportation, shall begin to be put on Board. Stat. 6 Geo. 1. c. 21. §. 6. And also of the Name of the Ship, &c. by 12 Geo. 1. c. 4. §. 57.

Every Malster or Maker of Malt (other than Com-pounder for the Duty on Malt) where Corn in any Cistern or Uting-Vat is steeping, or steeped, in order to be made into Malt, shall be found so hard, close, and compact, as it could not be, unless it had been forced together, to prevent the Rising and Swelling thereof. Stat. 6 Geo. 1. c. 21. §. 8.

On Penalty of 40 s. for every Neglect of such Notice *ut supra*.

Forfeits 5 s. for every Bushel *ut supra*.

5 s. for every Bushel of Malt, shipped or put on Board without Notice, *ut supra*.

2 s. 6 d. for every Bushel of such Corn steeping or steeped, which shall be found so hard, close, and compact, *ut supra*.

See 11 Geo. 2. c. 1. in *Dalton*, Chap. 61. Tit. *Malt*.

[**Qu. Sess.**] Upon Appeals against original Judgments, given by particular Justices, upon Information for Offences committed contrary to the Acts relating to the Duties upon *Malt*, the Duties upon *Hides*, &c. and upon *Vellum and Parchment*, to rehear, examine, and consider the Truth and Merits of the Facts in Question, and to re-examine the Witnesses upon Oath, and finally determine; and may rectify and amend Defects of Form in Proceedings before the Justices, who gave such Original Judgments. Stat. 6 Geo. 1. c. 21. §. 10.
See Tit. *Malt post*.

(Retailers of Beer, Ale, Cyder, Perry, Methoglin, &c.)

[**Two**] Retailers of Beer, Ale, Cyder, Perry, Methoglin, or Strong-Waters, not making true Entries once a Month. Stat. 12 Car. 2. c. 23. §. 15. c. 24. §. 29. 1 W. & M. sess. 1. c. 24.
One Witness, or Confession.
The Prosecution must be within Three Months.

Retailers of Beer, &c. after Receipt from Brewer, mixing Beer, &c. of extraordinary Strength, with any Small Beer, &c. in a Vessel that holds Three Gallons, or more. Stat. 22 & 23 Car. 2. c. 5. §. 11.

Witnesses refusing to appear. Stat. 22 & 23 Car. 2. c. 5. §. 11.

20 s. and 20 s. more, to be levied, mitigated and divided in the same Manner as the Penalty on Brewers, not making true Entries once a Month.

Vide Brewers antea.

Double the Duty of Strong so mixed; to be levied by Distress and Sale.

One Third to the King, one Third to the Poor, and one Third to the Informer.

40 s. to be levied and disposed *ut supra*.
Increased to 10 l. by 7 & 8 W. 3. c. 30. §. 19.

Offences.

Fairs.

Penalties.

[**Qu. Sess.**] OWNER of a Fair or Market, not appointing a *Toll-taker* (where Toll is taken) or a *Book-keeper* (where Toll is paid) to sit there from Ten of the Clock in the Forenoon, till Sun-set. Stat. 2 & 3 P. & M. c. 7. §. 2.

The Toll-taker or Book-keeper not delivering, in one Day after, unto the Owner, a Note of *all Horses* sold there. Stat. 2 & 3 P. & M. c. 7. §. 2.

40 s. for every Default, to be divided between the King and Prosecutor.

40 s. to be divided *ut supra*.

A P P E N D I X.

Offences.

Every Seller or Exchanger of an Horfe, in a Fair or Market, which being unknown to the Toll-taker or Book-keeper, doth not procure one credible Witnefs, that is well known unto him, to vouch the fame Sale of the fame Horfe, and every falfe Voucher, and the Toll-taker or Book-keeper who fuffers fuch Sale or Exchange to pafs. Stat. 31 *Eliz. c. 12. §. 2.*

Fairs.

Five Pounds, to be divided between the Queen and the Profecutor; and the Sale void.

Penalties.

Offences.

[Two] TO convene by Procefs, or otherwise, Perfons fufpected to have gotten Money or other Thing by Falfe Tokens, or counterfeit Letter. Stat. 33 *H. 8. c. 1. §. 3. Quorum 1.*

Falfe Tokens.

To commit or bail till Affifes or Seflions, or otherwife to order them at their Difcretion.

Penalties.

[Qui. Scff.] Perfons obtaining any Money, or other Thing, by Colour of any Falfe Token, or counterfeit Letters. Stat. 33 *H. 8. c. 1. §. 2.*
Confeflion, or Witneffes.

To fuffer fuch Punifhment as the Court fhall adjudge, Death only excepted.

Offences.

[Qui. Scff.] Fellers of Oak-Trees apt for Barking, where Bark is worth 2 s. a Cart-Load (except Timber for Repair of Houfes, Ships and Mills) but only between the firft of *April* and the laft of *June*. Stat. 1 *Jac. 1. c. 22. §. 20.*

Fellers of Oak-Trees.

Forfeit the Trees, or the double Value of them, to be divided; one Third to the King, one to the Profecutor, and the other to the City, Borough, Town, or Lord of the Liberty, where the Offence is committed.

Penalties.

Felons. *Vide* Title **Transportation.**

Felony. See *Dalton*, Chap. 159, 160.

Offences.

ALL Fines fet by Virtue of the Stat. 7 *Jac. 1. c. 4.* are to be paid to the Treasurer of the County, and by him accounted for. Stat. 7 *Jac. 1. c. 4.*

Fines.

Penalties.

Offences.

[Two] Church-wardens of every Parifh, within the *Weekly Bills of Mortality*, not making, placing, fixing, and continuing Stop-blocks or Fire-cocks on Mains and Pipes, and not having and keeping in Repair a large Engine, Hand-Engine, and Leather-Pipe and Socket. Stat. 6 *Ann. c. 31. §. 1.*

Fire.

Ten Pounds, to be levied by Diftreff and Sale. One Moiety to the Informer, the other to the Poor of the Parifh.

Penalties.

Church-warden, where Fire happens, not paying to the Turn-Cock, whofe Water fhall be found on, or firft come into the Main or Pipe, Ten Shillings. Stat. 6 *Ann. c. 31. §. 1.*

Ten Shillings, to be levied by Diftreff and Sale.

Church-warden, where Fire happens, not paying to the firft Engine-keeper, who brings in a Parifh-Engine, 30 s. to the Second 20 s. and to the Third 10 s. Stat. 6 *Ann. c. 31. §. 1.*

The 30 s. 20 s. and 10 s. to be levied by Diftreff and Sale.

Menial, or other Servants, firing any Dwelling-houfe or Out-houfe, through Negligence or Careleffnefs. Stat. 6 *Ann. c. 31. §. 3.*

One hundred Pounds, to be paid to the Church-wardens, to be given to Sufferers by Fire; in Cafe of Default, or Refufal, to be committed to the Work-houfe or Houfe of Correction, to hard Labour, as the Juftices fhall think fit.

The Owner, or Head-builder or Workman, who fhall build any new Houfe without a Party-Wall between Houfe and Houfe, wholly of Brick or Stone; and

Fifty Pounds a-piece, to be levied by Diftreff and Sale; and for Want of Diftreff, to be imprifoned till Payment.

One

A P P E N D I X.

Offences.

and Two Bricks thick in the Cellar and Ground-Stories; and if it be not 13 Inches thick upwards, and 18 Inches above the Roof: And if any Mundillion, or Cornice of Timber or Wood, under the Eaves, shall be made, or fuller'd in any such new House and Houses; and if all Front and Rear Walls of every House and House, shall not be built of Brick or Stone, to be carried a Foot and half above the Garret and Floor, and coped with Stone or Brick. Stat. 6 Ann. c. 31. §. 4.

Fire.

One Moiety to the Informer, the other to the Poor. Actions against Persons where the Fire accidentally begins, taken away for Three Years.

Penalties.

This Act was made perpetual, 10 Ann. c. 14.

All Persons who shall erect any House on an old or new Foundation, in *London* or *Westminster*, or the *Weekly Bills of Mortality*, or in *Mary le Bone* and *Paddington*; in the Parishes of *Chelsea* and *St. Pancras*, (except Houses on *London-Bridge*, and on the *Thames* below Bridge) and who shall think it necessary to pull down any Partition-Wall between that and the adjoining House, shall (if the Owner of the adjoining House will not agree) give Three Months Notice in Writing of their Intention, that before the Party-Wall be pull'd down, it may in a Month after Notice be viewed by Four able Workmen, Two to be nam'd by the first Builder, and Two by the Owner of the next House; and if either Party shall not name, in Three Weeks, such Workmen, then the other shall name Four to view the Party-Wall; and (without Consent) the same shall not be pulled down, unless the major Part of the Workmen shall certify to the Quarter-Sessions, that the Party-Wall is defective and ruinous, and ought to be pulled down; and if any Person shall think himself aggrieved by such Certificate, the Justices are to summon before them, one or more of the Workmen, and such others as they think fit, and examine them on Oath, and thereon the Justices are to make Orders in the Premises, which shall be conclusive to all Parties without Appeal.

If within Three Days after such Certificate, and there be no Appeal from the same, and the Owner of the next House shall not shore and support it in Six Days after the Time allowed for Appeal, then the first Builder may shore and support the same at the Charges of the Owner, and build up a new Party-Wall; and in Ten Days after the Party-Wall shall be built, he shall leave with the Owner of the next House, an Account of the Rods in the Party-Wall; and one half Part of the Expence, at 5 *l.* per Rod, shall be paid by such Owner; and the Tenant shall pay to the first Builder for the same, and for shoring, and deduct it out of the next Rent; and the first Builder, if not paid in 21 Days after Demand, may sue for his Proportion of the Expence.

It shall not be lawful to have in any Party-Wall, which shall be erected in the said Limits, any Door-case, Window, Lintel, Breast-summer, or Story-Poets or Plates, unless where Two or more Houses shall be laid together, and used as one House, during such Usage, on Forfeiture of 50 *l.* but such Door-case, Window, &c. may be affixed in the Front for Conveniency of Shops only.

First Builder, giving Three Months Notice, may pull down the old Timber-Walls or Partitions, and build a new Brick Party-Wall, and be paid for the same as afore directed, and subject to such Appeal, &c.

The Water falling from the Tops of the Houses built after 24 June 1725. in the said Limits, and Water falling from Balconies and Penthouses, shall be conveyed into the Channels by Party-Pipes, on the Sides of the Houses, on Forfeiture of 10 *l.*

All Penalties imposed by this Act shall be sued for in Manner before-mentioned, and one Moiety shall be to the Informer, and the other to the Poor of the Parish.

Where Houses are built on new Foundations, no second Builder shall take Benefit of such Party-Wall and Fence-Wall, nor lay any Timber, or cut any Hole for Cup-boards, Presses, or other Uses in the Party-Wall, on Forfeiture of 10 *l.*

The Conviction for the said Forfeitures shall be before Two Justices of the Peace at the least. 11 Geo. 1. c. 28.

Offences.

[One] Rectors of Wear or Wears along the Sea-Shore, or in any Haven or Creek, &c. wilfully destroying the Spawn or Fry of Fish. Stat. 3 Jac. 1. c. 12. §. 2.

Fish.

Ten Pounds, to be levied by Distress, &c. and divided between the Poor and the Prosecutor.

Penalties.

Fishers in any Haven or Creek, or within Five Miles of them, with any Net of a less Mesh than Three Inches and an Half between Knot and Knot, (except for the taking Smoulds in *Norfolk* only) or with a Canvas Net, or other Engine, whereby the Spawn or Fry of Fish may be destroyed. Stat. 3 Jac. 1. c. 12. §. 2.

The Net or Engine to be forfeited, and 10 *s.* to be levied and divided *ut supra*.

Persons taking Fish by any Device, in any several Water or River, or assisting therein, without the Owner's Consent. Stat. 22 & 23 Car. 2. c. 25. §. 7.

Such Recompence, and in such Time as the Justice shall appoint, not exceeding treble Damages, such Sum to the Overseers of the Poor as he shall appoint, not exceeding 10 *s.*

In Default, to be levied by Distress and Sale; and for Want of Distress, to be committed, not exceeding a Month, unless he gives Bond, with one or more Sureties to the Party injured, not exceeding Ten Pounds, not to offend again.

Confession, or one Witness.
Prosecution to be in a Month.

Persons

A P P E N D I X.

Offences.

Fish.

Penalties.

Persons keeping any Net, Angle, Leap, Piche, or other Engine for taking Fish, other than Makers and Sellers of them, and Owners or Occupiers of Rivers or Fisheries. Stat. 4 & 5 W. & M. c. 23. §. 5.

Such Engines may be seized, and kept by the Owners and Occupiers of such Rivers and Fisheries, or such as they shall authorize.

Inferior Tradesmen, Apprentices, and other dissolute Persons fishing or fowling, unless in Company with the Master of such Apprentice qualified by Law. Stat. 4 & 5 W. & M. c. 23. §. 10.

Subject to the same Penalties as Persons are where Game is found; and to be levied and employed in the same Manner.

Vide Title Deer, &c. in Title Game.

To grant his Warrant to search the Houses of Persons prohibited, and suspected to have Engines for taking Fish, and to seize or destroy the same. Stat. 4 & 5 W. & M. c. 23. §. 5.

By Warrant to order Nets of less Mesh or Moke than three Inches and an half, or of false or double Bottom, Cod or Pouch, forfeited, to be publickly burnt. Stat. 1 Geo. 1. c. 18. §. 6.

Selling, offering, or exposing to Sale, or exchanging for any other Goods, *Bret* or *Turbot* under 16 Inches long, *Brill*, or *Pearl* 14, *Codlin* 12, *Whiting* 6, *Bass* and *Mullet* 12, *Sole*, *Place*, or *Dab* 8, and *Flounder* 7, from the Eyes to the utmost Extent of the Tail. Stat. 1 Geo. 1. c. 18. §. 7.

Forfeit the Fish to the Poor, where, &c. and twenty Shillings by Distress.

One Moiety to the Informer, the other to the Poor, where, &c. In Default of Payment, or want of Distress, to be sent to the House of Correction to be whipt, and put to hard Labour, not longer than fourteen Days, nor less than six.

Note; Persons imprisoned by this Act not liable to pay the Penalty. §. 8.

No Prosecution for any Offence against the Stat. 1 Geo. 1. c. 18. unless commenced in one Month after committed. §. 9.

Laying or drawing any Kind of Nets, Engines, or Devices, in the Rivers *Severn*, *Dee*, *Wye*, *Thame*, *Were*, *Tees*, *Ribble*, *Mersey*, *Dun*, *Air*, *Ouze*, *Swaile*, *Caldor*, *Wharf*, *Eure*, *Darwent*, and *Trent*, whereby the Spawn, or small Fry of *Salmon*, or any Kepper or Shedder-Salmons, or Salmons under 18 Inches long, from the Eye to the middle of the Tail, shall be taken, killed, or destroyed; or making, erecting, or setting any Bank, Dam, or Hedge, or Stank, or Nets, cross the said Rivers, to take the Salmon, or to hinder them from going up to spawn, or killing Salmon in the said Rivers, between the last of *July* and 12 *November*; or fishing for Salmon with unlawful Nets, after the 12th of *November*.

Five Pounds for every Offence, besides the Fish taken, and all Nets, &c.

One Moiety of the said Sum to the Informer, the other to the Poor where, &c. to be levied by Distress and Sale, &c.

And for want of Distress, Commitment to the House of Correction to hard Labour, not exceeding three, nor less than one Month. And to suffer such other corporal Punishment, as the Justice shall think fit.

Nets, &c. to be seized and cut to Pieces in the Presence of the Justice.

To cause Banks, Dams, &c. to be demolished at the Charge of Offenders, and such Charges to be levied *ut supra*.

View, Confession, or one or more Witnesses. Stat. 1 Geo. 1. c. 18. §. 14.

No Salmon to be sent to *London* to Fishmongers, or their Agents, that shall weigh less than six Pounds each Fish. And every Person buying, selling, or sending Salmon under six Pounds Weight.

Five Pounds for every Offence, besides the Fish, between Informer and Poor, to be levied *ut supra*.

And for want of Distress, Commitment to the House of Correction to hard Labour for three Months, unless paid in the mean Time.

View, Confession, or one or more Witnesses. Stat. 1 Geo. 1. c. 18. §. 15.

Note; An Appeal lies upon any Branch of the Statute 1 Geo. 1. c. 18. to Quarter-Sessions. §. 17.

Masters, or Commanders of Smacks, Hoys, Boats, Ships, or other Vessels, importing Fish taken by Foreigners or Strangers, except Protestants inhabiting in this Kingdom; to be summoned, and if convicted.

Forfeit for every Offence twenty Pounds by Distress, and for want thereof, twelve Months Imprisonment.

Not to extend to the Importing, Buying, or Selling any Eels, Stockfish, Anchovies, Sturgeon, Botarge, or Cavear. §. 3.

Or Lobsters and Turbots. §. 10.

Two Witnesses.
Stat. 1 Geo. 1. c. 18. §. 2.

None to use Nets for fishing at Sea upon the Coast of *England*, (except for Herrings, Pilchards, Sprats, or Lavidnian) with a Mesh or Moke less than three Inches and an half, from Knot to Knot, or with any false or double Bottom, Cod, or Pouch, or shall put Nets of legal Size or Mesh, upon or behind one another. Stat. 1 Geo. 1. c. 18. §. 4.

Liable to the same Penalties as Masters of Vessels importing Fish contrary to this Act, and the Nets forfeited.

A P P E N D I X

Offences.	Fish.	Penalties.
<p>[Two] To issue out Warrants upon their own Knowledge, or upon Information, of unlawful fishing in the River <i>Severn</i>, to search all suspected Places for unlawful Instruments, and to seize them, and bring them to the Quarter-Sessions to be destroyed. Stat. 30 <i>Car. 2. c. 9. §. 3.</i></p>		

<p>[Qu. Sess.] Using any Net or Engine to destroy the Spawn or Fry of Fish, or take Salmon or Trouts out of Season, or Pikes shorter than 10 Inches, Salmon than 16, Trouts than 8, and Barbels than 12, or using any Engine to take Fish, other than Angle or Net, or a Trammel of 2 Inches and a half Mesh. Stat. 1 <i>Eliz. c. 17. §. 5.</i></p>	<p>Twenty Shillings a Fish, and the Net, or Engine.</p>	
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<p>Unlawfully breaking down Fish-Ponds, or fishing there without the Owners Licence. Stat. 5 <i>Eliz. c. 21. §. 7.</i></p>	<p>Three Months Imprisonment, and to be bound to the Good Behaviour for Seven Years. Treble Damages to the Party grieved. Upon the Offender's Acknowledgment in Sessions, and Satisfaction to the Party, the Behaviour may be released.</p>	
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<p>Fishing in the River <i>Severn</i> with, or making use of any Engine or Device, whereby any Salmon, Trout, or Barbel, under the Length appointed by 1 <i>Eliz. c. 17.</i> shall be taken or killed, or shall fish with any Net for Salmon, Peale, Pike, Carp, Trout, Barbel, Chub, or Grayling, the Mesh whereof shall be under 2 Inches and an half square from Knot to Knot, or above 20 Yards in Length, and 2 in Breadth; or above 50 Yards in Length, and 6 in Breadth in the Wing of the Net, from <i>Ripple-Lock Stake</i> to <i>Gloucester Bridge</i>, or above 60 Yards in Length below <i>Gloucester Bridge</i>, and 6 Yards in Breadth in the Wing of the Net, or shall fish with more than one of those Nets at once, or shall use any Device for taking the Fry of Eels. Stat. 30 <i>Car. 2. c. 9. §. 1.</i></p>	<p>Five Pounds for every Offence, and the Fish so taken, and the Instruments. One Moiety to the Poor, the other to the Prosecutor.</p>	
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<p>Every Person who, between the first of <i>March</i> and the last of <i>May</i>, shall do any Act whereby the Spawn of Fish shall be destroyed. Stat. 30 <i>Car. 2. c. 9. §. 2.</i></p>	<p>Forty Shillings, and the Instrument, to be divided <i>ut supra.</i></p>	
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See 9 *Geo. 2. Chap. 33.* in *Dalton*, Chap. 42. Tit. *Fish.*

Offences.	Flesh.	Penalties.
<p>[Qu. Sess.] Person preaching, or otherwise avouching, or notifying, that any Eating of Flesh, or Forbearing of Flesh, is necessary for the Service of God, otherwise than as other political Laws be. Stat. 5 <i>Eliz. c. 5. §. 40.</i></p>		<p>To be punished as Spreaders of false News.</p>

Offences.	Forcible Entry and Detainer.	Penalties.
<p>[One] Entering into Lands and Tenements by Force, and detaining them by Force. Stat. 5 <i>R. 2. c. 7.</i> 15 <i>R. 2. c. 2. §. 2.</i> 8 <i>H. 6. c. 9. §. 1.</i> Upon View.</p>		<p>Imprisonment, and Ransom at the King's Pleasure. <i>Note</i>; The Statute of 8 <i>H. 6. c. 9.</i> shall indamage none, where peaceable Possession hath been enjoyed three Years. Stat. 31 <i>Eliz. c. 11.</i></p>

Upon Complaint of a *Forcible Entry* or *Detainer*, by Precept to command the *Sheriff* to return a Jury to inquire of the Force committed, and to cause the Tenements to be seized. Stat. 8 *H. 6. c. 9. §. 4.*

<p><i>Jurors</i> returned to inquire of a <i>Forcible Entry</i>, making Default. Stat. 8 <i>H. 6. c. 9. §. 4.</i></p>	<p>Issue 20 Shillings upon the first Precept, 40 Shillings upon the second, 5 Pounds upon the third; and every Default after, double.</p>	
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To give Restitution upon *Force* or *Detainer* to Tenants for Years, by *Elegit*, Statute Merchant or Staple; and Copyholders, as well as those who claim Freehold or Inheritance: And may fine or commit. Stat. 21 *Jac. 1. c. 15.* By Inquiry.

A P P E N D I X.

Offences.

Forcible Entry and Detainer.

Penalties.

[Du. Scff.] The Sheriff or Bailiff neglecting his Duty in the Case of Forcible Entry or Detainer. Stat. 8 H. 6. c. 9. §. 5.

Twenty Pounds, to be divided between the King and the Prosecutor.

Offences.

Forestallers and Ingrossers.

Penalties.

[Du. Scff.] Ingrossers of Bark, to the Intent to sell the same again. Stat. 1 Jac. 1. c. 22. §. 19.

Forfeit the Bark, or the Value of it, to be divided; one Third to the King, the other to the Prosecutor, and the other to the City, Borough, Town, or Lord of the Liberty where the Offence is committed.

Forestallers, Regrators, Ingrossers of Merchandizes, Victuals, &c. Stat. 5 & 6 Ed. 6. c. 14. §. 4, 5.

First Offence, the Value of the Goods, and two Months Imprisonment, without Bail.

By Inquisition, Presentment, Bill, or Information, or two Witnesses.

Second Offence, double Value, and six Months Imprisonment, without Bail.

Extends not to buying Barley, or Oats to make Malt or Oatmeal, nor Provision of any Town Corporate, Ship, &c. or any Fishmonger, Innholder, Victualler, Butcher, Poulterer, or People living within a Mile of the Sea, which are to buy or sell Fish; they retailing the same at reasonable Prices. Nor to any Badger, Kidder, or Carrier, licensed by three Justices, and selling in one Month; nor to taking any Thing reserved on a Lease, so as all be done without Fraud and Forestalling; nor to restrain Transportation of Corn, or Cattle, allowed by three Justices. Nor to Wines, Oil, &c. or other Victuals brought from beyond Sea, Fish and Salt only excepted. Stat. 13 Eliz. c. 25. §. 20.

Third Offence, all his Goods, to be set in the Pillory, and Imprisonment during the King's Pleasure.

One Moiety of the Forfeitures to the King, the other to the Prosecutor, by *Fieri fac'* or *Capias*.

If the Prosecution be at the King's Suit only, the whole to the King.

Not to be punished twice for the same Offence.

Note; A *Forestaller* is one that shall buy or contract for any Merchandize, Victual, or other Thing whatsoever, in the Way, before it shall be brought by Land or by Water, unto any City, Port, Road, Fair or Market, where it shall be sold; or shall cause the same to be so bought; or shall dissuade People from bringing any such Commodity to any such Place; or being brought, shall persuade them to enhance the Price thereof. Stat. 5 & 6 Ed. 6. c. 14.

A *Regrator* is one that buys any Grain, Wine, Fish, Butter, Cheese, Candles, Tallow, Sheep, Lambs, Calves, Swine, Pigs, Geese, Capons, Hens, Chickens, Pigeons, Conies, or other dead Victual whatsoever, brought to a Fair or Market to be sold there, and does sell the same in the same Fair or Market, or in some other Fair or Market within four Miles. *Ibid.*

An *Ingrosser* is he that gets into his Hands by Buying, Contract or Promise (other than by Demise, Grant, or Lease of Land or Tithes) any Corn growing in the Fields, or other Grain, Butter, Cheese, Fish, or other dead Victual whatsoever, with Intent to sell it again. Stat. 5 & 6 Ed. 6. c. 14.

Fruit-Trees. Vide Orchards.

Offences.

Fuel.

Penalties.

[One] Offenders against the Statute for the Assise of Fuel, if they be not able to satisfy the Forfeitures. Stat. 7 Ed. 6. c. 7. §. 6. 43 Eliz. c. 14. One Witness, or otherwise. Prosecution to be within a Year.

To be set upon the Pillory in the next Market-Town, on the Market-Day at Eleven of the Clock, having a Billet or Faggot bound to some Part of his Body.

Where *Billet* is exposed to Sale, and not assised and marked, or cut, as is directed by Stat. 9 Ann. c. 15. §. 2. which see.

The Justice, upon Information, is to call before him Six good lawful Men of the Parish, &c. where the said Billet is exposed to Sale, and swear them to inquire into the Truth; and if they find the Billet not truly assised and marked, the said Justice shall deliver the same to the Overseer of the Poor, to be given to the Poor there.

Offences.

Games not Lawful.

Penalties.

[One] TO enter into any common House or Place, where Playing at Dice, Tables, Cards, Bowls, Coits, Cates, Loggats, Shove-groat, Tennis, casting the Stone, Foot-ball, or other unlawful Game is suspected to be used. Stat. 33 H. 8. c. 9. §. 14.

APPENDIX.

Offences.	Games not Lawful.	Penalties.
The Keepers of Houses or Places where unlawful Games are used. Stat. 33 H. 8. c. 9. §. 14.		To be taken and imprisoned, till they find Sureties by Recognizance, no longer to keep such House or Place.
Artificers, Husbandmen, Labourers, Apprentices at Husbandry, Journeymen, or Servants of Artificers, Mariners, Fishermen, or Serving-men, playing at any unlawful Game. Stat. 33 H. 8. c. 9. §. 16.		To be committed without Bail, till he be bound in such Sum as the Justice shall think reasonable, not to offend again.
[Two] To cause to come, or be brought before them, such Persons whom they shall have just Cause to suspect to have no visible Estate, or Calling, to maintain themselves by; but do for the most part support themselves by Gaming; and if they appear to be such. Stat. 9 Ann. c. 14. §. 6.		To be bound to the Good Behaviour for twelve Months: And if they cannot find Sureties, to be committed to the common Gaol, till they find Sureties.
<p><i>Note</i>; If such Person so bound to the Good Behaviour, shall afterwards at any one Time play or bet for more than 20 Shillings, it is a Breach of his Good Behaviour, and the Recognizance becomes forfeited. <i>Ib.</i> §. 7.</p>		
[Qui. Sess.] Keeping a House of unlawful Games. Stat. 33 H. 8. c. 9. §. 11.		Forty Shillings a Day.
Reforting to, or Playing in an House of unlawful Games. Stat. 33 H. 8. c. 2. §. 12.		Six Shillings and eight Pence a Time.
Mayor, Sheriffs, Constables, and Head-Officers, not searching Places suspected for unlawful Gaming. Stat. 33 H. 8. c. 9. §. 15.		Forty Shillings.
Artificers, Apprentices, &c. <i>ut supra</i> , using unlawful Games out of <i>Christmas</i> Time. Stat. 33 H. 8. c. 9. §. 16.		Twenty Shillings.
<p>The Statute 33 H. 8. c. 9. against unlawful Games, to be proclaimed Four Times a Year in the Market, and every Quarter-Sessions in open Sessions.</p> <p style="text-align: center;">See 2 Geo. 2. c. 28. §. 9. in <i>Dalton</i>, Chap. 46. Tit. <i>Games and Plays</i>.</p>		

Offences.	Game.	Penalties.
(Conies.)		
[One] Persons entering wrongfully into Ground kept for breeding Conies, tho' not inclosed; and chafing, taking or killing any against the Owner's Will. Stat. 22 & 23 Car. 2. c. 25. §. 4. Confession, or one Witness. Prosecution to be in a Month.		Treble Damages and Costs, and three Months Imprisonment, and till they find Sureties for their Good Behaviour.
Persons killing or taking in the Night, Conies upon the Borders of Warrens, or on other Grounds, used for keeping Conies, except Owners. They who use Snares, Hair-pipes, and other Engines. Stat. 22 & 23 Car. 2. c. 25. §. 5. Conviction <i>ut supra</i> .		Such Recompence, in such Time as the Justice shall appoint, and pay such Sum to the Overseers of the Poor, as he shall think fit, not exceeding Ten Shillings; and in Default to be committed to the House of Correction.
(Deer, Hare, Partridge and Pheasant.)		
[One] Killers or Takers of Pheasants or Partridges in the Night. Stat. 23 Eliz. c. 10. §. 2.		Being convicted, he is to take Bond (for Two Years only) with good Sureties, not to offend in the like Kind. To examine and bind over all Offenders against the said Statute.
<p>To grant a Warrant to search the Houses of suspected Persons for Hare, Partridge, and other Game. Stat. 4 & 5 W. & M. c. 23. §. 3.</p>		
Persons where Game is found, not giving a good Account how they came by it, or not producing the Party of whom they bought it, in some convenient Time,		Not under 5 s. nor exceeding 20 s. for every Hare, Partridge, or other Game, to be levied by Distress and Sale; and in Default, to be committed to the House of Cor-

A P P E N D I X.

Offences.

Game.

Penalties.

(*Deer, Hare, Partridge and Pheasant.*)

Time, or some credible Person, to prove such Sale upon Oath. Stat. 4 & 5 *W. & M. c. 23. §. 3.*

Correction, not exceeding a Month, nor less than ten Days, to be whipp'd and kept to hard Labour.
One Moiety of the Penalties to the Informer, the other to the Poor.

Higlers, Chapmen, Carriers, Inn-keepers, Victual-ers or Alehouse-keepers, having in his or their Custody or Possession, any *Hare, Pheasant, Partridge, Moore, Heath-Game, or Grouse*; or shall buy, sell, or offer to sell any *Hare, &c.* except Carriers who carry for Persons qualified. Stat. 5 *Ann. c. 14. §. 2.*
View, or one Witness.
Conviction to be in Three Months.

Five Pounds for every *Hare, &c.* to be levied by Distress and Sale.
One Moiety to the Informer, the other to the Poor.
For Want of Distress, to be committed to the House of Correction for Three Months, without Bail or Mainprize, for the first Offence, and Four Months for every other Offence.

Persons offending against 5 *Ann. c. 14.* having Game in Custody, and bringing a *Certiorari* to remove the Conviction. Stat. 5 *Ann. c. 14. §. 2.*

To enter into a Recognizance for 50 *l.* with Sureties, conditioned to pay the Prosecutor full Costs, to be ascertained upon Oath within fourteen Days after Conviction or *Procedendo* granted.
In Default, Justices may proceed to execute such Conviction.

Note; The Stat. 5 *Ann. c. 14.* is made perpetual by 9 *Ann. c. 25.*

If any *Hare, &c.* shall be found in the Shop, House, or Possession of any Person not qualified in his own Right to kill Game, or intitled thereto under some Person qualified, the same shall be adjudged exposing the same to Sale. Stat. 9 *Ann. c. 25. §. 2.*

Persons taking, killing, or destroying *Hare, &c.* in the Night-time. Stat. 9 *Ann. c. 25. §. 3.*

Incur the same Forfeitures, Pains, and Penalties; and to be recovered, as by Stat. 5 *Ann. c. 14.*

[**Two**] Killers or Takers of any *Pheasant, Partridge, Pigeon, Duck, Heron, Hare,* or other Game; and Takers or Destroyers of the Eggs of Pheasants, Partridges, or Swans. Stat. 1 *Jac. 1. c. 27. §. 2.*
Confession, or Two Witnesses.

To be committed without Bail, unless they pay to the Poor where the Offence was committed, or they apprehended, 20 *s.* for every Fowl, *Hare* or Egg.
After they have been committed a Month, to be bound with Two sufficient Sureties in twenty Pounds a-piece, not to offend again.

Sellers, or Buyers to sell again of *Deer, Hare, Pheasant* or *Partridge,* (except reared up or brought from beyond Sea.) Stat. 1 *Jac. 1. c. 27. §. 4.*

Deer, 40 s. Hare, 10 s. Pheasant, 20 s. Partridge, 10 s. Between the Poor and the Prosecutor.
Extends not to one licensed in open Sessions to kill Hawks-Meat; but then he must be bound in a Recognizance of 20 *l.* not to kill any of the same Game, nor to shoot within 200 Yards of an Heronry, within 100 Paces of a Pigeon-house, or in a Park, Forest or Chase, whereof his Master is not Owner.

Hawkers at, or Destroyers of *Pheasants* or *Partridges,* between the first of *July* and the last of *August.* Stat. 7 *Jac. 1. c. 11. §. 2.*
Confession, or Two Witnesses.
Prosecution in Six Months.

One Month's Imprisonment, without Bail, unless he pays to the Poor of the Parish where the Offence was committed, 40 *s.* for every Time he hawked, and 20 *s.* for every Pheasant or Partridge destroyed or taken.

[**Qu. Sess.**] Taking *Pheasants* or *Partridges* with Engines, in another's Ground, without Licence. Stat. 11 *H. 7. c. 17. §. 2.*

Ten Pounds, to be divided between the Owner of the Ground and the Prosecutor.

Killing or taking any *Pheasants* or *Partridges* with any Net or Engine, in the Night-time. Stat. 2 *Eliz. c. 10. §. 2.*

20 *s.* for every Pheasant, and 10 *s.* for every Partridge. If not paid in ten Days, a Month's Imprisonment without Bail.
The Money to be divided between the Lord and the Prosecutor; but if the Lord, &c. shall dispense with it, then his Moiety to the Poor.

(*Deer-Hayes, or Buck-Stalls.*)

[**Two**] Keepers of *Deer-Hayes* or *Buck-Stalls,* save in his own Forest or Park. Stat. 19 *H. 7. c. 11. §. 3.*

40 *s.* a Month, the Offender to be examined and committed till Payment.
Justices to have the 10th Part.

A P P E N D I X.

Offences.

Game.

Penalties.

Stalkers, with any Bush or Beast to any Deer, except in his own Forest or Park. Stat. 19 H. 7. c. 11. §. 4.

(Deer-Hayes, or Buck-Stalls.)

Ten Pounds, Proceedings against him *ut supra*.

(Eggs of Falcon, Gofsbawk, Lanner or Swan.)

[**Qu. Sess.**] Taking out of the Nest any Eggs of *Faulcon, Gofsbawk, Lanner or Swan.* Stat. 11 H. 7. c. 17. §. 4.

A Year and Day's Imprisonment; a Fine, one Moiety to the King, the other to the Owner of the Ground. But where they are Swans Eggs, to the Owner of the Swans.

Vide Title Deer supra.

(Game-keeper.)

[**One**] *Game-keepers* felling or disposing of Game without the Consent or Knowledge of the Lord. Stat. 5 Ann. c. 14. §. 4.
One Witness.

To be committed to the House of Correction for three Months, to be kept to hard Labour.

No Lord or Lady of a Manor to make above one Person to be a *Game-keeper* within any one Manor, whose Name must be entred with the Clerk of the Peace, who is to grant a Certificate thereof. And *Game-keepers*, whose Names are not so entred, and not otherwise qualified, who shall kill any Hare, &c. or who shall sell or expose to Sale any Hare, &c. Stat. 9 Ann. c. 25. §. 1.

Incur like Forfeitures, Pains and Penalties, as are inflicted on Higlers, &c. for Buying or Selling of Game, by 5 Ann. c. 14.

Forfeitures to be recovered by such Means as are prescrib'd in the said Act 5 Ann.

Game-keepers not qualified, or not Servants to Lords of Manors, or immediately employed by them to take and kill Game for their sole Use or Benefit, killing Hare, Pheasant, &c. or keeping Greyhounds, &c. Stat. 3 Geo. I. c. 11. §. 1.

Incur the Penalties in the Acts 5 & 9 Ann.

Note; The Acts 5 & 9 Ann. and all other Laws now in Force for the better Preservation of the Game, are continued and enforced by 3 Geo. I. c. 11. §. 2.

(Greyhounds, Bows, Setting-Dogs, Ferrets and Snares.)

[**One**] Persons, not qualified by Law, keeping or using any *Bows, Greyhounds, Setting-Dogs, Ferrets, Coney-Dogs, Hayes, Lurchers, Tunnels, Low-bells, Hare-pipes, Snares,* or other Instruments for destroying of Game. Stat. 4 & 5 W. & M. c. 23. §. 3.
Confession, or one Witness.

Subject to the same Pains and Penalties as Offenders are liable to, on whom Game shall be found, and who do not give a good Account how they came by it; which *vide supra*, in Title *Deer*, &c. under Title **Game**.

To be levied and employed in the same Manner.

Before the Allowance of a *Certiorari*, to remove any Conviction upon the Stat. 4 & 5 W. & M. c. 23. the Party is to become bound to the Prosecutor in 50 l. with *Sureties*, to be approved by a Justice, to pay Cofts, upon Oath, in a Month after Conviction is confirmed. Stat. 4 & 5 W. & M. c. 23. §. 7.

Persons not qualified, keeping, or using any *Greyhounds, Setting-Dogs, Hayes, Lurchers, Tunnels,* or any other Engine, to kill and destroy the Game. Stat. 5 Ann. c. 14. §. 4.
One Witness.

Five Pounds, to be levied by Distress and Sale; and for Want, to be committed to the House of Correction for Three Months, for the first Offence, and Four Months for every other Offence.

[**Two**] Keepers of *Greyhound, Dog or Net*, to kill or take *Deer, Hare, Pheasant or Partridge*, by any who have not an Inheritance of Ten Pounds *per Ann.* or Lease for Life of Thirty Pounds *per Ann.* or be worth 200 Pounds in Goods, or be Son of a Baron, or Knight, or Heir apparent of an Esquire. Stat. 1 Jac. I. c. 27. §. 3.
Confession, or Two Witnesses.

To be committed without Bail, unless they pay 40 s. to the Poor where the Offence was committed.

Persons of mean Condition, killing or taking any *Pheasant or Partridge*, with Dogs, Nets, or Engines. Stat. 7 Jac. I. c. 11. §. 8.
Confession, or one Witness.

To be committed without Bail, unless he pays 20 s. for every Pheasant and Partridge so killed, or taken; and also be bound in a Recognizance of 20 l. never to offend again.

A P P E N D I X.

Offences:

Game.

Penalties.

(Greybonds, Bows, Setting-Dogs, Ferrets and Snares.)

To grant a Warrant for any Constable, or Headborough, to search the Houses of Persons suspected to have any Setting-Dogs or Nets. Stat. 21 Jac. 1. c. 11. §. 9.

The Dogs to be killed, and the Nets cut in Pieces.

(Guns.)

[One]. To grant his Warrant to Game-keepers, and others, to search the Houses of Persons prohibited to keep Guns, &c. for such Guns, &c. and to seize them for the Use of the Lord of the Manor, or destroy them. Stat. 22 & 23 Car. 2. c. 25. §. 2.

(Hawks.)

[Qui. Sess.] Bearing any Hawk of English Breed, called a Nysse, Gosshawk, Tassiel, Lanner, Lanneret, or Faulcon. Stat. 11 H. 7. c. 17. §. 4.

Forfeited to the King, and to be at his Disposal.

Killing or scaring away any of the said Hawks from the Coverts where they used to breed. Stat. 11 H. 7. c. 17. §. 9, 10.

Ten Pounds, to be divided between the King and Profecutor.

Unlawfully taking any Hawk, or Hawk's Eggs. Stat. 5 Eliz. c. 21. §. 7.

Three Months Imprisonment; to be bound to the Good Behaviour for Seven Years.
Treble Damages to the Party grieved.
Upon the Offender's Acknowledgment in Sessions, and Satisfaction to the Party, the Behaviour may be released.

(Hawking and Hunting.)

[One] Hunters in Forests, Parks or Warrens, in the Night-time, or disguised. Stat. 1 H. 7. c. 7. §. 3.

To be examined, and bound over, or committed. Rescous of the Execution of the Justice's Warrant, Felony.

Inferior Tradesmen, Apprentices, and other dissolute Persons, hunting or hawking, unless in Company with the Master of such Apprentice qualified by Law. Stat. 4 & 5 W. & M. c. 23. §. 10.

Subject to the same Penalties as Persons are where Game is found, and to be levied and employed in the same Manner.

[Qui. Sess.] Hunters in Forests, Parks, or Warrens, in the Night-time, or disguised. Stat. 1 H. 7. c. 7. §. 5, 6.

If the Fact be concealed, Felony.
If confessed, fineable.

Hawking or Hunting with Spaniels in standing Corn, except on his own Ground, or with the Owner's Consent. Stat. 23 Eliz. c. 10. §. 4.

Forty Shillings to the Owner of the Ground.

(Heron.)

[Two] Takers of any old Heron, without their Grounds.

Six Shillings and eight Pence.

A young Heron. Stat. 19 H. 7. c. 11. §. 6.

Ten Shillings. The Offender to be examined, and committed till Payment.

Pigeon. Vide Title Deer, &c. supra.

(Wild-Duck, Teal, Widgeon and Water-Fowl.)

[One] Persons, between July 1 and Sept. 1. as they shall yearly happen, by Hayes, Tunnels, or other Nets, driving and taking any Wild-Duck, Teal, Widgeon, or any other Water-Fowl, in Fens, &c. or other Places of Resort for Wild Fowl in the Molting Season. Stat. 9 Ann. c. 25. §. 4.

5 s. for every Wild-Duck, Teal, or other Water-Fowl.

One Witness on Oath.

One Moiety to the Informer, the other to the Poor: To be levied by Distress and Sale, rendering the Overplus, if any be, above the Penalty and Charge of Distress. For Want of Distress, to be committed to the House of Correction for any Time not exceeding one Month, nor less than fourteen Days, there to be kept to hard Labour.

The Time limited by 10 Geo. 2. c. 32. §. 10. is between 1 June and 1 October.

The Justice to order the Hays, Nets, or Tunnels, to be seized and destroyed in his Presence.

[Qui.]

Forfeits

APPENDIX.

Offences.

Game.

Penalties.

(*Wild-Duck, Teal, Widgeon and Water-Fowl.*)

[*Du. Sess.*] Destroying or taking away any Wild-Fowl. Stat. 25 *H. 8. c. 11. §. 5.*

Forfeits for every Egg of a Crane or Bustard, 20 *d.* of a Bittern, Heron, or Shovelard, 8 *d.* of a Mallard, Teal, or other Wild-Fowl, 1 *d.*
To be divided between the King and Profecutor.

Wherefoever any Person shall, for any Offence hereafter to be committed against any Law now in Being, for the better Preservation of the Game, be liable to pay any pecuniary Penalty, upon Conviction before any Justice or Justices of Peace; it shall be lawful for any other Person whatsoever, either to proceed to recover the said Penalty by Information or Conviction before a Justice, or to sue for the same by Action of Debt, &c. in any Court of Record; and the Plaintiff, if he recover, shall have double Costs.

Provided, That all Suits and Actions to be brought by Force of this Act, shall be brought before the End of the next Term after the Offence committed, and no Offender shall be prosecuted for the same Offence both by the Way prescribed by this Law, and by the Way prescribed by any of the former Laws. 8 *Geo. 1. c. 19. §. 1, 2.*

Offences.

Gaol.

Penalties.

[*Duc*] CAN commit Murderers and Felons to no other Prison but to the common Gaol. Stat. 5 *H. 4. c. 10. 11 & 12 W. 3. c. 19. §. 3.*

[*Duc or Du. Sess.*] To settle what Persons under Arrest shall pay for each Night's Lodging, and other Expences. Stat. 22 & 23 *Car. 2. c. 20. §. 9.*

[*Duc*] An Offender, who is to be conveyed to Gaol, if he does not bear all the Charges. Stat. 3 *Jac. 1. c. 10. §. 2.*

His Goods (if he has any) are by Warrant, to be sold by the Constable, the Appraisement thereof to be made by the Neighbours, and the Overplus returned. If he has no Goods, the Constables, Church-wardens, and two or three honest Inhabitants, may, with the Allowance of a Justice under his Hand, tax every Inhabitant, to be levied by Distress and Sale.

Persons not paying Monies charged for Repair of Gaols. Stat. 11 & 12 *W. 3. c. 19. §. 2.*
Continued for seven Years by 10 *Ann. c. 14.*

To be distrained; and if not paid in four Days, the Distress to be sold.

Act 10 *Ann. c. 14.* made perpetual as to so much of the said Act as relates to the Building and Repairing County-Gaols, by Stat. 6 *Geo. 1. c. 19. §. 1.*

May commit Vagrants, and other Criminals, Offenders, and Persons charged with small Offences, or for Want of Sureties, to the common Gaol, or House of Correction, as he in his Judgment shall think fit. Stat. 6 *Geo. 1. c. 19. §. 2.*

[*Chanc*] May consent, that Keepers of Gaols, upon emergent Occasions, may provide other Places for the Removal of Sick, or other Persons, out of the usual Gaols, but not against the good Will of the Owner. Stat. 19 *Car. 2. c. 4. §. 2. Quorum 1.*

To settle Gaolers Fees for Commitment, Discharge and Chamber-Rent, within their several Precincts, except *London, Middlesex, and Surry*, which are to be settled by the two Chief Justices, and the Chief Baron, or two of them, and the Justices of Peace, in their several Jurisdictions. Stat. 22 & 23 *Car. 2. c. 20. §. 10.*

Note, That the several Rates of Fees, and the Rates for the Government of Prisons, are to be signed by the Chief Justices, and Chief Baron, or two of them, and the Justices of Peace of *London, Middlesex, and Surry*; and by the Judges for the Circuits, and the Justices in their Precincts, in the other Counties; to be registred by the Clerk of the Peace, and hung in a Table in each Prison.

See the Stat. 2 *Geo. 2. c. 22. §. 4, 7.*

[*Du. Sess.*] Upon Presentment of the Grand Jury at the Assises or Great Sessions, of the Insufficiency of the Prisons or Gaols, may upon Examination of Workmen agree on a Sum for Building or Repairing thereof, and equally levy the same on the several Divisions of the County, by Warrant issued at the Quarter-Sessions to the High Constable, &c. and may make a Receiver. Stat. 11 & 12 *W. 3. c. 19. §. 1, 2.*

Made perpetual by 6 *Geo. 1. c. 19.*

Vide Title House of Correction.

Offences.

Gilding and Goldsmiths.

Penalties.

[*Du. Sess.*] Gilding Sheaths, or any Metal, but Silver, and the Ornaments of Holy Church; and silvering any Metal but Knights Spurs, and

Ten Times the Value of the Thing so gilt, and a Year's Imprisonment.

Quo

APPENDIX.

Offences.

Silversmiths and Goldsmiths.

Penalties.

and the Apparel belonging to a Baron, or above. Stat. 8 H. 5. c. 3. §. 4.

One Third Part of the Forfeiture to the Professor.

To hear and determine all Offences about Goldsmiths, selling Silver, contrary to Stat. 2 H. 6. c. 14. §. 8.

Offences.

Gunpowder.

Penalties.

[Two] MAY summon and examine Dealers in Gunpowder upon their Oath, if 600 Pounds is kept in any Place within *London* and *Westminster*, or three Miles of the Tower, or *St. James's*, or two Miles of any the Magazines of the Crown. Stat. 5 Geo. 1. c. 26. §. 2.

And commit such as refuse to be examined, to the County-Gaol without Bail, till he conform, &c.

If on Examination, or Oath of two Witnesses, it shall appear he has more than 600 Pounds, *ut supra*. Stat. 5 Geo. 1. c. 26. §. 2.

May by Order cause him to remove it, and if he does not within 24 Hours after Notice of such Order, he forfeits Twenty Shillings for every 100 Pounds, to any that sues within six Months.

May by Warrant order Store-houses, or Places used for keeping Gunpowder, to be searched in the Day-time, and to break open Doors, if Occasion.

Opposers hereof forfeit Five Pounds to any that sues in six Months. And if more than 600 Pounds be found, to cause it to be removed at the Owner's Charge, to be levied by Distress. Stat. 5 Geo. 1. c. 26. §. 3.

None to carry thro' *London*, *Westminster*, or Suburbs, above twenty Hundred Pounds of Gunpowder at a Time, and to be carried in Carriages and Barrels close jointed, and hooped and cased with Canvas or Leather. And Gunpowder carried by Man or Horse, to be put in Cases of Canvas or Leather, intirely covered. Stat. 5 Geo. 1. c. 26. §. 4.

On Forfeiture of all the Gunpowder, on Conviction before two Justices.
To Person seizing the same.

Note; This Act does not extend to any Store-house or Magazine belonging to the King, or to the proving Gunpowder by his Majesty's Officers, or to the carrying of Gunpowder to or from his Majesty's Magazines, or with Forces in their Marches. Stat. 5 Geo. 1. c. 26. §. 5.

[Qu. Sess.] The Sessions for *Essex*, *Kent*, and *Surry*, to appoint Places not exceeding two Acres in a Place, for erecting Warehouses for Gunpowder; and if the Land-Owners disagree, send Warrants to the Sheriff to return a Jury to inquire the Value: Such Inquisitions to be kept among the Sessions Records, and their Judgment final: To which End they may examine on Oath, and order the Sum not exceeding 30 Years Purchase to be paid the Owner; which if he refuses, they may receive for his Use, and thereon the Inheritance to be vested in the Purchaser. Stat. 5 Geo. 1. c. 26. §. 8.

By the 11 of Geo. 1. c. 23. The Quantity of Gunpowder kept in any one House, is not to exceed 200 lb. weight, on Forfeiture of the Gunpowder, or Value, with Costs.

[One] Persons using any Iron Hammer, or Hammer plated with Iron or Steel, in any Warehouse or Place while any Gunpowder is there, if convicted within one Month after, on Oath of one Witness. Stat. 11 Geo. 1. c. 23. §. 3.

Twenty Shillings to the Informer, by Distress, &c. and if none, to the House of Correction, for not less than 14 Days, nor above a Month.

[Two] On Demand of a Parish-Officer (or two Householders assigning reasonable Cause) to issue Warrants *gratis* for a Search, &c. The Searchers are immediately to seize, and in twelve Hours remove the Gunpowder, except the Quantity allowed to be kept. *Ib.* §. 2.

Obstructing Seizure or Amoval 5 l. to the Informer, &c. *ut supra*.

Note; This does not extend to any Magazine, &c. of the Crown. *Ib.* §. 4. and 5 Geo. 1. c. 26. shall be in Force. *Ib.* §. 6.

Offences.

Hackney Coaches and Chaises.

Penalties.

NO Person shall drive or let to hire by the Hour or Day, or otherwise, any Hackney-Coach, or Coach-Horses, within the Cities of *London* or *Westminster*, or Suburbs,

Upon Pain to forfeit five Pounds, for every Offence. To be levied by Distress, and to be sold in ten Days, and the Overplus to be returned to the Owner.
The.

A P P E N D I X.

Offences.

Hackney Coaches and Chairs.

Penalties.

Suburbs, or within the *Bills of Mortality*, without Leave or Licence from the Commissioners appointed by Virtue of the Stat. 9 *Ann. c. 23. Ibid. §. 4.*

The Charges of the Distress to be first deducted, if not paid upon seven Days Notice.

In Default to be committed till Payment, without Bail. §. 12, 17.

No Person shall carry for Hire, in any Hackney-Chair, any Person whatsoever in the Cities of *London, &c.* without a Licence from the Commissioners. *Ibid. §. 4.*

Upon Pain to forfeit Forty Shillings for every Offence.

To be levied *ut supra*, and in Default, to be committed *ut supra*.

No Horse, Gelding, or Mare, to be used with any Hackney-Coach, to be under the Size of 14 Hands high, according to the Standard. *Ibid. §. 4.*

Five Pounds, to be levied *ut supra*, and in Default, to be committed *ut supra*.

No Person shall put the same Figure or Mark of Distinction upon his Coach or Chair, that is appointed for any other Coach or Chair, or shall blot out, obliterate, alter, or deface the Figure appointed by the Commissioners for his Coach or Chair. *Ibid. §. 4.*

Under the Forfeiture of five Pounds for every Offence.

To be levied *ut supra*, and in Default, to be committed *ut supra*.

One Moiety of the above Penalties to be to the Informer, the other to the Queen, her Heirs and Successors. §. 12, 17.

No Hackney-Coachman, nor Driver, shall take for his Hire, in and about *London and Westminster*, or within ten Miles thereof, above the Rate of ten Shillings for a Day, reckoning twelve Hours to the Day; and by the Hour, not above eighteen Pence for the first Hour, and twelve Pence for every Hour after.

From any of the *Inns of Court*, or thereabouts, to any Part of *St. James's* or City of *Westminster* (except beyond *Turtle-Street*) above twelve Pence; and the same Prices from the same Places to the *Inns of Court*, or Places thereabouts.

From any of the *Inns of Court*, or thereabouts, to the *Royal Exchange*, twelve Pence; and if to the *Tower, Bishopsgate, or Aldgate*, or thereabouts, one Shilling and six Pence, and the like Rates from and to any Place of the like Distance. *Ibid. §. 6.*

No Person to pay above twelve Pence for any Distance, not exceeding one Mile and four Furlongs; and if above that Distance, and not exceeding two Miles, eighteen Pence: The Commissioners to cause the several Distances between the most noted Places within the *Weekly Bills of Mortality* to be admeasured, and published. *Ibid. §. 7.*

No Person to pay Chairmen for an Hackney-Chair, carried any Distance within the said Limits, more than the Rate by this Act allowed for an Hackney-Coach, driven two Thirds of the same Distance; and Commissioners to publish in Writing the several Rates of Chairmen. Stat. 9 *Ann. c. 23. §. 8.*

Hackney Coachman or Chairman refusing to go at, or exacting more for his Hire than the Rates limited by the Stat. 9 *Ann. c. 23. Ibid. §. 8.*

Forfeits for every Offence Forty Shillings.

To be levied *ut supra*, and in Default, to be committed *ut supra*.

All the Offences against the Stat. 9 *Ann. c. 23.* are to be heard and determined in a summary Way upon the Oath of one or more credible Witnesses (the Party accused being summoned to make his Defence) or upon Confession of the Party offending.

One Moiety of all the Forfeitures and Penalties to the Queen, her Heirs, &c. the other to the Informer. *Ibid. §. 13.*

The Breach of any of the Rules and Orders appointed by the Stat. 5 & 6 *W. & M. c. 22.* and 9 *Ann. c. 23.* and the Penalties thereupon; and the Rules, Orders, and By-Laws made by the Commissioners, and allowed and approved by the Lord Chancellor, &c. are punishable, and to be inflicted and put in Execution by any Justice, &c. where such Offence shall be committed, in as full and ample Manner as by the Commissioners. *Ibid. §. 17.*

No Person to be twice punished for the same Offence.

The Penalties levied by any Justice of the Peace, &c. by Virtue of the Stat. 9 *Ann. c. 23.* or By-Laws: The Queen's Part to be transmitted to the Receiver General of the Hackney Coaches and Chairs, and to be certified to the Commissioners within ten Days after levied. *Ibid. §. 18.*

Upon Pain to forfeit double the Value of the Sum which should be transmitted and certified.

Two Thirds to the Queen, the other to him that will inform or sue for the same.

Hackney Coachman, Driver, or Chairman, may ply and drive on the *Lord's Day*, within the *Weekly Bills of Mortality*, notwithstanding the Act 29 *Car. 2. Ibid. §. 20.*

APPENDIX.

Offences.

Hackney Coaches and Chairs.

Penalties.

Persons refusing or neglecting to pay Coachman or Chairman the Money justly due to him, or wilfully cutting, defacing, or breaking any Coach or Chair, upon Complaint thereof. *Ibid.* §. 22.

To grant a Warrant to bring the Offender before him, and upon Proof on Oath, to award reasonable Satisfaction for Damages and Costs; and on Refusal, to pay or make Satisfaction, to bind over to the Quarter-Sessions.

Persons driving a Coach, or carrying a Chair for Hire, not being interested himself in the Licence so to do, but acting under the Licence of another, as his or her Servant, or otherwise, being guilty of any Misbehaviour in his Employment, by demanding more than his Fare, or by giving abusive Language, or any other rude Behaviour. *Ibid.* §. 56.

Forfeits a Sum not exceeding 20 s. to the Poor; if not able, or refuse to pay, to be committed to the House of Correction, to be kept to hard Labour for seven Days, and receive the Correction of the House before he be discharged.

If convicted by the Oath of one or more credible Witnesses before one Justice of London, Middlesex, or Surry.

Forfeit not exceeding three Pounds, nor under 10 s. Offences to be determined, and Penalties and Forfeitures to be recovered, levied and applied, as the 40 s. Penalty may by 9 *Ann.* c. 23.

Hackney Coachman or Driver, refusing to go at, or exacting more for his Hire than according to the Stat. 9 *Ann.* c. 23. or By-Laws made pursuant thereto. Stat. 1 *Geo.* 1. c. 57. §. 2, 7.

Justices have the same Power to inflict Penalties, as the Commissioners.

[*Qu. Sess.*] Finally to hear and determine the Matter of Complaint between Persons refusing to pay Coachmen or Chairmen, what is justly due; and cutting, defacing or breaking Coach or Chair, where the Party is bound over by a Justice, for not paying or making such Satisfaction as is awarded. *Ibid.* §. 22.

The Court is to award Satisfaction for Damages and Costs to the Party grieved; and for Non-payment, to levy the same by Distress.

Offences.

Harvest Workmen.

Penalties.

[*Two*] TO convey back Harvest or other Workmen who are licensed, and do not return when their Work is finished, or shall become impotent. Stat. 13 & 14 *Car.* 2. c. 12. §. 3.

Offences.

Hawkers and Pedlars.

Penalties.

[*One*] **H**awkers, Pedlars and Petty-Chapmen, trading without or contrary to Licence. Stat. 8 & 9 *W.* 3. c. 24. §. 3. 9 & 10 *W.* 3. c. 27. §. 3. Confession, or due Proof upon Oath, of one or more Witnesses.

For every Offence twelve Pounds: One Moiety to the Informer, the other to the Poor, to be levied by Distress and Sale.

Persons so trading, and upon Demand, refusing to shew to a Justice, &c. a Licence. Stat. 8 & 9 *W.* 3. c. 24. §. 3. 9 & 10 *W.* 3. c. 27. §. 3. Conviction *ut supra.*

Five Pounds to the Use of the Poor, and for Non-payment, shall suffer as a common Vagrant, and be committed to the House of Correction.

Constables, or other Officers, refusing, or neglecting upon due Notice, to aid or assist in the Execution of Stat. 8 & 9 *W.* 3. c. 24. §. 7. 9 & 10 *W.* 3. c. 27. §. 7.

40 s. One Moiety to the Poor, the other to the Informer, to be levied by Distress and Sale.

Note; Any Person may seize and detain any Hawker, &c. till such Time as he or she shall produce a Licence, if they have any; if not, till they give Notice to the Constable or some other Parish-Officer, who shall carry such Offender before a Justice, who is by Warrant to levy the Penalty out of the Offender's Goods and Wares, with reasonable Charges. *Ibid.* §. 8.

Persons trading as Hawkets, &c. who shall not, upon Demand, have their Licence ready to be produced. Stat. 3 & 5 *Ann.* c. 4. §. 4.

Forfeits as one trading without Licence, and may be committed, and the Forfeitures levied and employed *ut supra.*

Makers and Wholesale Traders in *English* Bone-lace, and selling the same by Wholesale, are not *Hawkets*, &c. within the Stat. 8 & 9 *W.* 3. c. 24. And 9 & 10 *W.* 3. c. 27. And they, their Children, Apprentices, Servants or Agents, (selling by Wholesale only) may go from House to House, or Shops, to their Customers, without being liable to the Penalties against *Hawkets*. Stat. 4 *Geo.* 1. c. 6. §. 1.

A P P E N D I X.

Offences.	Hay.	Penalties.
<p>[One] Persons offering any old <i>Hay</i> to be sold within the <i>Weekly Bills of Mortality</i>, between the last of <i>August</i> and first of <i>June</i>, which does not weigh 56 Pounds a Truss at least; and between the first of <i>June</i> and the last of <i>August</i>, weighs not 60 Pounds a Truss new, and old 56. Stat. 2 <i>W. & M. Sess.</i> 2. c. 8. §. 16.</p> <p style="padding-left: 2em;">View, Confession, or one Witness.</p>		<p>One Shilling and six Pence for every Truss, to be levied and employed, as the Penalties for not sweeping the Streets; which see in Title Scavenger.</p>

Offences.	Hay and Dats.	Penalties.
<p>THE Statutes 13 <i>Car.</i> 2. c. 8. 1 <i>Jac.</i> 2. c. 10. and 5 & 6 <i>W. & M.</i> c. 22. (inserted in Edition of 1727 of this Book under this Title, and in several late Books relating to Justices of Peace) are all expired.</p>		

Offences.	Hay and Straw.	Penalties.
<p>[One] Persons suffering their Waggon, Cart, &c. to stand in any Place within the <i>Weekly Bills of Mortality</i>, laden with <i>Hay</i> or <i>Straw</i> to be sold, from <i>Michaelmas</i> to <i>Lady-Day</i>, after Two a-Clock in the Afternoon, and from <i>Lady-Day</i> to <i>Michaelmas</i> after Three. Stat. 2 <i>W. & M.</i> c. 8. §. 17.</p> <p style="padding-left: 2em;">View, Confession, or one Witness.</p>		<p>Five Shillings, to be levied and employed, as the Penalties for not sweeping the Streets; which see in Title Scavenger.</p>

Offences.	Hay-Market.	Penalties.
<p>[One] Persons refusing to pay three Pence a Cart-Load of <i>Hay</i>, and one Penny a Cart-Load of <i>Straw</i>, that shall stand to be sold in the <i>Hay-Market</i>, in the Parish of <i>St. Martin</i> and <i>St. James</i>, in Ease of the Parishioners of the said Parishes, for and towards the Paving and Amending the Street. Stat. 8 & 9 <i>W.</i> 3. c. 17. §. 3.</p>		<p>The same to be levied by Warrant, under the Hand and Seal of one Justice of <i>Middlesex</i> or <i>Westminster</i>, by Distress, to be sold, if not paid in Three Days.</p>
<p>One Justice of the <i>Quorum</i> of <i>Middlesex</i> or <i>Westminster</i>, may take the Complaint against such as stand longer in the said <i>Hay-Market</i> than they ought, whereby they forfeit. Stat. 8 & 9 <i>W.</i> 3. c. 17. §. 3.</p>		<p>Five Shillings, to be levied, as by 2 <i>W. & M.</i> c. 8.</p>

[Qu. Sess.] The Collectors of the Toll gathered in the *Hay-Market*, are yearly, at every *Easter* Sessions, to give to the Justices of the Peace of the County of *Middlesex* and City of *Westminster*, a particular Account, upon Oath, of their Receipts and Disbursements, and the Overplus is to go to the County of *Middlesex*. Stat. 8 & 9 *W.* 3. c. 17. §. 7.

Offences.	Heath, Furze, and Fern.	Penalties.
<p>[One] Persons on Mountains, Hills, Heaths, Moors, Forests, Chases, or other Wastes, burning between 2 <i>Feb.</i> and 24 <i>June</i>, any <i>Grig</i>, <i>Ling</i>, <i>Heath</i>, <i>Furze</i>, <i>Gors</i> or <i>Fern</i>. Stat. 4 & 5 <i>W. & M.</i> c. 23. §. 11.</p>		<p>To be committed to the House of Correction, not exceeding one Month, nor under ten Days, to be whipp'd, and kept to hard Labour.</p>

Offences.	Hemp and Flax.	Penalties.
<p>[Qu. Sess.] Watering <i>Hemp</i> or <i>Flax</i> in the River <i>Severn</i>. Stat. 30 <i>Car.</i> 2. c. 9. §. 1.</p>		<p>Five Pounds for every Offence. One Moiety to the Poor, the other to the Prosecutor.</p>

To administer the Oaths to Foreigners, who shall use the Trade of *Hemp* or *Flax Dressing* for Three Years; of making and whitening Thread; Spinning, Weaving, &c. Cloth made of *Hemp* or *Flax*; and making Tapestry-Hangings, Storing Cordage, Twine or Nets for Fishery. Stat. 15 *Car.* 2. c. 15.

APPENDIX.

Offences.	Hides.	Penalties.
<p>[One] TO administer an Oath to all subordinate Officers for the Duty on <i>Hides</i>, &c. who shall receive any Salary or Allowance, in respect of his Office, before he acts, for his due and faithful Execution of his Office; and to give a Certificate <i>gratis</i>. Stat. 9 <i>Ann.</i> c. 11. §. 45.</p>		
<p>[Qu. Sess.] Putting <i>Hides</i> to Sale being putrified, or watering them at any other Times but <i>June</i>, <i>July</i>, or <i>August</i>. Stat. 1 <i>Jac.</i> 1. c. 22.</p>		<p>Three Shillings and four Pence a Hide; one Third to the King, one to the Profecutor, and the other to the Town, Place, &c. where the Offence is committed.</p>
<p>Persons Buying rough Hides, or Calves Skins in the Hair, except such as can lawfully tan them. <i>Ibid.</i></p>		<p>Forfeit them, or the Value.</p>
<p>Forestalling <i>Hides</i>, or Buying them otherwise than in open Fair or Market. <i>Ibid.</i></p>		<p>Six Shillings and eight Pence a Hide, to be divided <i>ut supra</i>.</p>

Offences.	Highway-man.	Penalties.
<p>[Two] IF any Person, endeavouring to apprehend a <i>Highway-man</i>, be killed, his Executors or Administrators, upon a Certificate under the Hand and Seal of the Two next Justices, shall receive the Sum of Forty Pounds. Stat. 4 & 5 <i>W. & M.</i> c. 8. §. 3.</p>		<p>The Sheriff in Failure of Payment forfeits double the Sum. To be recovered by Action of Debt, Bill, Plaint, or Information, &c. with treble Costs.</p>
<p>The Streets of <i>London</i> and <i>Westminster</i>, and other Cities, Towns and Places, are deemed and taken to be Highways within the Intent and Meaning of the Stat. 4 & 5 <i>W. & M.</i> c. 8. Stat. 6 <i>Geo.</i> 1. c. 23. §. 8.</p>		

Offences.	Highways.	Penalties.
<p>(Constables and Surveyors.)</p>		
<p>[One] Constables and Surveyors of the <i>Highways</i>, neglecting to put in Execution the Statutes made for repairing the <i>Highways</i>. Stat. 22 <i>Car.</i> 2. c. 12. §. 1. View, or one Witness.</p>		<p>To be fined, not exceeding 40 s. To be levied by Warrant, directed to the High Constable, and to be employed in amending the <i>Highways</i>. The Penalty is increased to Five Pounds, by 6 <i>Ann.</i> c. 29. §. 3.</p>
<p>Refusing any employed in the executing the Acts for Repairing the <i>Highways</i> or rescuing Goods distrained by Virtue of them. Stat. 22 <i>Car.</i> 2. c. 12. §. 3. View, or one Witness.</p>		<p>Forty Shillings, to be employed <i>ut supra</i>, and if not paid in Seven Days after Notice, to be committed till Payment.</p>
<p>To take the Returns, which the Surveyors of the <i>Highways</i> are to make, of Defaulters, within a Month after every Default, and to present the same at the next Quarter-Sessions. Stat. 22 <i>Car.</i> 2. c. 12. §. 12.</p>		
<p>Surveyors of the <i>Highways</i> not viewing the Roads, Water-Courses, Bridges, Causeways, &c. and not returning, upon Oath, once in Four Months to a Justice. Stat. 3 & 4 <i>W. & M.</i> c. 12. §. 8. Profecution in Six Months.</p>		<p>The same Penalty as for refusing to execute the Office.</p>
<p>Where Notice of Defaults is given in the Church by the Surveyors of the <i>Highways</i>, and the Defaulters do not repair and amend in thirty Days, and the Surveyors do. Stat. 3 & 4 <i>W. & M.</i> c. 12. §. 8. Upon Oath of the Surveyors. Profecution <i>ut supra</i>.</p>		<p>Defaulters to pay to the Surveyors, such Charges as one Justice shall think reasonable, to be levied by Distress and Sale.</p>
<p>Surveyors of the <i>Highways</i> neglecting to erect or fix a Stone or Post, where Two or more cross <i>Highways</i> meet, with an Inscription thereon in large Letters, containing the Name of the next Market-Town, to which each of the adjoining <i>Highways</i> lead, according to the Precept to him to be directed by the Justices, at their Four Months Sessions for the <i>Highways</i>. Stat. 8 & 9 <i>W.</i> 3. c. 15. §. 7.</p>		<p>Ten Shillings, to be levied by Distress and Sale, and employed towards such Stone or Post; if any Overplus, in repairing the <i>Highways</i>.</p>

A P P E N D I X

Offences.

Highways.

Penalties.

(*Constables and Surveyors.*)

Surveyors of the *Highways* neglecting to put the 6 *Ann. c. 29.* or any former Laws for repairing *Highways*, in Execution. Stat. 6 *Ann. c. 29. §. 3.*

Five Pounds, to be levied by Distress and Sale in Three Days.
One Moiety to the *Highways*.
The other Moiety to the Prosecutor, so as he be an Inhabitant of the Town, Village or Place.

Justices of Corporations, &c. are to put in Execution this and all former Statutes relating to *Highways* Stat. 1 *Geo. 1. c. 52. §. 7.*

[Two] Surveyors of the *Highways* elected, and not taking the Office upon them. Stat. 2 & 3 *P. & M. c. 8. §. 1. Quorum 1.*

Twenty Shillings a-piece, by Distress and Sale, and employed in the Amendment of the *Highways*.
Increased to Five Pounds, by 3 & 4 *W. & M. c. 12. §. 3. Vide infra.*

Bailiff or High Constable, not accounting for Monies by them received towards the Repair of the *Highways*. Stat. 2 & 3 *P. & M. c. 8. §. 4. Quorum 1.*

To be committed till all Arrears are paid, save eight Pence in the Pound for themselves, and twelve Pence for the Clerk of the Peace.

Surveyors of the *Highways* not presenting Defaulters in not Repairing the *Highways*, and all Offenders therein, to the next Justice. Stat. 5 *Eliz. c. 13. §. 8.*

Forty Shillings, to be levied as the Penalties in 2 & 3 *P. & M. c. 8.*

To nominate on *Jan. 3.* yearly, or within 15 Days after, at a special Sessions, to be held for that Purpose, out of a List, to be to them returned by the Constables, Headboroughs, Tithing-men, Church-wardens, Surveyors of the *Highways*, and Inhabitants, One, Two, or more to be Surveyor or Surveyors of the *Highways*, under Hand and Seal. Stat. 3 & 4 *W. & M. c. 12. §. 3.*

Note; Justices are required to give Notice to Constables, &c. within the Division, Ten Days before the Holding their special Sessions. And none are qualified to be Surveyors who have not an Estate in Land in their own Right, or their Wife's, of 10 *l. per Ann.* or a personal Estate of 100 *l.* or occupy Lands, &c. of 30 *l. per Ann.* if such there be.

Persons nominated by the Justices to be Surveyors of the *Highways*, refusing or neglecting. Stat. 3 & 4 *W. & M. c. 12. §. 3.*
One Witness.
Prosecution in Six Months.

Five Pounds, to be levied by Distress and Sale.
One Moiety to the Informer, the other to the Repair of the *Highways*.

To name other Persons in the Room of Surveyors of the *Highways* refusing, *toties quoties.* Stat. 3 & 4 *W. & M. c. 12. §. 3.*

Constables, &c. who shall not return Lists of Names to the Justices at their special Sessions, out of which they are to nominate Surveyors of the *Highways*. Stat. 3 & 4 *W. & M. c. 12. §. 3.*
Conviction and Prosecution *ut supra.*

Twenty Shillings, to be levied and employed *ut supra.*

The Surveyors, every Four Months, to make their Presentments on Oath. Stat. 3 & 4 *W. & M. c. 12. §. 10.*
Conviction and Prosecution *ut supra.*

Forty Shillings, to be levied and employed as the Penalty for refusing to hold.

Surveyor of the *Highways*, before he be discharged of his Office, is to account upon Oath, and if they have Money in their Hands, and do not pay it. Stat. 3 & 4 *W. & M. c. 12. §. 9.*
Prosecution in Six Months.

Double the Value, to be levied and employed *ut supra.*

Surveyors neglecting their Duty in any Thing required by Stat. 3 & 4 *W. & M. c. 12. §. 12.*
Conviction and Prosecution *ut supra.*

Forty Shillings, to be levied and disposed *ut supra.*
Vide Rate infra.

Surveyors of the *Highways* nominated by Virtue of the Stat. 3 & 4 *W. & M. c. 12.* within Fourteen Days after Acceptance of their Office; and so every Four Months, or oftner, if required thereto by Warrant, to view all the Roads, common *Highways*, Bridges, Causeways, Pavements, Hedges, Ditches, and Water-Courses appertaining to such *Highways*, and Nufances

The like Penalty on Surveyors neglecting to give such Account, as on Surveyors refusing to execute the Office.

To be levied and disposed of as the Penalties are by 3 & 4 *W. & M. c. 12.*

Justices, at such their special Sessions, may excuse on reasonable Excuse.

APPENDIX

Offences.

Highways.

Penalties.

(Constables and Surveyors.)

and Incroachments made in or upon them. And to give an Account in Writing upon Oath, of the State and Condition of them, and of Neglects of Labourers, and of those obliged to find Labourers or Teams, to the Justices at their special Sessions. Stat. 1 Geo. 1. c. 52. §. 2.

Justices at their special Sessions, by Writing under their Hands and Seals, may order Roads out of Repair, within the Hundred or Division, to be amended, and in what Manner the same shall be performed. Stat. 1 Geo. 1. c. 52. §. 3.

Surveyors or other Persons misapplying any Fine, Penalty, or Forfeiture laid by Virtue of this Act, on Proof upon Oath before Justices at their special Sessions, who likewise may examine upon Oath, Persons that can give any Account of Monies that ought to be applied to amend *Highways*. Stat. 1 Geo. 1. c. 52. §. 5.

Note; Justices Clerks not to take any Fee for Surveyor's Oath, or Accounts, on Pain of Ten Pounds, to be recovered in any Court of Record. Stat. 1 Geo. 1. c. 52. §. 11.

[**Qui. Sess.**] Surveyors neglecting their Duty. Stat. 1 Geo. 1. c. 52. §. 10.

Surveyors required to proceed according to such Orders.

Forfeit Five Pounds to the Informer.
To be levied by Distress.

Forfeit Forty Shillings, to be levied by Distress and Sale, if not paid in Eight Days.

(Obstructions.)

[**Two**] Persons laying in any *Highways*, not 20 Foot broad, any Thing whereby the same may be obstructed or annoyed. Stat. 3 & 4 W. & M. c. 12. §. 4.

One Witness.

Prosecution in Six Months.

Possessors of Lands next adjoining to *Highways*, where Timber, Stone, Hay, Straw, Stubble, or other Matter for making Dung is laid, shall remove and dispose of the same to their own Use; and if they neglect to clear the Way, or cleanse their Ditches, and carry away the Earth; to lay sufficient Trunks or Bridges, where there are Cart-ways into Grounds, by the Space of Ten Days after Notice given by Surveyors. Stat. 3 & 4 W. & M. c. 12. §. 6.

Conviction and Prosecution *ut supra*.

Owner of Tree, Bush or Shrub, growing in any *Highway*, not cutting it down in 10 Days after Notice by the Surveyor. Stat. 3 & 4 W. & M. c. 12. §. 6.

Conviction and Prosecution *ut supra*.

Persons neglecting or delaying to scour and keep open Ditches and Water-Courses adjoining to *Highways*, and to remove such Annoyances to the *Highways* 30 Days after Notice by Surveyors. Or shall leave the Earth of Ditches scoured in the *Highways*, for the Space of Eight Days, Oath thereof being made by Surveyors. Stat. 1 Geo. 1. c. 52. §. 8.

[**Qui. Sess.**] Not scouring Ditches, or keeping low Hedges, Trees and Bushes, according to 5 Eliz. c. 13. Stat. 18 Eliz. c. 10. §. 8.

Not scouring the Ditches in the Ground next the *Highway*. Stat. 18 Eliz. c. 10. §. 6.

Causing the Scouring of Ditches into the *Highway*, and suffering it to lie there Six Months. Stat. 18 Eliz. c. 10. §. 7.

Five Shillings, to be levied by Distress and Sale.

One Moiety to the Informer, the other to the Repair of the *Highways*.

Five Shillings for every Offence, to be levied and employed *ut supra*.

Five Shillings for every Offence, to be levied and employed *ut supra*.

Forfeit two Shillings and six Pence for every eight Yards of Ditching so not scoured.

And not exceeding Five Pounds, nor under Twenty Shillings for each other Offence.

To be levied by Distress and Sale, and applied to the Amending the *Highways*.

Ten Shillings, to be levied by Distress and Sale.

Twelve Pence for every Rod unscoured, to be levied *ut supra*.

Twelve Pence for every Load, to be levied *ut supra*.

A P P E N D I X

Offences.

Highways.

Penalties.

(*Presentment and Certificate.*)

[**One**] To certify the Presentments made by the Surveyors of the *Highways* the next Sessions; and his Presentment of the *Highways*, upon his own Knowledge, is a good Conviction. Stat. 5 *Eliz. c. 13. §. 9.*

(*Rates.*)

[**Two**] At Four Months Sessions, upon Oath made by the Surveyors of the *Highways* what Sum or Sums they have expended for Materials to repair the *Highways*, the Justices are, by Warrant to order a Rate to be made, according to 43 *Eliz.* for Relief of the Poor, to reimburse Surveyors. Stat. 3 & 4 *W. & M. c. 12. §. 17.*

Persons refusing to pay the above-mentioned Rate for re-imburfing the Surveyors. Stat. 3 & 4 *W. & M. c. 12.*

The Rate to be levied by Distress and Sale.

Profecution in Six Months.

If any Fine, &c. imposed upon a Parish for not repairing the *Highways*, shall be levied on one or more of the Inhabitants; the Justices, at Four Months Sessions, shall cause a Rate to be made to re-imburf them, which is to be levied and paid by the Surveyors in a Month. Stat. 3 & 4 *W. & M. c. 12. §. 14.*

[**Qu. Sess.**] To order Rates to be made for repairing the *Highways*, but not to exceed Six Pence in the Pound upon Land, and Six Pence for 20 *l.* in Personal Estate, where they cannot be repaired by any former Law in Force. Stat. 3 & 4 *W. & M. c. 12. §. 17, 18.*

To order a Rate for Repair of *Highways* in the Parishes in *Middlesex* within the Bills of Mortality, not exceeding Four Pence in the Pound for Land, and Eight Pence for Twenty Pounds Personal Estate. Stat. 2 & 3 *W. & M. c. 8. §. 23.*

On the Surveyor's Application to the Quarter-Sessions, if the Justices there find the *Highways*, &c. so far out of Order, that they cannot be repaired without a further Power than the Laws have appointed, they may cause Assessments to be made not exceeding what is limited by 3 & 4 *W. & M.* tho' the Six Days Work have not been performed. But raising Money by such Assessments, not to excuse the working of Teams, or Labourers, by Law appointed to work, &c. Stat. 1 *Geo. 1. c. 52. §. 6.*

To make such Order for Relief of Persons aggrieved as they shall think convenient. The same to conclude and bind all Persons, except such who neglect to scour their Ditches, and carry away the Earth taken out of the same; or who shall not carry away Stone, Timber, Straw or Dung, left in *Highways*; or who shall not remove Annoyances to *Highways* by Water-Courses. Stat. 1 *Geo. 1. c. 52. §. 12.*

Note; No Person is liable to be punished for any Offence against the Stat. 1 *Geo. 1. c. 52.* unless prosecuted in Six Months. And no Person who shall be punished for any Offence by this Act, to be punished for the same Offence by Virtue of any other Act or Law whatsoever. §. 14. *Ibid.*

(*Sessions.*)

[**Two**] To hold a special Sessions for the *Highways*, every Four Months, and summon thereunto all the Surveyors of the *Highway*, and declare to them what they are obliged to do by Virtue of this, or any former Act. Stat. 3 & 4 *W. & M. c. 12. §. 10.*

Justices neglecting or refusing to do what is required of them by this Act, forfeit Five Pounds, to be recovered by Action of Debt, &c.

One Moiety to the Profecutor, the other in Amending the *Highway*.

Profecution in Six Months.

[**Five**] After Summons, to shew Cause why *Highways* should not be enlarged; at the Quarter-Sessions to order the Enlarging or Widening any *Highway*: But the Ground taken in must not exceed Eight Yards; nor must any House be pull'd down, or Garden, Orchard, Court or Yard, taken away; and Satisfaction must be made, by Jury, for the same, not exceeding 25 Years Purchase. Stat. 8 & 9 *W. 3. c. 15. §. 1.*

An Appeal to the Judge of Assise.

[**Five**] To order Assessments upon Land not exceeding Six Pence in the Pound; and upon Personal Estate, not exceeding Six Pence for every 20 Pounds, upon such as are to pay to the *Highways*, towards Payment of the Owners of the Land taken away. Stat. 8 & 9 *W. 3. c. 15. §. 2.*

Appeal *ut supra.*

[**Qu. Sess.**] To inquire of Breaches of 2 & 3 *P. & M. c. 8.* concerning *Highways*, and set such Fines as they, or any Two (*Quorum* 1.) shall think fit, to be levied by way of Distress; and if no Distress, or not paid in 20 Days after Demand, double so much, to be employed in mending the *Highways*. Stat. 2 & 3 *P. & M. c. 8. §. 10.*

To assess a Fine upon a Justice of Peace his Presentment of the *Highways*, upon his own Knowledge, to be estreated, levied, accounted, and employed, as by 2 & 3 *P. & M. c. 8.* Stat. 5 *Eliz. c. 13. §. 9.*

(*Who to work.*)

[**Two**] Persons having a Team, or Plough-Land, either in Arable or Pasture, and a Subsidy-Man of Nine Pounds in Goods, or Forty Shillings in Lands,

Ten Shillings for every Day, to be levied by Distress and Sale, and employed in the Amending of the *Highways*.

APPENDIX

Offences.

Highways.

Penalties.

(Who to work.)

not sending Two able Men with Team and Tools convenient, to work for Six Days, Eight Hours in a Day. Stat. 2 & 3 P. & M. c. 8. §. 2. 5 Eliz. c. 3. §. 2. 18 Eliz. c. 16. §. 2, 3. *Quorum* 1.

Cottagers not working themselves, or finding a sufficient Labourer. Stat. 2 & 3 P. & M. c. 8. §. 2. *Quorum* 1.

Labourers neglecting to work in the *Highways*.
Others, neglecting to send a Man and a Horse.
Others neglecting to send a Cart with Two Men. Stat. 22 Car. 2. c. 12. §. 9.
Upon Surveyor's Complaint, and one Witness.

Twelve Pence for every Day, to be levied *ut supra*.

One Shilling and Six Pence.
Three Shillings.
Ten Shillings.
To be levied by Distress and Sale.

Two or more Justices of the Peace for the County of *Middlesex*, at any Petty Sessions, or Special Sessions of the Peace, upon Application made to them by any Five of the Trustees for repairing the *Highways* between *Kilburn-Bridge* in *Middlesex*, and *Sparrows-Herne* in *Hertsford*, to adjudge and determine what Part and Proportion of the Statute-Work shall be done in the said Roads, by and in each Parish. 8 Geo. 1. c. 9. §. 3.

See **Carters**, **Scavenger** and **Turnpikes**. As also 7 Geo. 2. c. 9. & 14 Geo. 2. c. 42. in *Dalton*, Chap. 50. Tit. *Highways*.

Offences.

Hops.

Penalties.

[One] TO administer an Oath to every Officer, who shall be empowered to make a Charge on *Hops*, for the due and faithful Execution of his Office, and shall give to such Officer a Certificate thereof. Stat. 9 Ann. c. 12. §. 12.

Pickers or Gatherers of *Hops*, and others privately conveying any *Hops* from the Place of their Growth, or where put to be cured, bagged or weighed. Stat. 9 Ann. c. 12.

Persons obstructing, beating, or abusing the Officer in the Execution of his Office, concerning the Duty on *Hops*. Stat. 9 Ann. c. 12.

Five Shillings for every Pound, to be levied by Distress; and if no Distress can be found, the Offenders to be committed to the House of Correction, not exceeding a Month.

Five Pounds, to be levied *ut supra*.

Offences.

Horses.

Penalties.

[One] TO take the Oaths of two Witnesses to prove a stolen Horse to be the Owner's, and on the Buyer's Oath what he paid for the Horse, the Owner is to have him again, paying the Buyer: But this must be done in six Months after the Sale. Stat. 31 Eliz. c. 12. §. 4.

[Qu. Sess.] Have Power to hear and determine all Offences against 32 H. 3. c. 13. for putting stoned Horses to feed upon Forests or Common Ground, above two Years old, and not 15 Hands high, according to the Standard, and for refusing to measure them. Stat. 32 H. 8. c. 13. §. 3.

Vide Titles **Cattle** and **Fairs**.

Offences.

House of Correction.

Penalties.

[Qu. Sess.] TO give Orders for erecting Houses of Correction, and for Maintenance and Government of the same, and for the Punishment of Offenders committed thither; and to appoint Governors and their Salaries, which are to be paid Quarterly by the Treasurers. Stat. 39 Eliz. c. 4. §. 1. 7 Jac. 1. c. 4. §. 6.

Governors of Houses of Correction, not yielding a true Account every Quarter-Sessions, of Persons committed, or suffering any to escape, or to be troublesome to the County by going abroad. Stat. 7 Jac. 1. c. 4. §. 9.

Fineable, as Justices shall think fit.

Vide Title **Goal**.

See 13 Geo. 2. c. 24. & 14 Geo. 2. c. 33. in *Dalton*, Chap. 196.

Que and Cry. See Title **Robbery**.

Infirmers.

A P P E N D I X

Offences.

Informers.

Penalties.

[*One*] **U**PON Information for Treppasses, Batteries, and other Misdemeanors, to take the Informer's Recognition in 20 *l.* That he will prosecute with Effect, and abide by such Order as the Court shall direct. Stat. 4 & 5 *W. & M. c. 18. §. 2.*

Offences.

Journeyman Taylors.

Penalties.

[*Two*] **A**NY Person brought up in, or professing, using, or exercising the Art or Mytery of a Taylor, or Journeyman Taylor, in making up Mens or Womens Work in the Cities of *London* and *Westminster*, or *Weekly Bills of Mortality*, who shall at any Time keep up, continue, act in, make, enter into, sign, seal, or be knowingly interested or concerned in any Contract, Covenant, or Agreement, in Writing, or not in Writing, for advancing their Wages, or for lessening their usual Hours of Work.

To be committed either to the House of Correction, to hard Labour, not exceeding *two Months*, or to the common Gaol, there to remain without Bail or Mainprife, not exceeding two Months, at the Discretion of the Justices before whom convicted.

One or more credible Witnesses.
Prosecution in three Months after the Offence was committed. Stat. 7 *Geo. I. sess. 1. c. 13. §. 1.*

Journeyman Taylors, Servants, and Apprentices to Taylors, and others, employed or retained as Taylors, in making up Mens or Womens Work within the Cities of *London* and *Westminster*, or *Weekly Bills of Mortality*, to work from Six of the Clock in the Morning, until Eight at Night. The Master to allow one Penny Halfpenny a Day for Breakfast, and one Hour for Dinner. And for the Time or Hours of Work aforesaid, to pay them not exceeding *two Shillings per Diem*, from the 25th Day of *March* to the 24th Day of *June*; and for the Rest of the Year, *1 s. and 8 d. per Diem.* Stat. 7 *Geo. I. sess. 1. c. 13. §. 2.*

Taylor or others, acting as such within the Limits aforesaid, hiring, retaining, or employing any Journeyman Taylor, or other Person, not being an Apprentice, to pay them after the *Rates aforesaid* for the full Time for which they hire them. *Ibid. §. 3.*

Upon Complaint thereof to summon before them the Party offending, and for Non-payment of the Wages directed by this Statute, to issue their Warrant for levying such Wages by Distress and Sale, &c. *Ibid. §. 4.*

For Want of Distress to commit the Party offending to the common Gaol without Bail or Mainprife, till Payment or Satisfaction made.

Journeyman Taylor, &c. departing from his Service before the End of the Term for which he is hired, or until the Work for which he is hired be finished; or not being retained or employed, shall refuse to work after Request made for that Purpose by any Master Taylor, for the Wages and Hours limited, unless some reasonable Cause to be allowed by two Justices. And being thereof convicted. *Ibid. §. 6.*

To be committed to the House of Correction to hard Labour, not exceeding two Months.

Taylor, &c. within the Limits aforesaid giving, allowing, or paying any more, or greater Wages than limited by this Statute or the *Qu. Sess.* for the Hours of Work aforesaid, to any Journeyman Taylor, &c. being lawfully convicted.
Prosecution in three Months. *Ibid. §. 7.*

Five Pounds. One Moiety to the Informer or Prosecutor.
The other to the Poor of the Parish where, &c.

Journeyman Taylors, &c. taking more or greater Wages for the Hours of Work aforesaid than limited by this Statute or *Qu. Sess.* *Ibid. §. 7.*

To be sent to the House of Correction to hard Labour, not exceeding two Months.

Note; All Wages, Pay or Allowances contrary to this Act or Order of *Qu. Sess.* are null or void. *Ibid. §. 7.*

This Act does not extend to Wages or Allowances agreed upon for Working before or after the Hours of Work limited, or to be limited. *Ibid. §. 8.*

[*Qu. Sess.*] An Appeal lies to the next General Quarter-Sessions, giving Six Days Notice, whose Judgment is final. And may award reasonable Costs to either Party, as to them shall seem just. *Ibid. §. 9.*

Within the Limits aforesaid, upon Application to be made to them for that Purpose, may from Time to Time

To be imprisoned, not exceeding Two Months.

APPENDIX

Offences.

Journeyman Taylors.

Penalties.

Time take into their Consideration the Plenty or Scarcity of the Times, &c. and alter the Wages and Hours of Work directed by this Statute. *And* may order and appoint what *Wages* and *Allowances* shall be paid or made to Journeyman Taylors, &c. *and* what *Hours* they shall work, which Rates and Alterations the Sessions must cause to be printed and published in Fourteen Days next after such General Quarter-Sessions, at the reasonable Expence of the Persons desiring the same. *And* from and after Publication thereof, All Taylors and their Journeyman, &c. not observing the same, and being thereof convicted. *Ibid.* §. 5.

Prosecution in Six Days after Offence committed.

Offences.

Jurors.

Penalties.

[*Qu. Sess.*] **T**O take the Return of the Constables and Headboroughs, of their List of Names and Places of Abode, of Persons qualified to serve on Juries, between the Age of 21 and 70; which they are to make at *Michaelmas*-Sessions yearly; and to cause the Clerk of the Peace to deliver a Duplicate thereof to the Sheriff, before the first of *January* after, and to enter the same fairly in a Book. Stat. 7 & 8 *W.* 3. c. 32. §. 4.

Note; The foregoing Act was continued for 11 Years, by 10 *Ann.* c. 14. *And* farther continued for 7 Years, by 9 *Geo.* 1. c. 8. and referred to by 3 *Geo.* 2. c. 25. which last Act is made perpetual by 6 *Geo.* 2. c. 37. See *Dalton*, Chap. 186.

At *Midsummer*-Sessions yearly to issue Warrants, under the Hands and Seals of Two or more, to the High Constables, to issue out their Precepts to prepare a List of Freeholders, according to 7 & 8 *W.* 3. c. 32. which the Constables are to return the first Day of *Michaelmas*-Sessions.

Note; The Act of the 10 *Ann.* c. 14. and the Act 7 & 8 *W.* 3. c. 32. are to be read publickly in open Court. Stat. 3 & 4 *Ann.* c. 18. §. 5.

The High Constables not issuing their Precepts to the Constables, to prepare their Lists of Persons to serve on Juries. Stat. 3 & 4 *Ann.* c. 18. §. 5.

Ten Pounds.

The Petty Constables not returning the List of Persons to serve on Juries. Stat. 3 & 4 *Ann.* c. 18. §. 5.

Five Pounds.

Vide Title **Panel**s of Jurors.

And see 3 *Geo.* 2. c. 25. in *Dalton*, Chap. 186. Tit. *Jurors*, &c.

Offences.

Justices of Peace.

Penalties.

Justices have Power to arrest and chastise *Rioters*, *Barrators*, and other Offenders; and also to imprison and punish them according to Law, and by Discretion and good Advise ment; also to bind People of evil Fame to the Good Behaviour, to hear and determine Felonies and Trespasses done in the same County, according to Law. *And* to impose *Fines* for Trespasses, which must be reasonable and just. Stat. 34 *Eliz.* 3. 1.

Justices must keep their Sessions Four Times in the Year, and by Three Days, if need be, *viz.* in the first Week after *Michaelmas*, *Epiphany*, *Easter*, and the *Translation* of *St. Thomas* the Martyr, *viz.* *Becket*, being the 7th of *July*. *And* oftner, if need require. Stat. 12 *R.* 2. c. 10. 2 *H.* 5.

Justices of Peace of *Middlsex* are not compellable to keep their Sessions above twice in the Year, notwithstanding the Stat. 12 *R.* 2. c. 10. yet they may keep them oftner at their Discretion. Stat. 14 *H.* 6.

None (except Men learned in the Law, or inhabiting Corporations) to be Justices, unless their Lands be worth Twenty Pounds *per Annum*. Stat. 18 *H.* 6. 11.

If any be put into the Commission, not having Lands, *ut supra*, and do not within one Month after Notice thereof acquaint the Lord Chancellor therewith, or do sit or make any Warrant by Force of such Commission. *Ibid.*

Forfeits Twenty Pounds.
To be divided betwixt the King and the Prosecutor.

Justices must certify Recognizances to the next General or Quarter-Sessions, where, if the Party bound, being called, do not appear, the Recognizance must be certified into the *Chancery*, *King's Bench*, or *Exchequer*. Stat. 3 *H.* 7. 1.

APPENDIX.

Offences.

Justices of Peace.

Penalties.

A new Commission of the Peace, or Gaol-Delivery of the whole County, does not supercede a Commission granted to a City or Town Corporate. Stat. 2 & 3 P. & M. 18.

If a Justice for any County at large shall dwell in a City, that is a County of itself, and within the County at large for which he shall be appointed a Justice, though not within the same County, he may grant Warrants, take Examinations, &c. at his own Dwelling-house, though it be out of that County where he is authorized to act as a Justice, and in some City or Precinct adjoining, that is a County of itself; and such Acts of the Justice, and of the Peace-Officers in Obedience to any such Warrant, shall be good in Law, though it happen to be out of his Limits.

Provided, That nothing in this Act shall give Justices of the County Power to hold their Quarter-Sessions in Cities that are Counties of themselves; nor Peace-Officers of the County at large, to intermeddle in any Matters arising within such Cities or Towns. 9 Geo. 1. c. 7. §. 3.

Justices of Peace in *England* or *Wales* must have 100*l.* per Annum in Free, Copy or Leasehold. See 5 Geo. 2. c. 18. in *Dalton*, Chap. 2.

Offences.

Keels.

Penalties.

[One] Persons removing or altering the Marks of Keels, Boats, &c. Stat. 6 & 7 W. 3. c. 10. §. 7. One Witness.

Ten Pounds, to be levied by Distress and Sale; for Default, three Months Imprisonment. The Penalty between the King and the Discoverer.

Lamps. See Lights.

Offences.

Leather.

Penalties.

[Du. Sess.] THE Mayor and Aldermen of *London* to chuse and swear Eight expert Men out of some of the Four Companies of *Shoemakers, Curriers, Girdlers* and *Sadlers*, to be Searchers and Sealers of all tanned Leather there, whereof one to be assigned to keep the Seal. Stat. 1 Jac. 1. c. 22. §. 31.

Forty Shillings, to be divided between the King and Profecutor.

Head Officers in Corporate and Market-Towns, and Lords of Liberties, to appoint and swear yearly Two, Three, or more honest and skilful Men to be Searchers and Sealers of Leather. *Ibid.* §. 32.

Forty Shillings, to be divided *ut supra*.

The Mayor of *London*, and the Head Officer, or Lord aforesaid, to appoint Six Triers of insufficient Leather and Leather-Wares. *Ibid.* §. 35.

Five Pounds, to be divided *ut supra*.

Triers not doing their Duty without Delay. *Ibid.* §. 35.

5*l.* to be divided *ut supra*.

A Trier in *London* continuing Two Years together. *Ibid.* §. 36.

Incapable of being chosen for three Years after, on Pain to forfeit for every Month he continues otherwise in that Office 10*l.* to be divided in Thirds. One to the King, one to the Profecutor, and the other to the City, Borough, Town, or Lord of the Liberty where the Offence is committed.

Searcher or Sealer refusing in convenient Time to do his Office, or allowing insufficient Wares. *Ibid.* §. 37.

40*s.* to be divided in Thirds *ut supra*.

Searchers or Sealers taking Bribes, or exacting more than due Fees. *Ibid.* §. 37.

20*l.* to be divided in Thirds *ut supra*.

Searcher or Sealer being lawfully elected, and refusing the Office. *Ibid.* §. 37.

10*l.* to be divided in Thirds *ut supra*.

Selling tanned Leather in *London* before it is searched and sealed. *Ibid.* §. 39.

Forfeited, or the Value thereof, to be divided in Thirds *ut supra*.

With-

A P P E N D I X.

Offences.	Leather.	Penalties.
Withstanding the <i>Searchers</i> and <i>Scalers</i> in the Execution of their Office, or their seizing insufficient Wares. <i>Ibid.</i> §. 40.		5 <i>l.</i> to be divided in Thirds <i>ut supra</i>
Persons selling any tann'd Leather (red or unwrought) before it is registred. <i>Ibid.</i> §. 42.		The Value thereof to be divided in Thirds <i>ut supra</i> .
Persons Buying any tanned Leather before it be searched and sealed; or carrying it out of the Fair or Market before it be registred. <i>Ibid.</i> §. 44.		The same, or the Value thereof, to be divided in Thirds <i>ut supra</i> .
Artificers in <i>London</i> using tanned and curried Leather, putting into his Wares Leather insufficiently tanned or curried. <i>Ibid.</i> §. 44.		The Wares, and the just Value, to be divided in Thirds <i>ut supra</i> .
Such Artificers selling any where but in open Shop, Fair or Market, where due Search may be had. <i>Ibid.</i> §. 45.		The Wares, and Ten Shillings for every Offence, to be divided in Thirds <i>ut supra</i> .
Buying forfeited Wares to sell again. <i>Ibid.</i> §. 47.		3 <i>s.</i> 4 <i>d.</i> for every Parcel, to be divided in Thirds <i>ut supra</i> .

Note; The Stat. 1 *Jac.* 1. *c.* 22. is not to prejudice the Authority of the Universities, so as their Officers observe the Provision of the same; and Hides or Skins of Ox, Steer, Bull, Cow, Calf, Deer, Goats and Sheep, being tanned or tawed, and salt Hides are reputed Leather within this Act.

Vide Titles **Curtier**, **Shoemaker** and **Tanner**.

See more in *Dalton*, Chap. 59.

Offences.	Lights.	Penalties.
[One] H ouse-keepers, within the <i>Weekly Bills of Mortality</i> , whose Houses adjoin to or near the Street, from <i>Michaelmas</i> to <i>Lady-Day</i> , not hanging out Lights every Night from the Time it is dark, till twelve at Night, or paying to the Lamps. Stat. 2 <i>W. & M.</i> <i>c.</i> 8. §. 15. View, Confession, or one Witness.		Two Shillings every Default, to be levied and employed as the Penalties for not sweeping the Streets.
[Two] To approve the Distances which one Lamp is to be set from the other. Stat. 2 <i>W. & M.</i> <i>c.</i> 8. See 9 <i>Geo.</i> 2. <i>c.</i> 20. in <i>Dalton</i> , Chap. 60. Tit. <i>London</i> .		

Offences.	London.	Penalties.
FOR the Rules of Buildings to be erected in the City and Liberties, see 19 <i>Car.</i> 2. <i>c.</i> 3. And the Powers of the Lord Mayor, or any two Justices in Relation thereto, <i>ibid.</i> §. 3. in <i>Dalton</i> , Chap. 60. Tit. <i>London</i> , & <i>vide supra</i> , Tit. Fire .		

Offences.	Lotteries.	Penalties.
[Two] E VERY Person who shall erect, set up, continue, or keep any Office or Place under the Denomination of Sales of Houses, Lands, Advowsons, Presentations to Livings, Plate, Jewels, Ships, Goods, or other Things, for the Improvement of small Sums of Money, or shall sell or expose to Sale any Houses, &c. by Way of <i>Lottery</i> , or by Lots, Tickets, Numbers, or Figures; or who shall make, print, advertise, or publish, or cause to be made, advertised, or published Proposals or Schemes for advancing small Sums of Money by several Persons, amounting in the Whole to large Sums, to be divided amongst them by the Chances of the Prizes in some publick Lottery or Lotteries, or shall deliver out, or cause, or procure to be delivered out Tickets to Persons advancing such Sums, to intitle them to a Share		500 <i>l.</i> over and above any former Penalties inflicted by any former Act or Acts of Parliament. One Third to his Majesty, one other Third to the Informer, and the remaining Third to the Poor of the Parish where the Offence is committed. To be levied by Distress and Sale; and also to be committed for every such Offence to the County-Gaol, without Bail for one whole Year, and from thence till full Payment be made of the 500 <i>l.</i> forfeited as aforesaid. Conviction by one Witness.

A P P E N D I X

Offences.

of the Money so advanced, according to such Proposals or Schemes; or shall make, print or publish, or cause to be made, &c. any Proposal or Scheme of the like Nature, under any Denomination or Title whatsoever.

One or more credible Witnesses. Stat. 8 Geo. 1. c. 2. §. 36.

See 12 Geo. 2. c. 28. and 13 Geo. 2. c. 19. in Dalton, Chap. 46. Tit. Games and Plays.

Setting up any Lottery under Colour of Authority from any foreign Prince, or selling Tickets in foreign Lotteries.

One Witness.

Appeal to Quarter-Sessions.

9 Geo. 1. c. 19. §. 4, 5. 6 Geo. 2. c. 35. §. 29.

Note; An Appeal lies to the next General Quarter-Sessions, whose Judgment is final. *Ibid.*

Lotteries.

Penalties.

200 l. The Crown, Informer, and Poor, one Third each, to be levied by Distress, &c. and Offender committed to the County Gaol for one Year, and till Satisfaction of such Sum.

Offences.

[Two] MAY by their Warrant directed to the Constables, Church-wardens and Overseers of the Poor, of the County or Place where Lunatics or mad Persons shall be found, cause such Lunatics and Persons furiously mad to be locked up, and, if necessary, chained, &c. (but not whipp'd) during their Lunacy, &c. and charge their Estate (if any) for their Maintenance; or (if none) provided for as the Poor of the Parish. 12 Ann. sess. 2. c. 23. §. 22.

Lunatics.

Penalties.

Offences.

[One] Constable may search for Malt which is faulty or mingled, and being found, may with the Advice of a Justice of Peace, make Sale thereof. The Prosecution must be within a Year; and not to be against Persons who make their own Malt. Stat. 2 E. 6. c. 10. §. 44.

Malt.

Penalties.

Note; The 39 Eliz. c. 16. inserted in former Editions of this Book, is repealed by 9 & 10 W. 3. c. 22.

[Qu. Sess.] Every Person employing less Time in making and drying of Malt (except in June, July and August) than Three Weeks, and in those Months less than 17 Days; and putting to Sale Malt mingled of good and bad. Stat. 2 & 3 Ed. 6. c. 10. §. 2.

Two Shillings for every Quarter.
To be divided between the King and Prosecutor.

Putting any Malt to Sale before (by Treading, Rubbing and Fanning it) he shall have taken out of every Quarter, Half a Peck of Dust, or more. Stat. 2 & 3 Ed. 6. c. 10. §. 3.

Twenty Pence for every Quarter, to be divided *ut supra.*

Malt entred and made for Exportation only, (as the Act directs) not to be charged with any of the Duties imposed on Malt made in Great Britain, and no Drawback to be allowed on any Malt exported. Stat. 12 Geo. 1. c. 4. §. 48.

Makers of Malt for Exportation are, before they begin to steep it, to leave Notice in Writing of the Quantities intended to be made, &c. which shall be kept separate from what is intended for home Consumption. *Ibid.* §. 49.

5 s. for every Bushel found mixed with what is intended for home Consumption.

Maltsters shall not begin to wet any Grain to make into Malt for Exportation, for above six Days before the Corn, &c. intended for home Consumption be dried off; nor wet any Grain for home Consumption above six Days before the Malt for Exportation be dried and locked up *ut infra.* *Ib.* §. 50.

5 s. for every Bushel so wet, &c.

Notice in Writing is to be given by the Exporter to the Port Officer, of the Day and Hour when the putting such Malt on board is to be begun, and of the Ship's Name, &c. *Ibid.* §. 57.

5 s. for every Bushel put on Board without such Notice. *Ibid.*

If such Malt be not exported within nine Months after made and put into Rooms or Store-houses *ut infra.* *Ibid.* §. 57.

5 s. for every Bushel.

APPENDIX.

Offences.

Malt.

Penalties.

Malsters (other than Compounders for the Duties) not to mix their Corn or Grain of one wetting or steeping, or any Part thereof, or of their Couches or Floors, with Corn or Grain of a former wetting or steeping before it be put on the Kiln for drying. Stat. 2 Geo. 2. c. 1. §. 11, 12.

5 s. for every Bushel so mixed, &c. recoverable by any Laws of Excise. One Moiety to the King, the other to the Informer.

Vide Excise antea.

Malt for Exportation when fully dried, &c. shall in the Presence of the Officer where made, be measured and carried thence directly on Shipboard, or into Store-houses or Rooms provided by the Maker, and there kept from other Malt under two Locks and Keys, one to be kept by the Officer, &c. Stat. 12 Geo. 1. c. 4. §. 51.

Not entering such Corn *ut supra*, or not providing Rooms or Store-houses with Locks, &c. or not giving Notice, or not causing it to be measured and locked up within six Days after it is dried, forfeits 50 l. *Ibid.* §. 58.

The said Officers may gauge such Malt in all its Operations, till it be fully dried, &c. and on Notice are to attend at Store-houses, &c. on the Delivery out of Malt for Exportation; as also to keep an Account thereof, and give out Certificates, &c. *Ibid.* §. 52, 53, 54.

Opposing and hindring an Officer, forfeits 50 l. *Ibid.* §. 58.

Proprietor neglecting to deliver such Certificate, forfeits 50 l. *Ibid.* §. 54.

The Port Officers are to attend the Measuring of Malt, and to continue on board till the Ship be cleared. *Ibid.* §. 55.

Breaking open the Hatches after locked down, 50 l. *Ibid.* §. 58.

See also *Malt* in Title **Excise**.

See 11 Geo. 2. c. 1. in *Dalton*, Chap. 61. Tit. *Malt*.

Offences.

Manufactures.

Penalties.

[Two] TO hear and determine all Wages, Frauds, &c. of Labourers employed in *Manufactures* of Woollen, Linen, Fustian, Cotton and Iron, concerning any Work done in the same *Manufactures*. Stat. 1 Ann. c. 10. And see 13 Geo. 2. c. 8. in *Dalton*, Chap. 196.

Mariners. See 1 Geo. 1. c. 25. and 2 Geo. 2. c. 36. in *Dalton*, Chap. 64. under this Title.

Offences.

Mats.

Penalties.

[Four] TO licence Persons to make Mats, Coverlets, and Dornicks, in *Norwich*, or *Norfolk*. If a Reward be taken for such Licence, the Forfeiture is five Pounds. Stat. 5 & 6 Ed. 6. c. 24. §. 5.

[Du. Sess.] Making any Mats, Dornicks, or Coverlets, in *Norfolk*, without Licence, except in a corporate Town. Stat. 5 & 6 Ed. 6. c. 24. §. 3.

Every six Fels 10 s. every Coverlet 3 s. 4 d. every six Yards of Dornicks 6 s. 8 d.

Not to extend to *Pulham* in *Norfolk*.

Offences.

Money.

Penalties.

[One] TO hear and determine, upon Oath, whether any Piece of Money cut be counterfeit or not. Stat. 9 & 10 W. 3. c. 21. §. 1.

Vide Title **Coin**.

Offences.

Murder.

Penalties.

[Du. Sess.] IN Case of Murder, may inquire of Escapes, and certify them into the *King's Bench*. Stat. 3 H. 7. c. 1. §. 21.

A P P E N D I X

Offences.	Non-conformity.	Penalties.
<p>[One] TO take Information of the <i>Non-conformity</i> of Persons in publick Offices, or Employments, Places of Truſt, &c. who receive Salaries or Wages, by reaſon of any Patent or Grant, or are of the King's Houſhold, or bear Office in any Corporation. Stat. 10 <i>Ann.</i> c. 2.</p>		<p>Forty Pounds recoverable in <i>Weſtminſter-Hall</i>, and the Perſon incapable of any Office, &c. for the future; except he conforms for a Year, and receives the Sacrament three Times within the ſame.</p>

Offences.	Norwich Stuffs.	Penalties.
<p>[One] TO convict Counterfeits of the Seal for <i>Norwich</i> Suffs, or ſealing them with a counterfeit Seal, or removing the Seal from one Piece to another. Stat. 13 & 14 <i>Car.</i> 2. c. 5. §. 14. Confefſion, or two Witneſſes.</p>		<p>Twenty Pounds.</p>
<p>Buyers of Stuffs unſealed, and they in whoſe Poſſeſſion they are found, other than the firſt Owner or Maker, and the Maker or Seller delivering them unſealed. Stat. 13 & 14 <i>Car.</i> 2. c. 5. §. 13. Two Witneſſes.</p>		<p>Four Shillings for the Poor of the Trade, to be levied by Diſtreſs, &c.</p>
<p>Weavers weaving without their proper Mark at the Head of the Piece. Stat. 13 & 14 <i>Car.</i> 2. c. 5. §. 16.</p>		<p>Three Shillings, to be levied and diſpoſed <i>ut ſupra</i>.</p>
<p>Perſons reſuſing to appear on any Jury to be returned, by Virtue of the Stat. 13 & 14 <i>Car.</i> 2. c. 5. §. 20.</p>		<p>Five Shillings, to be levied and diſpoſed <i>ut ſupra</i>.</p>

[Two] Two Juſtices of the County of *Norfolk*, ſhall join with the Mayor, and one Juſtice of the City of *Norwich*, in taking the Account of the Wardens of the Weavers of *Norwich* Stuffs quarterly, and applying one Half of the Fines and Forfeitures for the Poor of the ſaid Trade. Stat. 13 & 14 *Car.* 2. c. 5. §. 22.

[Three] Three Juſtices of the County of *Norfolk*, with the Mayor of *Norwich*, and two Juſtices of the City, to confirm By-Laws made by the Wardens and Aſſiſtants there choſen, for the regulating the Making of *Norwich* Stuffs. Stat. 13 & 14 *Car.* 2. c. 5. §. 3. *Quorum* 1.

Offences.	Oath.	Penalties.
<p>[One] IF any, who maintain that the Taking of an Oath in any Caſe whatſoever is unlawful, do reſuſe to take an Oath, where by Law they are bound; or do endeavour to perſuade others to reſuſe; or maintain that the Taking an Oath in any Caſe whatſoever is unlawful. Stat. 13 & 14 <i>Car.</i> 2. c. 1. §. 2.</p>		<p>To be committed to Gaol, or be bound over with Sureties to the Quarter-Sefſions, in order to Conviction.</p>

Note; Quakers are exempted from the Penalties of this Act, *per* Stat. 1 *W. & M.* c. 18. §. 13.

<p>Perſons reſuſing the Oaths when tendered. Stat. 1 <i>W. & M.</i> ſeſſ. 1. c. 18.</p>	<p>To enter into a Recognizance with two Sureties of 50 <i>l.</i> for his producing a Certificate under the Hands of ſix of the Proteſtant Congregation, whereof he is one, &c. that he is a Proteſtant.</p>
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[Two] In Default of Juſtices in Corporations, two Juſtices of the County are to adminiſter the Oaths required to be taken by Officers in Corporations. Stat. 13 *Car.* 2. c. 1. §. 10.

To adminiſter the *Oath* of Allegiance to any Perſon of the Age of eighteen, or above, and not a Peer. Stat. 7 *Jac.* 1. c. 6. *Quorum* 1.

To take the Oath and Declaration of Allegiance and Fidelity of Diſſenters proſecuted contrary to 1 *W. & A.* c. 18. And the ſolemn Affirmation of Quakers, with their Subscription to the Confefſion of the Chriſtian Faith, and to certify the ſame to the Sefſions. Stat. 10 *Ann.* c. 2.

Two next Juſtices, *Quorum unus*, to adminiſter an Oath to the *Sheriff* or *Returning Officer*, upon his delivering over to the Clerk of the Peace the *Poll-Books* of the *Election* of *Knights* of the *Shire*, within twenty Days after the *Election*, That he has delivered over all the ſaid Books without *Imbezilment* or *Alteration*. Or where there are more Clerks of the Peace than one, the Original Books to one, and atteſted Copies to the Reſt. 10 *Ann.* c. 23. §. 5

A P P E N D I X.

Offences.	Oath.	Penalties.
[Du. Sess.]	To discharge Persons certified by two Justices to have refused to take the Oath, and subscribe the Declaration, upon their doing it in open Sessions. Stat. 1 W. & M. c. 15. §. 8.	

See the Statute 1 Geo. 1. stat. 2. c. 13. and Dalton, Chap. 4. for the Oaths to be taken by all Persons bearing any Office Civil or Military, &c.

The Time limited for taking such Oaths is six Kalendar Months after Admission. 9 Geo. 2. c. 26.

Justices in Sessions to take the Oaths, of Persons having Offices, &c. convicted of Non-conformity; on their conforming, that they have conformed for a Year past, and received the Sacraments three Times within that Time. Stat. 10 Ann. c. 2.

Officers and Soldiers. See the Annual Act for punishing Mutiny and Desertion, &c.

Offences.	Orchards.	Penalties.
[One] Persons unlawfully cutting and taking Corn growing, robbing Orchards, and taking away any Fruit-Trees; breaking any Hedges, Pales, or other Fences, cutting or spoiling any Woods or Underwoods, standing and growing, or the like, and the Accessaries thereunto. Stat. 43 Eliz. c. 7. §. 1. Confession, or one Witness. Prosecution to be in Six Weeks, by 15 Car. 2. c. 2. (which see in Title Wood) it alters the Punishment.		First Offence, To pay to the Person grieved such Damages as the Justice shall appoint. If he be thought not able to pay, to be committed to the Constable, to be whipp'd, and for every other Offence to be whipp'd. The Constable refusing or neglecting to do his Duty, to be committed till he does. In the Justice's own Case, he is to associate one or more Justices.

Offences.	Panels of Juries.	Penalties.
[Du. Sess.]	Justices before whom Panels of Juries are returned by the Sheriff, to inquire for the King, <i>Quorum</i> 1. may reform such Panels, and the Sheriff must return the Panel so reformed, on the Penalty of Twenty Pounds, to be divided between the King and the Prosecutor. Stat. 3 H. 8. c. 12. §. 6.	

Offences.	Papists and Popish Superstition.	Penalties.
	(<i>Agnus Dei, &c.</i>)	
[One] Persons bringing into any of the Queen's Dominions any <i>Agnus Dei</i> , Crosses, Pictures, Beads, or any such vain or superstitious Thing; or delivering, or offering the same to any Person to be used. Stat. 13 Eliz. c. 2. §. 7.		A <i>Præmunire</i> . A Justice may receive Notice hereof, and is to disclose the same to the Privy Council in 14 Days after, in Pain of a <i>Præmunire</i> .
[Du. Sess.] Persons receiving any <i>Agnus Dei</i> , Crosses, Pictures, Beads, &c. Stat. 13 Eliz. c. 2. §. 17. 23 Eliz. c. 1. §. 2.		A <i>Præmunire</i> .

(*Arms and Horfes.*)

[One] A Popish Recufant refusing to declare what <i>Armour</i> or <i>Munition</i> he hath, or to deliver it to such Person as hath Power to seize it. Stat. 3 Jac. 1. c. 5. §. 28.	Forfeits the same, and shall be imprisoned, by Warrant, for Three Months, without Bail.
[Two] Papist, or reputed Papist, refusing to make the Declaration in 30 Car. 2. c. 1. or neglecting to appear before Two Justices, upon Notice. Stat. 1 W. & M. sess. 1. c. 15. §. 4, 5.	His Arms, Weapons, Gunpowder, or Ammunition, to be seized, by Warrant, to the Use of the Crown, to be delivered at the next Quarter-Sessions, in open Court. If he does not discover his Arms, or hinders Search for them, to be committed for Three Months without Bail, forfeits his Arms, and to pay treble Value, to be set at next Quarter-Sessions.
Persons concealing, or privy to concealing Arms of Papists, or reputed Papists; or hindring Search for, and Seizing the same. Stat. 1 W. & M. sess. 1. c. 15. §. 6.	To be committed to the common Gaol for Three Months, without Bail, and forfeit treble the Value of the Arms.
Papists concealing, or Aiders in concealing Horfes of Papists, or reputed Papists. Stat. 1 W. & M. c. 15. §. 10.	To be committed for Three Months, without Bail, and forfeit the treble Value of the Horfes.

[Four]

A P P E N D I X.

Offences.

Papists and Popish Superstition.

Penalties.

[**Four**] To take away from a Popish Recufant convict, all his Armour, Gunpowder and Munition, but what they allow him. Stat. 3 *Jac.* 1. c. 5. §. 27.

(Books and Relicks.)

<p>[Two] To fearch the Houfes and Lodgings of Popish Recufants convict, and of every Perfon whose Wife is a Popish Recufant convict, for Popish Books and Relicks. Stat. 3 <i>Jac.</i> 1. c. 5. §. 26.</p>	<p>The Books and Relicks are to be burnt and defaced.</p>
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(Crucifix.)

<p>[Qu. Sess.] A Crucifix, or other Popish Relick, of any Price. Stat. 3 <i>Jac.</i> 1. c. 5. §. 26.</p>	<p>To be defaced in open Seflions, and then returned to the Owner.</p>
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(Feme Coverts.)

<p>[Two] Feme Coverts being convicted Recufants (under Peerage) not conforming within Three Months after Conviction. Stat. 7 <i>Jac.</i> 1. c. 6. §. 28. <i>Quor</i> 1.</p>	<p>To be committed till they conform, unlefs their Husbands pay 10 s. a Month to the King, or the Third Part of his Lands.</p>
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Vide Titles **Abjuration** and **Church**.

(Jefuit and Priest.)

<p>[One] To take an Information of a Jefuit or Priest's remaining in any of the Queen's Dominions, and in 28 Days to difclofe it to fome of the Privy Council, or forfeits. Stat. 27 <i>Eliz.</i> c. 2. §. 13.</p>	<p>Two hundred Marks.</p>
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(Impugning Supremacy.)

<p>[One] Perfons above 16 abfenting from Church above one Month, impugning the Queen's Authority in Caufes Ecclefiastical, or frequenting <i>Conventicles</i>, or perfuading others fo to do, under Pretence of Exercife of Religion. Stat. 35 <i>Eliz.</i> c. 4. §. 1.</p> <p>This is not to be extended to Protestant Diffenters, by Stat. 1 <i>W. & M. Jelf.</i> 1. c. 18.</p>	<p>To be committed till they conform themfelves, and make Submission. He may require them to conform and fubmit; and if they refufe, they muft abjure the Realm in open Affife or Seflions.</p>
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(Licence.)

[**Four**] To licence a Popish Recufant to go about his neceffary Occafions, with the Affent in Writing of the Bifhop, Lord Lieutenant, or Deputy Lieutenant, upon Oath of the true Reason of his Journey, and that he will make no caufelefs Stays. Stat. 3 *Jac.* 1. c. 5. §. 7.

(Maintaining the Pope's Jurifdiction.)

<p>[Two] Perfons who maintain the Jurifdiction of the Bifhop, or See of <i>Rome</i>, and their Accessaries. Stat. 5 <i>Eliz.</i> c. 1.</p>	<p>Incur a <i>Premunire</i>, which Two Juftices are to hear and determine, and certify their Prefentments into the Queen's Bench, if in Term-time, within 40 Days; if not, the firft Day of the next Term, on Pain of 100 <i>l.</i> <i>Quorum</i> 1.</p>
<p>[Qu. Sess.] Perfons affirming or maintaining the Power or Jurifdiction of any foreign Prelate or Potentate within the Queen's Dominions. Stat. 5 <i>Eliz.</i> c. 1. §. 2. 23 <i>Eliz.</i> c. 1. §. 2.</p> <p>The Profecution to be in Twelve Months; but if by Preaching, Teaching, or Words only, in Six Months. Two, or more Witneffes.</p>	<p>First Offence, Forfeiture of all Goods and Chattels; and if not worth 20 <i>l.</i> at the Time of Conviction, all, and one Year's Imprifonment, without Bail.</p> <p>Second Offence, <i>Premunire</i>.</p>

The Statute of 5 *Eliz.* c. 1. againft maintaining the Pope's Jurifdiction, is to be openly read by the Clerk of the Peace every Quarter-Seflions. Stat. 5 *Eliz.* c. 1. §. 15.

<p>The Comforters and Maintainers of fuch as obtain, or put in Ufe any Bull of Abfolution or Reconciliation from the Bifhop of <i>Rome</i>, or abfolve, or be abfolved thereby. Stat. 13 <i>Eliz.</i> c. 2. §. 4. 23 <i>Eliz.</i> c. 1. §. 2.</p>	<p>A <i>Premunire</i>, unlefs within fix Weeks they difcover them to fome of the Privy Council.</p>
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A P P E N D I X.

Offences.

Papists and Popish Superstition.

Penalties.

Saying or singing Mass. Stat. 23 <i>Eliz. c. 1. §. 4.</i>	200 Marks, and one Year's Imprisonment, and not to be enlarged till the Fine be paid. Two Thirds to the Queen, one to her own Use, the other for the Poor, the Third to the Prosecutor.
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Hearing Mass. Stat. 23 <i>Eliz. c. 1. §. 4.</i>	100 Marks, and one Year's Imprisonment, the Fine to be divided <i>ut supra.</i>
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(*Oath of Allegiance.*)

[**One**] May require *Dissenting Teachers*, Preaching in any Congregation in such Counties where they have not qualified themselves, as the Toleration-Act directs, to take the Oath and Declaration of Allegiance and Fidelity. Stat. 10 *Ann. c. 2. §. 9.*

[**Two**] To tender the Oath of Allegiance to any Persons of 18, or above, convicted or indicted of Recusancy, who have not received the Sacrament twice in the Year next before, and to certify the Name and Dwelling of Persons taking the Oath, to the next Sessions, to be recorded by the Clerk of the Peace, or Town-Clerk. Stat. 3 *Jac. 1. c. 4. §. 13.*

Note; This extends not to Noblemen or Noblewomen.

Jointly or severally, to administer the Oaths of Allegiance and Supremacy to any Person reconciled to the Church of *Rome*, and returning into the Realm, to be certified the next Sessions, on the Penalty of 40*l.* If such Person takes the Oaths, in Six Days after he shall return, he shall not be prosecuted for the Treason. Stat. 3 *Jac. 1. c. 4. §. 24.*

To administer the Oath of Allegiance to any Person of the Age of 18, or above, and not a Peer. Stat. 7 *Jac. 1. c. 6. §. 26. Quorum 1.*

To administer the Oaths of Allegiance and Supremacy to Foreigners, who shall use for three Years the Trades of Breaking, Hickling, or Dressing *Hemp* or *Flax*; and of making and whitening Thread; and spinning, weaving, making, whitening or bleaching Cloth made of *Hemp* or *Flax* only; and making Twine or Nets for Fishery; or storing Cordage, or making Tapestry Hangings. Stat. 15 *Car. 2. c. 15. §. 3.*

To take the Oath and Declaration of Allegiance and Fidelity of *Dissenters*, prosecuted contrary to 1 *W. & M. c. 18.* (and *solemn Affirmation* and Declaration of *Quakers*) and their Subscription to the Confession of the Christian Faith, and to certify the same to the Sessions. Stat. 10 *Ann. c. 2. §. 8.*

To administer and tender the Oaths directed by 1 *Geo. 1. c. 13.* to be taken, to Persons whom they shall suspect to be dangerous or disaffected to his Majesty or his Government. On Neglect or Refusal. Stat. 1 *Geo. 1. c. 13. §. 1.*

To certify the Refusal to the Quarter-Sessions, to be recorded, and from thence to be certified by the Clerk of the Peace into Chancery or King's Bench.

Person so refusing or neglecting, is a Popish Recusant convict, and forfeits as such.

May summon any Person to appear at a Day and Place, to take the Oaths directed by 1 *Geo. 1. c. 13.* And on Oath made that the Summons was left at his House, and the Party not appearing. Stat. 1 *Geo. 1. c. 13. §. 12.*

To certify the Default to the Sessions; and if he neglects or refuses to take the Oaths at the Session; his Name to be proclaimed at the first Meeting of the Sessions.

Then to be adjudged a Popish Recusant convict, and this to be certified *ut supra.*

No Manors, Lands, &c. to be sold or bequeathed by Papists, &c. refusing to take the Oaths, by any Deed or Will, unless such Deed within six Months after the Date, and such Will within six Months after the Testator's Death, be inrolled in one of the Courts of Record at *Westminster*, or by the *Custos Rotulorum*, and Two Justices, and the Clerk of the Peace, or Two of them at the least, whereof the Clerk of the Peace to be one. Stat. 3 *Geo. 1. c. 18. §. 6.*

Note; No Action or Suit for the Penalties or Forfeitures, by 1 *Geo. 1. c. 13.* or 3 *Geo. 1. c. 18.* for wilfully neglecting or refusing to register, to be commenced or brought after Two Years. Stat. 3 *Geo. 1. c. 18. §. 2.*

[**Qui. Sess.**] A Papist of the Age of 21 Years, having an Estate in Lands, and not taking the Oaths, and also repeating and subscribing the Declaration 13 *Car. 2.* at the Quarter-Sessions, or Courts at *Westminster*, between the Hours of Nine and Twelve in the Forenoon; or in Default thereof not registering his Name and Lands, &c. *what Estate he has in them, the yearly Rents, &c.* within six Months, and not subscribing such Register in Presence of Two Justices in open Sessions, or by Warrant of Attorney, under Hand and Seal executed in the Presence of Two Witnesses, who are to make Proof thereof at the Sessions, upon Oath. On Neglect or Refusal,

Forfeits the Fee-simple of his Land, not registred, or fraudulently registred, and the full Value of other Lands, whereof he has not the Fee-simple.

Two Thirds thereof to the Crown, and the other to any Protestant that will sue.

A P P E N D I X

Offences.	Papists and Popish Superstition.	Penalties.
(Oath of Allegiance.)		
Two of the Justices then present to sign as Witnesses to such Entry. Stat. 1 Geo. 1. c. 55. §. 1.	In Default, each forfeits Twenty Pounds to the King	
All Officers Civil and Military, Ecclesiastical Persons, Heads of Colleges, &c. Serjeants at Law, Counsellors, Attornies, Solicitors, &c. practising in Courts, are within three Months to take the Oaths at Quarter-Sessions, or one of the Courts at Westminster. Stat. 1 Geo. 1. c. 13. §. 3, 9.	Neglecting are disabled to execute any Offices or Employments, or to sue any Action, or to be a Guardian, Executor or Administrator, not capable of any Legacy, or voting for a Member of Parliament, and forfeit 500 l. to be recovered by Action of Debt, &c. to the Person who sues for the same.	
But by 2 Geo. 2. c. 31. §. 2. this Clause is repealed. See Dalton, Chap. 67. Tit. Oaths.		

(Reconciler and Reconciled.)		
[One] Aiders and Maintainers of Persons reconciling and reconciled to the Romish Religion, if they do not in 20 Days discover the Reconciling and Reconciled to a Justice or higher Officer. Stat. 23 Eliz. c. 8. §. 3.	Misprision of Treason.	

(Recusancy.)		
[Qu. Sess.] A Recusant, who conforms, not receiving the Sacrament within a Year after, and so once every Year at the least. Stat. 3 Jac. 1. c. 4. §. 3.	For the first Year, 20 l. for the second, 40 l. and every Default after, 60 l. And if after he hath received it, he maketh Default therein by the Space of a Year, 60 l. to be divided between the King and Prosecutor.	
The Church-wardens and Constables of every Parish, or one of them, or (if there be none such) then the High Constable of the Hundred there, not presenting once every Year at the Quarter-Sessions, the Monthly Absence from Church of every Popish Recusant, and their Children, being nine Years of Age, and their Servants with the Childrens Age, as near as they can know them. Stat. 3 Jac. 1. c. 4. §. 4.	20 s. for every Default. The Clerk of the Peace to record it on 40 s. Penalty. If upon such Presentment (being the first) the Recusant be convicted, the Officer who presents him, shall have 40 s. to be levied on the Recusant's Goods and Estate, by Warrant, as the Justices shall think fit.	

To cause Proclamation to be made, that Popish Recusants shall render themselves to the Sheriff, or Bailiff of the Liberty, where they are before the next Assise, Gaol-Delivery, or Sessions respectively. If they do not, the Default being recorded, shall be taken as a sufficient Conviction. Stat. 3 Jac. 1. c. 4. §. 7.

Every Conviction of a Popish Recusant is, before the End of the Term next following, to be certified into the Exchequer, in such Certainty, that Procefs may issue. Stat. 3 Jac. 1. c. 4. §. 9.

Note; No Indictment against a Recusant shall be reversed for Want of Form, other than by direct Traverse to the Point of not coming to Church, or not receiving the Sacrament. Stat. 3 Jac. 1. c. 4. §. 16.

(Reputed Papists.)		
[One] Justice of London, Westminster and Southwark, and of the Counties of Middlesex, Surrey, Kent and Suffex, to cause to be brought before him every Person (not being a Merchant Foreigner within the Cities of London and Westminster) or within ten Miles of the same, as are reputed to be Papists, and tender them the Declaration mentioned in the Statute 30 Car. 2. intituled, <i>An Act for more effectual preserving the King's Person and Government, &c.</i> Stat. 1 W. & M. sess. 1. c. 9. §. 1.	Every such Person after Refusal to make and subscribe the same, who shall continue to be within the said City or Cities, or within ten Miles of the same, he or she shall forfeit or suffer as a <i>Popish Recusant</i> convict.	

Justices of Essex have like Jurisdiction by Stat. 1 W. & M. sess. 1. c. 17. §. 1.

Offences.	Parliament.	Penalties.
THREE Justices may consent to, and have Power to order a Petition to the King or Parliament. Stat. 13 Car. 2. c. 5.		
Persons endeavouring to procure above Twenty Hands to any Petition to the King or Parliament, for any Alterations in the Church or State, unless by Consent of Three or more Justices, the Grand Jury at the Assises, &c. and repairing to the King, &c. to deliver it, with above Ten Persons. Stat. 13 Car. 2. c. 5.	Forfeit a Sum not exceeding 100 l. and to be imprisoned for Three Months,	

A P P E N D I X.

Offences.	Parliament.	Penalties.
[Two]	To administer the Oaths to Candidates to serve after the Determination of this present Parliament, for County, City, Borough, or Cinque Port in <i>England, Wales, or Berwick upon Tweed</i> . He who stands for the County, that he has 600 <i>l. per Annum</i> of or in Lands, Tenements, or Hereditaments, above Reprizes; and for City, Borough, or Cinque Port, of 300 <i>l. per Annum</i> above Reprizes. Stat. 9 <i>Ann. c. 5. §. 6.</i>	

[One]	To administer the Oath required by 2 <i>Geo. 2. c. 24.</i> for preventing Bribery and Corruption in Elections for Parliament, to the Sheriff or other Returning Officer. <i>Ibid. §. 3.</i>	
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Note; This Act for preventing Bribery and Corruption in the Election of Members to serve in Parliament, is to be openly read every Year at the General Quarter-Sessions after *Easter*, in every County, &c. Stat. 2 *Geo. 2. c. 24. §. 9.*

Offences.	Partition of Lands.	Penalties.
[Two]	To be present at the Under-Sheriff's Executing a Writ of Partition, when the High Sheriffs, by Reason of Distance, Infirmity, or any other Hindrance, cannot be present. Stat. 8 & 9 <i>W. 3. c. 31. §. 4.</i>	
	<i>See Dalton, Chap. 67. Tit. Partition of Lands.</i>	

Offences.	Perjury.	Penalties.
[Qu. Sess.]	ONE who commits wilful Perjury. Stat. 5 <i>Eliz. c. 9. §. 4.</i>	<p>Forfeits 20 <i>l.</i> and shall suffer Six Months Imprisonment without Bail, and is disabled to give Evidence until the Judgment be reversed.</p> <p>If he be not able to pay the Fine, to be fet in the Pillory in the publick Market, and his Ears to be nailed.</p>

Note; One Justice may bind the Offender over to Sessions.
See the 2 Geo. 2. c. 25. in Dalton, Chap. 70. Tit. Perjury.

Petition to King or Parliament. *See Tit. Parliament.*

Pewter. *See Brass.*

Offences.	Physicians.	Penalties.
[One]	To assist the President, and all Persons authorized by the College of Physicians, for the due Execution of the several Acts of Parliament, which concern the said College. Stat. 1 <i>Mar. Parl. 1 Sess. 2. c. 9. §. 6.</i>	

Offences.	Pilchards.	Penalties.
[One]	Suspicious Persons, flocking together about the Boats, Nets and Cellars, belonging to the <i>Pilchard Craft</i> upon the Coast of <i>Cornwall and Devon</i> , being warned to be gone, and refusing. Stat. 13 & 14 <i>Car. 2. c. 28. §. 5.</i>	Five Shillings to the Poor, or to be fet in the Stocks.
	<i>Warning to be by the Company, or Owner of the Boats and Cellars.</i>	

Masters of Vessels, &c. importing <i>Pilchards, Herrings, Salmon, &c.</i> or selling the same in <i>England</i> , taken by Foreigners (except Protestants dwelling here). Stat. 1 <i>Geo. 1. c. 18. §. 1, 2.</i>	Twenty Pounds, to be levied by Distress; one Moiety to the Poor, the other to the Informer.
Oath of two credible Witnesses.	For want of a Distress, the Offender to be committed to the common Gaol for a Twelvemonth.

Offences.	Plague.	Penalties.
[One]	To command any Person infected with the Plague, residing in an infected House, not to go out; and if he does afterwards go out. Stat. 1 <i>Jac. 1. c. 31. §. 7.</i>	The Watchman may resist him; and if any Hurt happen thereupon, the Watchman shall not be impeached for the same.

If any Person being infected with the Plague, who has no Sore upon him, go abroad, and converse in Company. Stat. 1 <i>Jac. 1. c. 31. §. 7.</i>	To be openly whipped as a Vagabond, according to Stat. 39 <i>Eliz. c. 4.</i> <i>But 39 Eliz. c. 4. is repealed.</i>
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A P P E N D I X

Offences.

Plague.

Penalties.

[Two] The Mayor, Bailiffs, Head-Officers and Justices of Peace; and where there are none, two Justices of the County may tax the Inhabitants towards Relief of such as have the Plague. Stat. 1 Jac. 1. c. 31. §. 2.

To be levied by Distress and Sale; and upon Refusal, to be committed till Payment.

These Taxes to be certified to the Quarter-Sessions. *Vide Quarentine.*

Players of Interludes. See 10 Geo. 2. c. 28. in Dalton, Chap. 46. Tit. Games and Plays.
See also Tit. Vagabonds and Vagrants *infra*.

Offences.

Poor.

Penalties.

[One] Every Person receiving Relief of any Parish or Place, and the Wife and Children of any such Person, cohabiting in the same House (except one Child to attend an impotent or helpless Parent) refusing or neglecting to wear their *Badge*, in an open and visible Manner. Stat. 8 & 9 W. 3. c. 30. §. 2.
Upon Complaint.

(*Badge.*)

His or her Allowance to be abridged, or withdrawn, or to be committed to the House of Correction to be whipped, and kept to hard Labour, not exceeding 21 Days.

Church-wardens, or Overseers, relieving any such Poor, not having and wearing such *Badge*. Stat. 8 & 9 W. 3. c. 30. §. 2.
One, or more Witnesses.

Twenty Shillings, to be levied by Distress and Sale. One Moiety to the Informer, the other to the Poor.

Boys bound to Sea. *Vide Apprentice.*

(*Costs.*)

[One] Where *Costs* are given upon an Appeal, from an Order of Settlement of the Poor determined, or where Notice was given, and the Person, ordered to pay such *Costs*, dwells out of the Jurisdiction of the Court, which gave the *Costs*. Stat. 8 & 9 W. 3. c. 30. §. 3.
Upon Request, and producing a true Copy of the Order for *Costs*, on Oath of one Witness.

The *Costs* to be levied by Warrant of one Justice of the County where the Party dwells, who is to pay the *Costs*, by Distress and Sale; and for Want, to be committed to the common Gaol for 20 Days.

The Overseers to be reimbursed their reasonable Charges to be ascertained by one Justice. 3 Geo. 2. c. 29. §. 9. See Dalton, Chap. 73. Tit. Poor.

(*Father, &c. to maintain poor Children.*)

Qui. Sess.] Father, Grandfather, Mother, Grandmother, and Children of Poor who cannot work, to be assessed towards their Relief. Stat. 43 Eliz. c. 2. §. 7.

(*Overseers.*)

[Two] The Church-wardens, and four, three or two Householders of every Parish (according to the Greatness of the Parish) to be nominated in *Easter-Week*, or in a *Month* after, under their Hands and Seals, are *Overseers* of the Poor. Stat. 4 Eliz. c. 2. §. 1. *Quorum* 1.

Justices neglecting to nominate, forfeit 5*l*.

Overseers of the *Poor*, not meeting once a Month in the Church upon *Sunday* after Evening Prayer. Stat. 43 Eliz. c. 2. §. 2. *Quorum* 1.

Twenty Shillings to the Use of the Poor, to be levied by Distress and Sale.

To allow of the *Overseers* Excuse, for not meeting once a Month, or not, as they see Cause. Stat. 43 Eliz. c. 2. §. 2. *Quorum* 1.

Overseers not accounting in four Days after the End of their Year. Stat. 43 Eliz. c. 2. §. 2. *Quorum* 1.

To be committed without Bail, till they account.

May upon Application by Warrant or Order authorize the Church-wardens or *Overseers* of the Poor, where any Wife, Child, &c. is left to the Parish, to seize so much of the Husband, Father or Mother's Goods, Chattels, Rents, &c. as may discharge the Parish, and provide for such Wife, Child, &c. Stat. 5 Geo. 1. c. 8. §. 1.

A P P E N D I X.

Offences.

Poor.

Penalties.

(Overseers.)

[Two Sess.] If such Warrant of two Justices be confirmed at the next Sessions, the Sessions may order the Church-wardens or Overseers to sell the Goods, &c. or receive the Rents, &c. as shall be necessary to discharge the Parish, &c. And they to account at the Sessions for what Money they receive on such Warrant. Stat. 5 Geo. 1. c. 8. §. 1, 2.

(Rates.)

[Two] To consent to the setting poor People to work; to the raising by Taxation a convenient Stock to work upon; and also Monies for relieving the Aged and Impotent, and putting forth Apprentices. Stat. 43 Eliz. c. 2. §. 1. *Quorum* 1.

Parson, and all Inhabitants who are able, are taxable to the Relief of the Poor. Stat. 43 Eliz. c. 2. §. 1. <i>Quorum</i> 1.	Such Tax is to be levied by Distress and Sale of Goods, and in Default to be committed without Bail, till it be discharged.
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Where any Parish is not able to relieve themselves, may tax other Parishes and Places, and the Hundred, if need be. Stat. 43 Eliz. c. 2. §. 3. *Quorum* 1.

The Rates set upon every Parish, at <i>Easter-Sessions</i> . Stat. 43 Eliz. c. 2. §. 13. <i>Quorum</i> 1.	To be levied by Distress and Sale, and Commitment <i>ut supra</i> .
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The Constable not paying the Monies rated at <i>Easter-Sessions</i> , to the High Constable. Stat. 43 Eliz. c. 2. <i>Quorum</i> 1.	Ten Shillings, to be levied by Distress and Sale of Goods; and in Default, to be committed without Bail, till it be discharged.
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The High Constable not paying the Monies above mentioned to the Treasurers. Stat. 43 Eliz. c. 2. <i>Quorum</i> 1.	Twenty Shillings, to be levied <i>ut supra</i> .
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[Two Sess.] To tax every Parish in the County, not above 6 *d.* or 8 *d.* a Week for every Parish, towards Relief of *Prisoners* in the Common Gaol; to be levied by the Church-wardens, and paid to the High Constables, and the High Constables to pay it to the Collector appointed by the Justices, upon the Penalty of 5 *l.* a-piece. Stat. 14 Eliz. c. 5. §. 2.

To provide a Stock to set poor *Prisoners* committed for Felony, and other Misdemeanors, to work, in such Manner as other County-Charges are levied; and to appoint Overseers, and order their Accounts, and punish Abuses. No Parish to be rated above 6 *d.* a Week. Stat. 19 Car. 2. c. 4. §. 1.

Where the whole Hundred is not able to relieve the Poor, the Justices, in Sessions, may tax the County in Part, or in Whole, at their Discretions. Stat. 43 Eliz. c. 2. §. 3.

At *Easter-Sessions*, yearly to rate every Parish at a certain Sum, to be paid weekly: No Parish to pay more than 6 *d.* nor less than a Halfpenny, towards Relief of poor *Prisoners* in the *Queen's Bench*, *Marshalsea*, *Hospitals* and *Alms-houses* in their Jurisdictions, every one respectively, to receive out of every County 20 *s.* yearly. Stat. 43 Eliz. c. 2. §. 14.

(Refusing to work.)

[Two] Such Persons as refuse to work. Stat. 43 Eliz. c. 2. §. 4. <i>Quorum</i> 1.	To be sent to the House of Correction. One Justice may do this, as well as two.
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(Registering Notice.)

[One] Church-wardens and Overseers, refusing to register Notice of poor Persons coming into a Parish, and not reading, or causing to be read such Notice. Stat. 3 & 4 W. & M. c. 11. §. 5. Two Witnesses upon Oath.	Forty Shillings, to be levied by Distress and Sale; and for want, to be committed for a Month.
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(Relief and Settlement, &c.)

[One] No Justice to order *Relief* to a poor Person, before Oath made before him, of a reasonable Cause for it, and that the Party had applied to the Parishioners at a Vestry, or to two Overseers, and was by them refused to be relieved; nor till he has summoned the two Overseers, to shew Cause why the Party should not be relieved, and the Person summoned heard, or made Default to appear. Stat. 9 Geo. 1. c. 7. §. 1.

Persons ordered to be relieved by such Justice, are to be registred in the Parish Books as other Poor, only as long as the Cause for Relief continues, and no longer.

Two or more Parishes (if small) may with Approbation of *one Justice*, under his Hand and Seal, unite in hiring a House, and for Lodging, Employing and Maintaining their Poor; and the Church-wardens, &c. of one Parish may contract with those of other Parishes for such Lodging, Maintenance, &c. *Ib.* §. 4. *Vide infra*.

A P P E N D I X.

Offences.

Poor.

Penalties.

(Relief and Settlement, &c.)

<p>[Two] No Officer of any Parish, (except on emergent Occasions) shall bring to the Parish Account, any Money he shall give to any Poor not registred <i>ut supra</i>. <i>Ibid.</i> §. 2.</p>	<p>5<i>l.</i> to the Poores Use, to be levied by Distress, &c. by Warrant of two Justices after Examination, &c.</p>
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Note; By the said Statute Church-wardens and Overseers of any Parish or Place may, with Consent of the major Part of the Inhabitants at a Vestry or Meeting, purchase or hire any House or Houses in such Parish or Place, and contract with Persons for Lodging, Keeping, or Employing the Poor, who are to have the Benefit of their Work and Labour for their better Maintenance. *Ibid.* §. 4.

<p>A poor Person refusing to be lodged or kept in such House. <i>Ibid.</i> §. 4.</p>	<p>To be struck out of the Parish Books, and have no Relief.</p>
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[Settlement] But no Poor, or their Children, Apprentices, &c. to gain any Settlement in the Parish or Place to which they are removed by Virtue of this Act. *Ibid.* §. 4.

None to acquire a Settlement in any Parish by reason of any Purchase therein, where the Consideration does not amount to 30*l.* for any longer than he dwells in the Estate purchased; but shall be liable to be removed to the Place last settled. *Ibid.* §. 5.

And Persons taxed to the Scavengers Rates, or Repairs of Highways, and paying the same, gain not thereby any Settlement. *Ibid.* §. 6.

[Qu. Sess.] No Appeal from any Order for Removal shall be proceeded on in any Court or Quarter-Sessions, unless reasonable Notice be given by the Church-wardens, or Overseers making the Appeal to the Church-wardens, &c. from whence such Poor are to be removed; and if due Notice be not given, the Justices shall adjourn the Appeal to the next Quarter-Sessions, and then finally determine it. *Ibid.* §. 8.

If the Appeal be determined in favour of the Appellants, the Quarter-Sessions are to order the Money expended for Relief of the poor Person, between the Time of his Removal and the Determination of the Appeal, to be paid to the Appellants; recoverable as prescribed by the Act of the 9*W.* 3. (which see before.) *Ib.* §. 9.

(Setting them to work.)

[One] Where there is but one Justice of the Peace, he may consent to the Church-wardens and Overseers of the Poores setting up, using and occupying any Trade, Mystery or Occupation, only for the setting on Work, and better Relief of the Poor of the Parish where they bear Office. Stat. 3*Car.* 1. c. 4. §. 22.

(Settlement and Removal.)

[One] Complaint is to be made to one Justice, by the Church-wardens or Overseers of the Poor, within Forty Days, of Persons like to be become chargeable to the Parish, who come to settle in a Tenement under 10*l.* per Ann. Stat. 13 & 14*Car.* 2. c. 12. §. 1.

Note; The Stat. 13 & 14*Car.* 2. c. 12. is now made perpetual by 12*Ann.* sess. 1. c. 18. §. 1.

<p>Persons returning to the Parish whence they were removed. Stat. 13 & 14<i>Car.</i> 2. c. 12. §. 3.</p>	<p>To be sent to the House of Correction.</p>
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<p>Church-wardens or Overseers refusing to receive any Person removed, and to provide for them. Stat. 13 & 14<i>Car.</i> 2. c. 12. §. 3.</p>	<p>To be bound to the Assises or Sessions, to be indicted for their Contempt.</p>
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<p>Church-wardens or Overseers refusing to receive any Person removed by two Justices. Stat. 3 & 4<i>W. & M.</i> c. 11. §. 10. Two Witnesses upon Oath.</p>	<p>Five Pounds for the Poor of the Parish from which he shall be removed, to be levied by Distress and Sale: For want, to be committed for Forty Days. The Warrant, by the Justice of the Place to which the Removal is directed, to the Constable where the Offender dwells.</p>
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[Two] Where any Poor come to settle in any Tenement under 10*l.* per Annum, they may remove such Person, who is likely to be chargeable to such Parish where he or they were last legally settled, either as a Native, Householder, Sojourner, Apprentice or Servant, for the Space of 40 Days at least, unless Security be given to discharge the Parish, to be allowed by the Justices. An Appeal lies to the next Quarter-Sessions.

Stat. 13 & 14*Car.* 2. c. 12. §. 1, 2.

1*Fac.* 2. c. 17. §. 3.

3 & 4*W. & M.* c. 11. §. 3.

12*Ann.* sess. 1. c. 18. §. 2. *Quorum* 1.

To allow Certificates under the Hands and Seals of the Church-wardens or Overseers of the Poor, attested by two or more Witnesses, owning the Person mentioned in the Certificate to be an Inhabitant legally settled, which Certificate is not good without their Allowance. Stat. 8 & 9*W.* 3. c. 30. §. 1.

A P P E N D I X.

Offences.

Poor.

Penalties.

(*Settlement and Removal.*)

But if the Person, who hath such Certificate, rents 10 *l. per Annum*, or bears an Office in any other Parish afterwards, that will gain a Settlement in that Parish, notwithstanding such Certificate. Stat. 9 & 10 *W. 3. c. 11. §. 1.*

And *Note*; Persons removing to other Parishes by Virtue of such Certificates, and taking Apprentices, or hiring Servants there, such Apprentices or Servants do not thereby acquire any legal Settlement in such Parishes. Stat. 12 *Ann. sess. 1. c. 18. §. 2.*

[Qui. Sess.] Upon an Appeal concerning the Settlement of the Poor, or upon Proof of Notice given of an Appeal, (though the Appeal was not afterwards prosecuted) to award reasonable Coſts to the Party, for whom such Notice had been given. Stat. 8 & 9 *W. 3. c. 30. §. 3.*

Appeals againſt an Order for the Removal of poor Persons, to be heard and determined at the Quarter-Sessions in the County where the Place is, from whence such Person is removed, and not elsewhere. Stat. 8 & 9 *W. 3. c. 30. §. 6.*

See this Statute explained by the 12 *Ann. sess. 1. c. 18. antea.*

See 3 *Geo. 2. c. 29. in Dalton, Tit. Poor.*

Offences.

Post and Post-Master.

Penalties.

[One] NO Person shall be capable of having, using or exercising the Office of *Post-Master General*, or any Part thereof, or any other Employment relating to the Post-Office or any Branch thereof, or be any Way concerned in receiving, sorting or delivering Letters or Packets, unless such Person shall have taken the Oath prescribed before one Justice for the County or Place where such Person resides. Stat. 9 *Ann. c. 10. §. 41.*

[Two] *Post-Master General*, or any other Officer relating to the Post-Office, not taking the Oaths of Allegiance and Supremacy before two Justices of the County where they are resident. Stat. 12 *Car. 2. c. 35. §. 13.*

Not capable to hold.

All Sums not exceeding 5 *l.* due for Postage of Letters, to be recovered before them in the same Manner, and under the same Rates, as small Tithes are. See Title *Tithes*, where you will see how small Tithes are to be recovered. Stat. 9 *Ann. c. 10. §. 30.*

Bill of Exchange wrote on one and the same Piece of Paper with a Letter, and Letters to several and distinct Persons wrote upon one and the same Piece of Paper, to be rated by the *Post-Master General*, and to pay as so many several and distinct Letters, according to the Rates mentioned in the Stat. 9 *Ann. c. 10. Stat. 6 Geo. 1. c. 21. §. 50.*

To be recovered as small Tithes are by 7 & 8 *W. 3. c. 6.*

For 4 *Geo. 2. c. 33. relating to the Penny-Post, see Dalton, Chap. 74. Tit. Post-Office.*

Offences.

Preachers.

Penalties.

[One] A Disturber of a Preacher lawfully licensed. Stat. 1 *Mar. sess. 2. c. 3. §. 5. Vide 10 Ann. c. 7.*

To be committed.

[Two] Disturbers of Preachers lawfully licensed. Stat. 1 *Mar. sess. 2. c. 3. §. 6.*

In six Days after Commitment by a single Justice, he and one other are to examine the Fact, and if they find Cause, to commit him to the common Gaol for three Months, and thence to the next Quarter-Sessions.

Vide Title Church, touching Preachers in Scotland.

[Qui. Sess.] If a Disturber of a Preacher lawfully licensed, who has been committed to the County-Gaol by two Justices, shall at the Sessions be reconciled, and enter into Bond for his good Behaviour for a Year, he shall be discharged; but if he persists in his Obstinacy, he is to be committed without Bail, till he be reconciled, and be penitent for his Offence. Stat. 1 *Mar. sess. 2. c. 3. §. 6.*

He that rescues a Disturber of a licensed Preacher. Stat. 1 *Mar. sess. 2. c. 3. §. 7.*

To be imprisoned and fined 5 *l.*

The Inhabitants of a Town, who suffer a Disturber of a licensed Preacher to escape. Stat. 1 *Mar. sess. 2. c. 3. §. 8.*

Five Pounds.

A P P E N D I X

Pretended privileged Places. See 9 *Geo. 1. c. 28.* and 11 *Geo. 1. c. 22.* in *Dalton*, Chap. 78. under this Title.

Prisons. See Gaols.

<i>Offences.</i>	<i>Process.</i>	<i>Penalties.</i>
<p>[One] TO commit to the County-Gaol, without Bail or Mainprize, till the next Assises, Sessions of Oyer and Terminer, and General Gaol-Delivery, Persons opposing or resisting any Officer or Officers, or any aiding and assisting in the Execution of any Process in <i>White-Fryars, Savoy, Salisbury-Court, Ram-Alley, Mitre-Court, Fuller's Rents, Baldwin's Gardens, Mountague-Close,</i> or the <i>Minories, Mint, Chink, or Deadman's Place.</i> Stat. 8 & 9 <i>W. 3. c. 27. §. 15.</i></p>		

<i>Offences.</i>	<i>Prophecies.</i>	<i>Penalties.</i>
<p>[Qu. Sess.] Publisher or Setter forth of any fantastical, or false Prophecy, with an Intent to raise Sedition. Stat. 5 <i>Eliz. c. 15. §. 2, 3.</i> Prosecution to be within six Months.</p>		<p>First Offence 10 <i>l.</i> and one Year's Imprisonment. Second, forfeits all his Goods, and Imprisonment during his Life. The Forfeitures to be divided between the Queen and the Prosecutor.</p>

<i>Offences.</i>	<i>Purveyors.</i>	<i>Penalties.</i>
<p>[One] Persons making Purveyance, or impressing Carriages, or other Things, by Colour of any Warrant under the Great Seal, or otherwise. Stat. 12 <i>Car. 2. c. 24. §. 14.</i> At the Request of the Party grieved.</p>		<p>To be committed to Gaol till next Sessions.</p>
<p>[Two] <i>Purveyor, Badger,</i> &c. bargaining for any Victual or Grain, in the Markets of <i>Oxford or Cambridge,</i> or in five Miles of them. Stat. 2 & 3 <i>P. & M. c. 15. §. 2. 13 Eliz. c. 21.</i></p>		<p>Quadruple the Value thereof, and three Months Imprisonment without Bail. Except when the Queen is there, or within seven Miles.</p>

<i>Offences.</i>	<i>Quakers.</i>	<i>Penalties.</i>
<p>[One] Instead of the Declaration of Fidelity appointed to be made and subscribed by <i>Quakers,</i> by 1 <i>W. & M. c. 18.</i> they are to make and subscribe the Declaration of Fidelity, mentioned in 8 <i>Geo. 1. c. 6.</i> And instead of the solemn Affirmation or Declaration prescribed by 7 & 8 <i>W. 3. c. 34.</i> they are to make the solemn Declaration or Affirmation following: <i>I A. B. do solemnly, sincerely, and truly declare and affirm.</i> And instead of the Form prescribed by 1 <i>W. & M. c. 18.</i> for the Effect of the Abjuration Oath, they are to take that mentioned in 8 <i>Geo. 1. c. 6.</i></p>		

Note; All Persons authorized to administer or tender either the said former Declaration, or the said solemn Affirmation or Declaration, or the said Effect of the Abjuration Oath aforesaid, are authorized and required to administer and tender the same respectively to *Quakers* in the Words appointed by the Stat. 8 *Geo. 1. c. 6. §. 4.*

<p>If any <i>Quaker,</i> making such Affirmation or Declaration, shall be lawfully convicted of wilfully, falsely and corruptly affirming or declaring any Matter or Thing, which if sworn in the common or usual Form, would have amounted to wilful and corrupt Perjury. 8 <i>Geo. 1. c. 6. §. 5.</i></p>	<p>Offender to suffer such and the same Pains, Penalties and Forfeitures, as are against Persons convicted of wilful and corrupt Perjury.</p>
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Note; Quakers or reputed Quakers are disabled to give Evidence in any criminal Cause, to serve on a Jury, or bear Office or Place in the Government, by 7 & 8 *W. 3. c. 34.* And 8 *Geo. 1. c. 6. §. 6.*

<i>Offences.</i>	<i>Quarentine.</i>	<i>Penalties.</i>
<p>NOTE; The 7 <i>Geo. 1. stat. 1. c. 3.</i> inserted under this Title in the Edition of this Book 1727. is expired</p>		

A P P E N D I X.

Offences.

Recusancy.

Penalties.

[**One**] IF the Minister, Petty Constables, or Church-wardens of any Parish, or any Two, complain of any Person (under the Peerage) suspected for Recusancy. Stat. 7 *Jac.* 1. c. 6. §. 26.

To tender the Oath of Allegiance, and upon Refusal, to commit till next Assize or Sessions, where if he refuseth again, he incurs a *Præmunire*; but Feme Converts shall be imprisoned only, to remain there, till they take the Oath.

[**Two**] To summon and convene before them all such Persons within their Jurisdictions, &c. suspected to be dangerous, or disaffected to the Government, and tender the Oath of Abjuration.

To certify the Christian Name, Surname, and Place of Abode to the next Quarter-Sessions; if he takes it not next Term, or Sessions after Certificate, is a Popish Recusant convict.

Upon Refusal. Stat. 6 *Ann.* c. 14. §. 7. *Quorum* 1.

Vide *Recusancy* in Title *Papists*.

Rents. See the Stat. 11 *Geo.* 2. c. 19. for the Powers of Justices of Peace in Relation to Rents, in *Dalton*, Chap. 81. under this Title.

Offences.

Riots and Rioters.

Penalties.

[**One**] IF twelve or more Persons are riotously and tumultuously assembled, he may by Proclamation require and command them to disperse themselves, and peaceably to depart to their Habitations, or to their lawful Business. Stat. 1 *Geo.* 1. c. 5. §. 1.

And if they continue together an Hour after, it is Felony without Clergy.

The Form of the *Proclamation*.

OUR Sovereign Lord the King chargeth and commandeth all Persons, being assembled, immediately to disperse themselves, and peaceably to depart to their Habitations, or to their lawful Business, upon the Pains contained in the Act made in the First Year of King George, for preventing Tumults and riotous Assemblies.

God save the King.

Every Justice within his Jurisdiction is required on Notice or Knowledge of any riotous and tumultous Assembly, to resort to the Place, and there to make or cause to be made Proclamation in Manner aforesaid. 1 *Geo.* 1. c. 5. §. 2.

Rioters demolishing, or pulling down, or beginning to demolish or pull down any Church or Chapel, or any Building for religious Worship, certified and registered according to the Stat. 1 *W. & M.* c. 18. or any Dwelling-house, Barn, Stable, or other Out-house. Stat. 1 *Geo.* 1. c. 5. §. 4.

Felony without Clergy.

Knowingly to let, hinder or hurt any Person beginning to make Proclamation, whereby such Proclamation shall not be made; and the Rioters, to whom it should have been made, if not hindred, not dispersing themselves, but continuing together an Hour after such Let or Hindrance. Stat. 1 *Geo.* 1. c. 5. §. 5.

Felony without Clergy.

The Stat. 1 *Geo.* 1. c. 5. against Rioters, to be read openly at every Quarter-Sessions. §. 7.

Note; All Prosecutions upon the Stat. 1 *Geo.* 1. c. 5. to be commenced in twelve Months. §. 8.

[**Two**] With the Sheriff or Under-Sheriff, shall by the Power of the County, suppress Riots, Routs, and unlawful Assemblies, upon View to record it, commit the Offenders, and return the Record into the *King's Bench*, by which they shall be convict: If the Offenders be gone, Inquiry to be made in a Month, and the Matter determined according to Law. The Penalty of not doing this, 100 Pounds. Stat. 13 *H.* 4. c. 7. §. 4.

Riots, &c. shall be suppress'd and inquired of, at the King's Charge, which the Sheriff is to disburse, by Indenture, between the Justices and him. Stat. 2 *H.* 5. c. 8. §. 2.

Persons guilty of heinous Riots. Stat. 2 *H.* 5. c. 8. §. 2.

One Year's Imprisonment, without Bail.

Together with the Sheriff, under their Hands and Seals to certify a Riot to the Lord Chancellor, to the End he may send out a *Capias* against the Rioters. Stat. 2 *H.* 5. c. 9. §. 2.

A P P E N D I X.

<i>Offences.</i>	Riot and Rioters.	<i>Penalties.</i>
To testify, That the common Fame runs in the same County of the same Riot, before a <i>Capias</i> shall be awarded, upon 6 <i>H.</i> 5. c. 9. Stat. 8 <i>H.</i> 6. c. 14. §. 2.		

If a Riot, &c. by Maintenance, or Embracery of the Jurors, be not found. Stat. 19 <i>H.</i> 7. c. 13. §. 11.	They, with the Sheriff, or Under-Sheriff, are to certify the Names of such Maintainers and Embracers, which shall be a Conviction; and they shall forfeit 20 <i>l.</i> a-piece, and to remain in Prison, at the Discretion of the Justices.
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<i>Offences.</i>	Robberies.	<i>Penalties.</i>
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[One] **T**O take the Oath of the Person robbed, whether he knows the Persons who robbed him, or any of them; and if he knows any of them, he is to enter into sufficient Bond to prosecute the Person or Persons, so by him known, by Indictment, or otherwise, according to Law. Stat. 27 *Eliz.* c. 13. §. 11.

To grant a Warrant to make Hue and Cry from Town to Town, and County to County, where a Robbery is committed. Stat. 28 *Ed.* 3. c. 11.

See the Statute of *Hue and Cry*, 8 *Geo.* 2. c. 16. in *Dalton*, Chap. 84. Tit. *Robbery*.

[Two] Two Justices dwelling within, or near the Hundred, where the Robbery is committed, shall set a Tax upon every Parish within the Hundred, for the Payment of the Money, whereof the Party is robbed. Stat. 27 *Eliz.* c. 13. §. 5. *Quorum* 1.

<i>Offences.</i>	Runaways.	<i>Penalties.</i>
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[Two] P ersons running away and leaving their Charge to the Parish. Stat. 7 <i>Jac.</i> 1. c. 4. §. 8. <i>Vide</i> Stat. 12 <i>Ann.</i> sess. 2. c. 4.	To be punished as incorrigible Rogues.
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Persons, who threaten to run away, and leave their Charge to the Parish. Stat. 7 <i>Jac.</i> 1. c. 4. §. 8.	To be sent to the House of Correction, there to be punished as sturdy Rogues, (unless they put in sufficient Sureties to discharge the Parish) and not to be delivered, but at a Meeting of the Justices, or in open Sessions.
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Vide Title **Bagabonds.**

<i>Offences.</i>	Sacrament.	<i>Penalties.</i>
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[Three] **T**O take Informations upon Oath, of two lawful Persons at least, against any Person, who shall speak or do any Thing in Contempt of the most Holy Sacrament; and to bind over by Recognizance, every Accuser and Witnesses in five Pounds a-piece, to appear at the next Sessions, and prosecute. Stat. 1 *Ed.* 6. c. 1. §. 1.

To send out two Writs, *Capias Exigend'* and *Capias Utlegal'*, against Contemners of the Holy Sacrament, in all Counties and Liberties; and upon their Appearance to fine and imprison them, or to take Bail for their Appearance, to be tried at Sessions. Stat. 1 *Ed.* 6. c. 1. §. 3.

To direct a Writ in the King's Name to the Bishop of the Diocese, where the Contemner of the Sacrament committed the Offence, by which Writ he shall be required to be present himself (or some for him sufficiently learned) at the Arraignment of the Offender, to give Advice concerning the Offence committed. Stat. 1 *Ed.* 6. c. 1. §. 4.

<i>Offences.</i>	Salt.	<i>Penalties.</i>
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[One] O wners of <i>Salt</i> seized, not making it appear before the next Justice, within ten Days after Seizure, by the Oath of one or more Witnesses, That the <i>Salt</i> was duly entred, and that there was a Warrant for carrying away the same. Stat. 5 & 6 <i>W. & M.</i> c. 7. §. 7.	The <i>Salt</i> shall be forfeited; one Moiety to the King, the other to him who seized, and the Owner shall forfeit double the Value.
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<i>Salt</i> not measured by a Bushel of Eight Gallons <i>Winchester</i> Measure, by fit Measurers, sworn and admitted by a Justice without Fee. Stat. 5 & 6 <i>W. & M.</i> c. 7. §. 18.	Double the Value of the <i>Salt</i> so measur'd.
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A P P E N D I X.

Offences.

Salt.

Penalties.

To take the *Affidavit* of the Quantity of *Rock-Salt*, melted and refined. Stat. 5 & 6 *W. & M. c. 7. §. 26.*

Persons removing or conveying any *Salt* from any *Salt-Works*, or Place thereunto belonging, without due Entry of the same, and Payment or Security, or without Warrant, Ticket or Licence, for removing the same. Stat. 1 *Ann. sess. 1. c. 21. §. 4.*

Due Proof.

Persons hindring or obstructing any Officer or Officers, for the *Salt-Duties*, in the Execution of his or their Offices, or shall beat or abuse them. Stat. 1 *Ann. sess. 1. c. 21. §. 4.*

Due Proof.

No *Salt* to be brought out of *Scotland* by Land. Stat. 2 & 3 *Ann. c. 14. §. 7.*

[Two] Officer having due Notice, and neglecting or refusing to attend weighing *Salt*, which is entred, to be put on Board any Ship or Vessel, or carried by Land, and the Duty paid or secured, and all other Monies due on Account of *Salt* delivered. Stat. 9 & 10 *W. 3. c. 6. §. 3.*

Party to be summoned.

Confession, or Two Witnesses.

Every Maker or Curer of White Herrings in that Part of *Great Britain* called *England, Wales, and Berwick upon Tweed*, before he remove any White Herrings (except for Exportation) from the Office or Place where cured, must enter them at the next *Salt-Office*, and pay the Duty. And the Quantity must be marked on the Cask, and upon the Entry and Payment of the Duty the *Salt-Officer* to give a Permit. Stat. 8 *Geo. 1. c. 16. §. 2.*

[Three] *Badger, Retailer*, or other Person, making, or dealing in *Salt*, or buying *Salt* to sell again, otherwise than by Weight, after the Rate of 56 Pounds Weight to the Bushel. Stat. 9 & 10 *W. 3. c. 6. §. 1.*

Party to be summoned, Confession, or Two Witnesses.

[Du. Sess.] To certify the Proof of *Salt* taken by the Enemy, or perished at Sea, in order for the Owners to have the Duty repaid, or Security delivered up. Stat. 12 *Ann. sess. 2. c. 2. §. 7.*

To be seized, and if not able to pay the Penalties, and no sufficient Distress, to be committed to the House of Correction, to be whipp'd and kept to hard Labour, not exceeding one Month.

Twenty Pounds; and for Non-payment, and in Default of Distress, to be committed to the House of Correction, to be whipp'd, and kept to hard Labour, not exceeding a Month.

The *Salt* forfeited, and 20 s. a Bushel; and if not paid, to be committed to the next Gaol, for six Months, without Bail or Mainprize.

Forty Shillings, to the Informer.

To be levied by Distress and Sale, unless redeemed in Six Days; and for Want of Distress, Imprisonment till Satisfaction be made.

An Appeal lies to the Quarter-Sessions.

The White Herrings removed or carried away before Entry and Duty paid, or Cask mark'd, forfeited; and 40 Shillings for every Cask or Vessel removed.

One Moiety to his Majesty, the other to the Officer who shall seize the same.

To be recovered, levied and mitigated in such Manner, as Penalties by any Law of Excise are recoverable.

Five Pounds to the Informer, to be levied by Distress and Sale, unless redeemed in Six Days; and for Want of Distress, Imprisonment, till Satisfaction be made.

An Appeal lies to the Quarter-Sessions.

Offences.

Scavenger.

Penalties.

[One] House-keepers in the County of *Middlesex*, and City of *Westminster*, which are within the *Weekly Bills of Mortality*, and in *Kensington*, not sweeping the Streets before their Houses, on *Wednesdays* and *Saturdays*. Stat. 2 *W. & M. c. 8. §. 2.*

View, Confession, or one Witness.

Persons laying, or suffering to be laid any *Sea-coal-Ashes, Duft, Dirt, &c.* in any open Street, Lane or Alley, before their own Houses, or any publick Places. Stat. 2 *W. & M. c. 8. §. 2.*

View, Confession, or one Witness.

Three Shillings and four Pence a Day, to be levied by Distress and Sale; if not paid within Six Days, to be committed till Payment.

This Penalty enlarged to 10 s. by Statute 8 & 9 *W. 3. c. 37.*

To be employed, if upon Conviction, by the Evidence; one Moiety to the Poor, the other to the Informer. If upon View, one Moiety to the Poor, the other to the Repair of the Highways.

Five Shillings, to be levied and employed *ut supra.*

A P P E N D I X

Offences.

Persons laying any Ashes, Dirt, or Soil, before the Houses or Walls of Inhabitants, or any Church-yard Wall, or the Queen's Palace; or throwing, or causing to be thrown into any common Sewer or Highway, or any private Vault, any noisome Thing whatsoever. Stat. 2 *W. & M. c. 8. §. 2.*

Conviction *ut supra.*

The respective Church-wardens, and the House-keepers, and other Keepers of *Whitehall, Somerset-houfe, St. James's House and Park*, the Guard-houses and Stables, &c. the Ushers, Porters, or Keepers of Courts of Justice. *Ibid.*

Persons hooping, washing, or cleansing any Vessels in Streets, Lanes, or open Passages; or setting any Dung, Soil, Rubbish, or empty Coaches to make or mend, or rough Timber, or Stones to be saw'd or wrought. Stat. 2 *W. & M. c. 8. §. 4.*

Conviction *ut supra.*

Rakers, Scavengers, &c. not bringing Carts, and by a Bell, or otherwise, giving Notice of their Coming, and not daily (except *Sundays* and *Holidays*) carrying away the Dirt, &c. Stat. 2 *W. & M. c. 8. §. 5.*

Conviction *ut supra.*

Inhabitants, and Owners of Houses unoccupied, not *Paving the Streets*, before their Doors. Stat. 2 *W. & M. c. 8. §. 8.*

Conviction *ut supra.*

Owners and Inhabitants of Houses new built, not *paving*, or otherwise amending the Ground before their Houses and Buildings. Stat. 2 *W. & M. c. 8. §. 7.*

Conviction *ut supra.*

Scavengers duly chosen, and refusing. Stat. 2 *W. & M. c. 8. §. 9.*

Conviction *ut supra.*

[**Two**] Scavengers Tax to be made, after a Pound-Rate, by Constables, &c. and other antient Inhabitants, for a Year, to be allowed by Two Justices, payable quarterly; and in Case of Refusal, to be levied by Distress and Sale; and for Want of Distress to be imprisoned till Payment. Stat. 2 *W. & M. c. 8. sess. 2. §. 10.*

Scavengers refusing to account within 28 Days after the Election of new Scavengers. Stat. 2 *W. & M. c. 8. sess. 2. §. 11.*

To be committed till they account, and pay over the Money in their Hands to the new Scavengers.

To appoint vacant Places, near the Streets, for the Scavengers, to lay the Dirt, &c. in giving Satisfaction to the Owners, and in Case of unreasonable Demand, to moderate the Price. Stat. 2 *W. & M. c. 8. §. 12.*

Note; If any Conviction upon the Stat. 2 *W. & M. c. 8.* or on the Stat. 8 & 9 *W. 3. c. 37.* shall be by View or Knowledge of a Justice of Peace, then one Half of the Penalty shall be to the Poor, the other towards repairing Highways, and cleansing the Streets, to be paid to the Scavenger, otherwise to the Relief of the Poor. Stat. 8 & 9 *W. 3. c. 37. §. 2.*

[**Qui. Scil.**] Justices of the Peace in any City or Market-Town (not having already Provision made for them by any former Law) at their General or Quarter-Sessions, may appoint *Scavengers*, and order the Repairing and Cleansing the Streets; and may appoint Persons, or make Assessments on Owners and Occupiers of Lands and Houses equally, not exceeding Six Pence in the Pound, to defray the Charges of such Scavengers, to be levied in Eight Days, by Distress and Sale. Stat. 1 *Geo. 1. c. 52. §. 9.*

This Clause is extended to Justices of Peace in Corporate Towns, by 9 *Geo. 2. c. 18.*

Scavenger.

Penalties.

Twenty Shillings, to be levied and employed *ut supra.*

To suffer the like Penalties for the like Offences, and to be levied and employed *ut supra.*

Twenty Shillings for every Offence, to be levied and employed *ut supra.*

Forty Shillings for every Offence, to be levied and employed *ut supra.*

Twenty Shillings a Rod or Perch for every Default, and Twenty Shillings a Week, till amended, to be levied and employed *ut supra.*

Forty Shillings for every Perch, and the like for every Week, till amended, to be levied and employed *ut supra.*

Ten Pounds, to be levied *ut supra*, and employed in Mending and Repairing the Highways and Streets of the same Parish.

Offences.

[**One**] **S**ervants to Clothiers, Woollen-Weavers, Tuckers, Fullers, Cloth-workers, Sheermen, Dyers, Hofiers, Taylors, Shoemakers, Tanners, Pew-terers,

Servants.

Penalties.

To be bound over to the Sessions. The Cause to excuse, must be proved by Two Witnesses.

A P P E N D I X

Offences.	Servants.	Penalties.
<p>terers, Bakers, Brewers, Glovers, Cutlers, Smiths, Farriers, Curriers, Sadlers, Spurriers, Turners, Cappers, Hat or Felt-makers, Fletchers, Arrowhead-makers, Butchers, Cooks, Millers, refusing to serve for Statute-Wages, and departing (being retained) without a Quarter's Warning, or lawful Cause, to be allowed by a Justice. Stat. 5 Eliz. c. 4. §. 9.</p>		
<p>Masters, being Clothiers, or any of the Trades above-mentioned, putting away his Servant without a Quarter's Warning, and good Cause to be allowed by a Justice, and proved by two Witnesses. Stat. 5 Eliz. c. 4. §. 8.</p>		<p>Forty Shillings, to be inflicted at Sessions, and they to be bound over.</p>
<p>One retained in Service to work, and departing without Licence. Stat. 5 Eliz. c. 4. §. 11.</p>		<p>One Month's Imprisonment.</p>
<p>To give a <i>Testimonial</i> under his Hand to Labourers, that they had not sufficient Work in the Place, where they dwell, that they might get Work in other Shires in the Time of Harvest, for which he may take one Penny. Stat. 5 Eliz. c. 4. §. 23.</p>		
<p>[Two] Servants assaulting Master, Mistress, Dame, or Overseer. Stat. 5 Eliz. c. 4. §. 21.</p>		<p>One Year's Imprisonment, or less, or to be bound over to the Sessions, there to receive such open Punishment, as shall be thought convenient, Life and Member excepted.</p>
<p>Unmarried Women fit to serve, being above 12, and under 43, refusing to serve for convenient Time and Wages. 5 Eliz. c. 4. §. 24.</p>		<p>Imprisonment.</p>
<p>To hear and determine the Breach of 5 Eliz. c. 4. upon Indictment, or otherwise, and award Process and Execution accordingly. The Forfeitures (except those otherwise limited) to be divided between the Queen and Prosecutor. Stat. 5 Eliz. c. 4. §. 39.</p>		
<p>[Qu. Sess.] Servants to Clothiers, &c. refusing to serve for the Wages limited, according to the Statute; and being retained, departing his or their Service without a Quarter's Warning, or some lawful Cause. Stat. 5 Eliz. c. 4. §. 9.</p>		<p>To be imprisoned without Bail, but upon Submission to perform the Service, to be enlarged without Fees.</p>
<p>A Servant having served in one City or Town, and getting to serve in another, without a Testimonial. Stat. 5 Eliz. c. 4. §. 11.</p>		<p>To be imprisoned till he procure one; if he procure it not in 20 Days, to be whipped as a Vagabond.</p>
<p>A Master taking a Servant without a Testimonial. Stat. 5 Eliz. c. 4. §. 11. Vide <i>Wages</i>.</p>		<p>Five Pounds.</p>

Offences.	Sewers.	Penalties.
<p>[Str] A Fter the End of ten Years, all Laws, Ordinances, and Constitutions, made by Virtue of any Commission of <i>Sewers</i>, shall be in Force for one Year; and Six Justices may execute such Commission, and Law, &c. unless in the Interim a new Commission issues. Stat. 13 Eliz. c. 9. §. 2. <i>Quorum</i> 2.</p>		
<p>[Qu. Sess.] To swear the Commissioners of <i>Sewers</i>. Stat. 23 H. 8. c. 5. §. 5.</p>		

Offences.	Sheep.	Penalties.
<p>[Qu. Sess.] H E that keeps in his own Possession at any one Time above 2000 Sheep. Stat. 25 H. 8. c. 13. §. 1. The Prosecution for the King to be within three Years; for a Subject, within one.</p>		<p>Three Shillings and four Pence a-piece. Lambs not to be accounted Sheep till <i>Midsummer</i> twelve Months after their Fall. 1000 Sheep to be reckoned after the Rate of 120 to the 100. Executors, Infants, Spiritual Persons, or Temporal Persons, for House-Provisions, exempted.</p>

A P P E N D I X

Offences.	Sheep.	Penalties.
<p>Transporting Sheep beyond Sea. Stat. 8 Eliz. c. 3. §. 2.</p>	<p>Sheep.</p>	<p>First Offence, Forfeiture of Goods, to be divided between the Queen and the Prosecutor. To be imprisoned for a Year, and to have his Hand cut off in some open Market. Second Offence, Felony.</p>

Offences.	Sheriff.	Penalties.
<p>[One] Sheriff, Under-Sheriff, or Sheriff's Clerk, entering in the County-Court any Plaint in the Absence of the Plaintiff, or his Attorney, or having above one Plaint for one Cause. Stat. 11 H. 7. c. 15.</p>	<p>Sheriff.</p>	<p>Forty Shillings, to be divided between the King and the Prosecutor. To examine this Matter, and if the Party be found guilty, to certify the Examination into the <i>Exchequer</i>, within three Months, on Pain of 40 s. The Certificate is a Conviction.</p>
<p>[Qui. Sess.] Sheriffs, Under-Sheriffs Clerks, Bailiffs, Gaolers, Coroners, Stewards, Bailiffs of Franchises, and all other Officers, who act contrary to Stat. 23 H. 6. c. 10. §. 1.</p>	<p>Sheriff.</p>	<p>40 l. to be divided between the King and the Prosecutor <i>ut supra</i>.</p>

The Justices, who are to have the Controlment of the Sheriff, and his Estreats, are to be named in *Michaelmas* Sessions, by the *Custos Rotulorum*, or (in his Absence) by the Eldest of the *Quorum*. Stat. 11 H. 7. c. 15.

<p>Sheriffs, Coroners, and other Persons having Return of Writs, not returning Jurors, and not levying Issues, according to Stat. 27 Eliz. c. 7. §. 2.</p>	<p>Five Marks to the Queen, upon Conviction, Procefs to issue for the Levying of it.</p>
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<p>Every Bailiff of a Franchise, Deputy, or Clerk of a Sheriff, or Under-Sheriff, intermeddling with their Offices before they are sworn. Stat. 27 Eliz. c. 12. §. 4.</p>	<p>40 l. to be divided between the King and the Prosecutor; upon Conviction to award Procefs.</p>
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Note; The *Original Poll-Books*, &c. of Elections of Knights of the Shire, are to be delivered on Oath by the Sheriffs, or Returning Officers, to the Clerk of the Peace, and by him kept among the Records of the Sessions of the Peace. Stat. 10 Ann. c. 23. §. 5.

Vide Title **FoRcible Entry** and **Detainer**, Title **Oath**, and Title **Wages of Knight of the Shire**.

Offences.	Ships.	Penalties.
<p>[Two] Persons entering Ships in Distress, without Leave of the Commander, (except Officers of the Customs, Constables, or others by their Order) or shall molest the Assistants, or endeavour to hinder the Saving of the Ships or Goods, or when saved, deface the Marks of any Goods before taken down in a Book. Stat. 12 Ann. sess. 2. c. 18. §. 3.</p>	<p>Ships.</p>	<p>Shall within twenty Days after make double Satisfaction to the Party grieved, at Discretion of two next Justices; or in Default, be by them sent to the next House of Correction to hard Labour for twelve Months ensuing.</p>
<p>[Three] Persons assisting Ships in Distress, and preserving the same, or their Cargoes, to be paid by the Commander, Master or Owner, within 30 Days after, a reasonable Reward for their Service. Stat. 12 Ann. sess. 2. c. 18. §. 2.</p>	<p>Ships.</p>	<p>In Default, the Ship, &c. to remain in Custody of the Officer of the Customs, till all Assistants be reasonably gratified; and in Case of Disagreement, three near Justices named by the Officer, shall adjust the <i>Quantum</i> to be paid each Assistant.</p>

And if no Person claims the Goods, the chief Officer of the nearest Port to apply to Three of the nearest Justices, who are to put him, or some other responsible Person, in Possession of the Goods, taking an Account in Writing thereof, to be signed by the said Officer, and if *perishable*, sold presently, or else kept a Year. 12 Ann. sess. 2. c. 18. §. 2.

Made perpetual 4 Geo. 1. c. 12.

Offences.	Shoemakers.	Penalties.
<p>[Qui. Sess.] Shoemakers not making their Boots, &c. of good and sufficient Stuff, nor sewing them well, and selling on <i>Sunday</i>. Stat. 1 Jac. 1. c. 22. §. 28.</p>	<p>Shoemakers.</p>	<p>3 s. 4 d. for every Offence, and the Value of the Wares made and sold, to be divided one Third to the King, one to the Prosecutor, and the other to the City, Borough, Town or Lord of the Liberty, where the Offence is committed</p>

APPENDIX.

Offences.

Shoemakers.

Penalties.

In London, the Master and Wardens of the Company of Shoemakers, Curriers, Girdlers and Sadlers, to search every Quarter at least, and view all Wares made of tanned Leather, and to seize all insufficient Wares. Stat. 1 Jac. 1. c. 22. §. 29.

Forty Shillings for every Year's Default, to be divided between the King and Prosecutor.

See 9 Geo. 1. c. 27. in Dalton, Chap. 58. Tit. Labourers.

Offences.

Silk.

Penalties.

[One] Silk-winders, and Doublers, unjustly purloining, imbezilling, pawning, selling, or detaining Silk, delivered by Silk-throwers, and the Buyers and Receivers of such Silk. Stat. 13 & 14 Car. 2. c. 15. §. 7. 20 Car. 2. c. 6. §. 3.

To pay such Recompence and Satisfaction for Damage, Loss, and Charges, as he shall order, not exceeding what the Party proves: If the Party be not able to make Satisfaction, or if he be, and do it not in 14 Days, to be whipped and set in the Stocks.

Confession, or one Witness.
This extends to all Persons, who shall imbezil, pawn, sell, or detain any Silk delivered to any Silk-Manufacturers, Agents, Journeymen, Wapers, and Winders, by Stat. 8 & 9 W. 3. c. 36. §. 6.

To be committed to Prison, or House of Correction; till Satisfaction be made, or Punishment inflicted.

Offences.

Silk-thrower.

Penalties.

[Qu. Sect.] Exercising the Trade of a Silk-thrower, not having served seven Years. Stat. 13 & 14 Car. 2. c. 15. §. 2.

40 s. a Month; one Moiety to the King, the other to the Prosecutor.

Offences.

Smugglers or Runners of Foreign Goods.

Penalties

[One] Persons who shall be found passing (knowingly and wittingly) with any Foreign Goods or Commodities landed from any Ship or Vessel, without the due Entry, and Payment of the Duties in their Custody, from any of the Coasts of this Kingdom, or within 20 Miles of any of the said Coasts; and shall be more than five Persons in Company, or shall carry any offensive Arms or Weapons, or wear any Vizard, Mask, or other Disguise, when passing with such Goods, or shall forcibly hinder or resist any Officer of the Customs or Excise, in the Seizing Run-Goods, are, Stat. 8 Geo. 1. c. 18. §. 6.

Guilty of Felony, and to be transported for seven Years, to some of his Majesty's Plantations or Colonies in America.

Returning into Great Britain or Ireland, before the Expiration of Seven Years.

Felony without Benefit of Clergy.

Persons Receiving or Buying any Goods, Wares, or Merchandizes, clandestinely run or imported, before the same shall have been legally condemned, knowing the same to be so clandestinely run or imported.

Forfeit Twenty Pounds, to be levied by Distress and Sale, &c.

One or more credible Witnesses, or Confession. Stat. 8 Geo. 1. c. 18. §. 10.

And for Want of Distress, to be committed to Prison without Bail or Mainprize for three Months.

One Moiety of the above Penalty to the Informer, the other to the Poor of the Parish where the Offence committed.

[Two] All Seizures of Vessels or Boats of 15 Tuns, or under, which shall be made by Virtue of the Act 8 Ann. For granting to her Majesty new Duties of Excise, &c. And of an Act for Continuing several Impositions, &c. to raise Money by Loan for the Service of the Year 1710. or of any other Act relating to the Revenue of Customs, for carrying uncustomed or prohibited Goods from Ships, inwards, or for relanding Certificate or Debentur Goods from Ships, outwards: And all Seizures of Horses, or other Cattle, or Carriages whatsoever, for being used in the Removing, Carriage, or Conveyance of such Goods contrary to the said Acts. Stat. 8 Geo. 1. c. 18. §. 16.

To be examined into, proceeded upon, heard, adjudged, and determined by two or more Justices, residing near the Place where such Seizure shall be made, whose Judgment is final, and not liable to Appeal, or Certiorari.

A P P E N D I X.

Offences.

Smuglers or Runners of Foreign Goods.

Penalties.

Note; Justices of *London* and *Westminster* have the like Power in Summoning, Examining, &c. such Seifures, made in the said Cities, as Justices of any other County or Place have. *Ibid.* §. 17.

See 12 *Geo.* 1. c. 28. and 9 *Geo.* 2. c. 35. in *Dalton*, Tit. *Customs*, Chap. 33.

Offences.

Soldiers and Mariners.

Penalties.

[*Qui. Sess.*] A Soldier listed *departing* without Licence. Stat. 7 *H.* 7. c. 1. §. 2. Stat. 2 & 3 *Ed.* 6. c. 2. §. 6.

The Trial to be in the County where he is apprehended.

Felony without Benefit of Clergy.

To charge every Parish towards a weekly Relief of maimed *Soldiers* and *Mariners*, so as no Parish pay weekly above 10 *d.* nor under 2 *d.* nor any County, which consists of above 50 Parishes, pay above 6 *d.* one Parish with another. Stat. 43 *Eliz.* c. 3. §. 6.

Upon a Certificate under the Hand and Seal of the chief Commander, or of the Captain under whom a *Soldier* or *Mariner* served, a quarterly Pension is to be allowed him, till revoked or altered; he who hath not born Office, not to exceed 10 *l.* An Officer under a Lieutenant 15 *l.* A Lieutenant 20 *l.* Stat. 43 *Eliz.* c. 3. §. 8.

A Person commanded to muster, absenting himself without lawful Excuse, or not bringing his best Arms. Stat. 4 & 5 *P. & M.* c. 3. §. 2.

Ten Days Imprisonment without Bail, unless he agrees to pay 40 *l.* to be estreated into the *Exchequer*.

Any Person authorized to muster or levy Soldiers, exacting or taking any Reward to discharge, or spare any from the Service. Stat. 4 & 5 *P. & M.* c. 3. §. 3.

Ten Times so much as he shall exact, or take; one Moiety to the Crown, the other to the Prosecutor.

A *Captain*, or other Officer, after he shall have (for a Reward) licensed a *Soldier* to depart, not paying him his Wages, and Coat, and Conduct-Money. Stat. 4 & 5 *P. & M.* c. 3. §. 4.

Ten Times so much as he shall take, to be divided between the Crown and the Prosecutor, and to the *Soldier* three Times so much as he should have paid him.

See the annual Act for punishing Mutiny and Desertion, &c.

Offences.

Spirits.

Penalties.

[*Qui. Sess.*] Servants and others wittingly and willingly assisting in making Spirits, &c. contrary to Stat. 10 & 11 *W.* 3. c. 4. §. 1.

Six Months Imprisonment, without Bail or Mainprife.

See **Wandy and Spirits.**

Offences.

Squibs.

Penalties.

[*Que*] NO Person of what Age, Sex, Degree or Quality soever, to make, sell, or utter, or offer, or expose to Sale any *Squibs*, *Rockets*, *Serpents* or other *Fireworks*; or to permit or suffer any *Squibs*, &c. to be cast, thrown, or fired out of, or in their Houses or Lodgings, or any Part or Place thereto adjoining, into any publick Street, &c. or to throw, cast, or fire, or to be aiding and assisting in Throwing, &c. any *Squibs*, &c. in or into any Street, &c. is a common Nufance. Stat. 9 & 10 *W.* 3. c. 7. §. 1.

Persons making, or causing to be made, giving, selling or uttering, or offering, or exposing to Sale any *Squibs*, &c. Stat. 9 & 10 *W.* 3. c. 7. §. 2. Confession, or two Witnesses.

Five Pounds, to be levied by Distress and Sale, one Half to the Poor, the other to the Prosecutor.

Persons permitting, or suffering any *Squibs*, &c. to be cast, thrown, or fired from out of, or in his, her, or their House or Houses, Shops, Dwelling or Habitation, or any Part thereof, into any Street, &c. Stat. 9 & 10 *W.* 3. c. 7. §. 2. Conviction *ut supra*.

Twenty Shillings, to be levied and employed *ut supra*.

Persons throwing, casting or firing, or being aiding and assisting in Throwing, &c. any *Squibs*, &c. Stat. 9 & 10 *W.* 3. c. 7. §. 3. Conviction *ut supra*.

Twenty Shillings, to be employed *ut supra*; and if not paid immediately to the Justice, the Party to be committed to the House of Correction, to hard Labour, not exceeding a Month, unless the Offender shall sooner pay the Money.

Note; This Act extends not to the Master of the Ordnance, nor to the Artillery Company.

A P P E N D I X.

Offences.

Stamp-Duties.

Penalties.

[**One**] **C**ounterfeiting or forging Stamps made in Pursuance of the several Statutes.

Felony without Benefit of Clergy.

To cause or procure to be forged or counterfeited any *Stamp* or *Mark*, to resemble any *Mark* or *Stamp*, provided, made, or used in Pursuance of this, or any Act, relating to the Stamp-Duties; or to cause or procure any Vellum, Parchment, Paper, Cards, or Dice, to be marked or stamped, with such counterfeit Stamp, or *Mark*. Stat. 6 *Geo. 1. c. 21. §. 60.*

Felony without Benefit of Clergy.

[**Two**] If any Person shall write or print any Surrender or Admittance of or to any Copyhold Estate in *Great Britain* or *Wales*, or any Grant or Lease by Copy of Court-Roll, &c. (except the Surrender to the Use of a Will) or any Matter directed to be stamp'd, by 10 *Ann. c. 19.* or shall sell or expose to Sale any Pamphlet or News-paper (excepting Pamphlets exceeding one whole Sheet) before the same shall be stamped, the Offender forfeits. 10 *Ann. c. 19. §. 105.*

Ten Pounds, with full Costs for every Offence. One Moiety to the Crown, the other Moiety, with full Costs, to the Prosecutor. §. 119, 120.

Every Steward, or his Deputy, offending, and being convicted. *Ibid.*

Over and above the said Forfeiture, shall lose his Place; and such Writing is not good, and shall not be given in Evidence, until five Pounds together with the Ten, be paid, and a Receipt be produced under the Hand of the Receiver General of the Stamp-Duties, or his Deputy, and until the Vellum, &c. be stamped.

Persons writing or printing any Thing on stamped Paper, after the Crown shall think fit to alter or renew the Stamps, after the Expiration of sixty Days, after such Intention of Altering or Renewing shall be published by Proclamation. 5 & 6 *W. & M. c. 21. §. 16.*

Forfeit as Persons writing on Paper not stamped.

Printer and Publisher of any Pamphlet of more than one Sheet, and the Duty not paid, and the Title of it registred, and one Copy not stamped within the Time limited by the said Statute. 10 *Ann. c. 19. §. 112.*

Twenty Pounds, with full Costs. One Moiety to the Crown, the other Moiety, with full Costs, to the Prosecutor. §. 119, 120.

And the Author, Printer and Publisher to lose the Property in the Copy, though the Title thereto be registred in *Stationers Hall*; and any Person may freely print and publish the same, paying the Duty, without being liable to a Prosecution.

All Pamphlets must have the Printer's or Publisher's Name printed thereon. *Ibid. §. 113.*

Twenty Pounds for every Offence *ut supra.*

Two or more Justices, residing near the Place where any Pecuniary Forfeiture, not exceeding Twenty Pounds, upon this or any of the Acts of Parliament, touching the Duties under the Management of the Commissioners for managing the Duties on stamped Vellum, Parchment and Paper, shall be incurred, to hear and determine the same, within one Year after Seizure made, or Offence committed in a summary Way. And to award and issue out Warrants for levying the Penalties, adjudged on the Offender's Goods, and to cause them to be sold, unless redeemed within six Days, rendering the Overplus. *Ibid. §. 172.*

Q. Whether the Party offending may not be committed (if he has no Goods whereon to levy) till he pay the Penalty.

In their Discretions.

Justices may mitigate Penalties as they shall think fit, the reasonable Costs and Charges of the Officers and Informers being first allowed over and above such Mitigation, and so as it does not reduce the Penalties to less than double the Duties, over and above the Costs and Charges. *Ibid. §. 173.*

[**Qu. Sess.**] Persons aggrieved by the Sentence of two Justices, may appeal to the next Quarter-Sessions, who may examine Witnesses on Oath, and finally determine the same, and issue Warrants to levy. *Ibid. §. 173.*

Note; No *Writ* or *Certiorari* lies to supersede Execution or other Proceedings upon any Order made in Pursuance of the above Statute. *Ibid. §. 174.*

Journals, Mercuries and News-papers, printed on one Sheet and Half-Sheet of Paper, shall not for the future be deemed or taken as Pamphlets, to be entred, and pay only three Shillings for each Impression thereof.

There

A P P E N D I X.

Offences.

Stamp-Duty.

Penalties.

There shall be paid for every Sheet of Paper, on which any Journal, Mercury, or other News-paper whatsoever shall be printed, a Duty of one Penny; and for every Half-Sheet, one Halfpenny, during the Term mentioned in the Act 10 *Ann.*

These Duties shall be levied in the same Manner, and subject to the same Penalties, &c. as are contained in the said Act 10 *Ann.* or any other Act relating to those Duties. 11 *Geo. 1. c. 8. §. 13, 14, 15.*

Offences.

Starch and Hair Powder.

Penalties.

NOTE; The Penalties in relation to the Duties on Starch and Hair Powder, shall be recovered or mitigated, by such Ways as any Penalty may be by any Law of Excise, or by Action in any Court at *Westminster, &c.* And one Moiety of such Penalties (not otherwise directed by the Acts) shall be to the Crown, the other Moiety to him that shall sue. See the Statutes 10 *Ann. c. 26.* 12 *Ann. stat. 2. c. 9.* 4 *Geo. 2. c. 14.*

Offences.

Stolen Goods.

Penalties.

[One] **T**AKING Money or Reward, directly or indirectly, under Pretence, or upon Account of helping any Person to any stolen Goods or Chattels, unless such Person doth apprehend, or cause to be apprehended such Felon who stole the same, and bring him to Trial, and give Evidence against him. Stat. 4 *Geo. 1. c. 11. §. 4.*

Guilty of Felony, and to suffer in the same Manner, as if he had stole such Goods himself.

[Two] Whoever shall discover, apprehend, and prosecute to Conviction of Felony without Benefit of Clergy, any Person for taking Money, or other Reward, directly or indirectly, to help any Person to stolen Goods (such Offender not having apprehended the Felon who stole the same, and brought him to Trial for the same, and given Evidence against him) upon a Certificate under the Hand and Seal of the two next Justices, shall receive the Sum of 40*l.* to be paid by the Sheriff. Stat. 6 *Geo. 1. c. 23. §. 9.*

Penalty of Forty Pounds, to be recovered by Action of Debt, &c. on any Person taking more than five Shillings for a Certificate.

Note; The Reward of Forty Pounds for apprehending and convicting any Person for Burglary, to be paid without any Deduction as aforesaid. §. 10.

Offences.

Subornation of Perjury.

Penalties.

[Qu. Sess.] **S**UBORNING a Witness to give Testimony in any Court of Record, concerning any Lands, Goods, Debts, or Damages. Stat. 5 *Eliz. c. 9. §. 3.*

Forty Pounds, and if he has not wherewith to satisfy the same, six Months Imprisonment, without Bail, to stand upon the Pillory in the same or next Market-Town where the Offence was committed, and disabled to give Testimony in any Court of Record, till the Judgment be reversed by Attaint, or otherwise.

Note; One Justice may bind over, or commit the Offender.

See 2 *Geo. 2. c. 25.* in *Dalton*, Chap. 70. Tit. *Perjury.*

Offences.

Sunday.

Penalties.

[One] **P**ERSONS being present at Bear-baitings, Bull-baitings, Interludes, common Plays, and any other unlawful Pastimes on the Lord's Day. Stat. 1 *Car. 1. c. 1. §. 4.*

Three Shillings and four Pence for the Poor, to be levied by Distress, &c. in Default, to sit in the Stocks three Hours.

View, Confession, or one Witness.
Prosecution in one Month.

Carrier, Waggoner, Carman, Wainman, or Drover, travelling on the Lord's Day about their respective Business. Stat. 3 *Car. 1. c. 1. §. 2.*
View, Confession, or two Witnesses.
Prosecution in six Months.

Twenty Shillings for every Offence, to be levied and employed *ut supra.*
Third Part may be allowed to the Prosecutor.

Persons of the Age of 14 Years, and upwards, doing any worldly Labour or Business on the Lord's Day,
Works

Five Shillings to the Poor, to be levied by Distress and Sale; if not able, to be set in the Stocks two Hours.
The

APPENDIX.

Offences.	Sunday.	Penalties.
<p>Works of Charity and Necessity only excepted. Stat. 29 <i>Car. 2. c. 7. §. 1.</i> View, Confession, or one Witness.</p>		
<p>Persons publickly crying, or exposing to Sale any Wares, except Milk. Stat. 29 <i>Car. 2. c. 7. §. 1.</i> Conviction <i>ut supra.</i> View, Confession, or one Witness.</p>		<p>The Wares to be seized, and sold for the Poor.</p>
<p>Drovers, Horse-Courfers, Waggoners, Butchers, Higl-ers, or their Servants, travelling on the Lord's Day. Stat. 29 <i>Car. 2. c. 7. §. 2.</i> Conviction <i>ut supra.</i></p>		<p>Twenty Shillings, to be employed <i>ut supra</i>; to be levied by Distress and Sale; if not able, to be set in the Stocks two Hours.</p>
<p>Persons using or travelling on the Lord's Day, with Boat, Wherry, &c. except allowed by a Justice, &c. Stat. 29 <i>Car. 2. c. 7. §. 2.</i> Conviction <i>ut supra.</i></p>		<p>Five Shillings, to be levied and employed <i>ut supra</i>; and if not able, punished <i>ut supra.</i> A Part of the Penalties in this Act, not exceeding a Third, may be given to the Informer.</p>
<p><i>Vide Shoemakers and Butcher.</i></p>		

Offences.	Swearing and Cursing.	Penalties.
<p>[One] Persons profanely Swearing or Cursing. Stat. 21 <i>Jac. 1. c. 20. §. 1.</i> Hearing of a Justice, Confession, or two Witnesses.</p>		<p>Twelve Pence for the Poor, to be levied by Distress, &c. or in Default, to be set in the Stocks three Hours, if the Offender be above 12 Years old; but if under, and not paying, to be whipped by the Constable, or the Parent or Master, in the Constable's Presence.</p>
<p>Servants, Labourers, common Soldiers, common Seamen, profanely swearing and cursing in the Presence or Hearing of a Justice of Peace. Every other Person. Stat. 6 & 7 <i>W. 3. c. 11. §. 1.</i> Confession, or one Witness. Prosecution to be in ten Days.</p>		<p>One Shilling for the first Offence, for the Second double, for the Third treble, to the Use of the Poor. Two Shillings first, second and third, <i>ut supra</i>, to the same Use, to be levied by Distress and Sale; if no Distress, to be set in the Stocks one Hour for one Offence, two Hours for more, if above 16 Years of Age; if under, to be whipped.</p>
<p>Justice omitting or neglecting to put in Execution the Act immediately above mentioned. Stat. 6 & 7 <i>W. 3. c. 11. §. 3.</i> Prosecution <i>ut supra.</i></p>		<p>Five Pounds.</p>
<p>Parson not reading the last mentioned Act, the next Sunday after every Quarter-Day, yearly, immediately after Morning Prayer. Stat. 6 & 7 <i>W. 3. c. 11. §. 6.</i> Prosecution <i>ut supra.</i></p>		<p>Twenty Shillings for every Omiffion.</p>
<p>To register in a Book all Convictions upon Stat. 6 & 7 <i>W. 3. c. 11.</i> and the Time, and certify the same to the Quarter-Sessions. Stat. 6 & 7 <i>W. 3. c. 11. §. 7.</i></p>		

Offences.	Tanners.	Penalties.
<p>[One] TO administer an Oath to Tanners, and Dressers of Hides in <i>England</i>, That they did, within two Days after taking Hide, or Skin, or Pieces thereof, or Vellum, or Parchment, out of Wooze, Mill, Liquor, or other Materials, make a true Entry, with the proper Officer, of the Number and Quality of the Hides, &c. so taken out to be dried. Stat. 9 <i>Ann. c. 11. §. 16.</i></p>		
<p>To administer an Oath to Tanners, &c. that they give Notice to the proper Officer two Days before Removal of Hides, &c. Stat. 9 <i>Ann. c. 11. §. 16.</i></p>		
<p>[Two] Tanner, or other Person, shaving, or causing to be shaved, Hide or Calf-Skin before tanned, where- by it shall be impaired, or Duty diminished. Prosecution in three Months.</p>		<p>Every such Hide, or Skin, or the Value, forfeited. One Moiety to the Queen, the other to the Informer. Justices may mitigate, so as the reasonable Costs and Charges in Prosecution be allowed over and above such</p>
2	An	Miti-

A P P E N D I X.

Offences.

Tanners.

Penalties.

An Appeal to the next Quarter-Sessions. Stat. 9 Ann. c. 11. §. 11.

Mitigation, so as the Penalty be not reduced to less than one fourth Part. §. 37.
To continue for 32 Years.

Vide the Definition of tanned Hides or Skins, Pieces of Hides or Skins, Leather dressed in Oil, &c. and tawed Leather, in Stat. 9 Ann. c. 11. §. 3.

Tanners, Bazil-Tanners, Curriers, Tawers, *Spanish* Leather-Dressers, and all other Dressers of Hides or Skins, or Pieces of Hides or Skins, and all Makers of Vellum and Parchment, neglecting to give Notice in Writing to the proper Officer, of their respective Names and Places of Abode, and Tan-houses, Yards, Work-houses, Mills, or other Places for Tanning, Tawing, or Dressing any such Hides, or Skins, or Pieces thereof.

Fifty Pounds; one third Part to the Queen, the other two Thirds to the Informer.

Prosecution and Appeal *ut supra*. Stat. 9 Ann. c. 11. §. 15.

Owners, or Occupiers of Tan-Yards, &c. refusing the proper Officer to enter.

Ten Pounds, to be divided *ut supra*.
Mitigation *ut supra*.

Prosecution and Appeal *ut supra*. Stat. 9 Ann. c. 11. §. 17.

Tanners, Tawers, Curriers, or Dressers of any Hides, or Skins, or Pieces thereof; or any Makers of Vellum or Parchment, using any private Tan-yard, &c. or not giving timely Notice of taking the Hides, &c. out of the Wooze, &c. or Removing, Sending, or Carrying away the same, or any Part thereof; or hiding or concealing any Skins, &c. or causing the same to be hid or concealed.

Twenty Pounds, and the Forfeiture of the Skins, &c. or the Value thereof; one Moiety to the Queen, the other to the Informer.
Mitigation *ut supra*.

Prosecution and Appeal *ut supra*. Stat. 9 Ann. c. 11. §. 17.

Tanners, &c. not paying the Duties, with which Hides, Skins, &c. are chargeable.

Double the Duty.
Double the Value of such Hides so delivered, or carried out.
To be divided *ut supra*.
Mitigation *ut supra*.

Sending, delivering, or carrying out any Hides, &c. before the Duty is paid.

Prosecution and Appeal *ut supra*. Stat. 9 Ann. c. 11. §. 25.

Tanners, &c. not keeping just Scales and Weights, or not permitting Hides, &c. to be weighed, or neglecting to bring the same to the Scale; or to assist at the Weighing, or removing Hides, &c. or causing them to be removed, before the Duties be charged, and the Skins, &c. marked.

Fifty Pounds, to be divided *ut supra*.
Mitigation *ut supra*.

Prosecution and Appeal *ut supra*. Stat. 9 Ann. c. 11. §. 26.

Tanners, &c. not accounting with the proper Officer once in Three Months.

Fifty Pounds, to be divided *ut supra*.
Mitigation *ut supra*.

Prosecution and Appeal *ut supra*. Stat. 9 Ann. c. 11. §. 27.

Note; Collar-makers, Glovers, Bridle-Cutters, and others, who dress any Skins or Hides, or Pieces of Skins or Hides, in Oil, Allom and Salt, or Meal, or with other Ingredients, and who cut and make the same into Wares, are Tawers and Dressers within the Act, and subject to the Penalties and Forfeitures in the same. Stat. 9 Ann. c. 11. §. 28.

Officer taking any Fee or Reward for any Entries, Accounts, Permissions, Certificates, Marks, or Receipts.

Five Pounds to the Party grieved, for every such Offence.

Prosecution and Appeal *ut supra*. Stat. 9 Ann. c. 11. §. 35.

To hear and determine all Offences against the Statute of 1 Jac. 1. c. 22. concerning Tanners, within the Time, and in the Manner, and subject to Mitigation and Appeal *ut supra*. Stat. 9 Ann. c. 11. §. 36, 37.

A P P E N D I X.

Offences.

Tanners.

Penalties.

Relanding, or putting on Shore again, within *Great Britain*, any Hides, Calve-Skins, Boots, Shoes, Gloves, or other Manufactures of Leather, shipp'd to be exported,

Prosecution and Appeal *ut supra*. Stat. 9 *Ann.* c. 11. §. 42.

Forfeiture of the same, and the treble Value. One Moiety to the Queen, the other to the Informer. Mitigation *ut supra*.

Note; The Judgment of the Justices is final, and no *Certiorari* to be brought or allowed to remove any the Proceedings of the Justices of Peace, relating to Offences committed against Stat. 9 *Ann.* c. 11. *Ibid.* §. 47.

[**Qu. Sess.**] Butcher exercising the Mystery of a Tanner. 1 *Jac.* 1. c. 22. §. 4.

Six Shillings and eight Pence a Day, to be divided. One Third to the King, one to the Prosecutor, and the other to the City, Borough, Town, or Lord of the Liberty, where the Offence is committed.

Persons exercising the Mystery of a Tanner, not having served Seven Years as an Apprentice or hired Servant, except the Widow or Children of a Tanner, and having been brought up in that Profession Four Years. 1 *Jac.* 1. c. 22. §. 5.

Forfeit all the Leather they tan, or the Value thereof, to be divided *ut supra*.

Persons buying rough Hides or Calves-Skins in the **Hair**, except such as can lawfully tan them. 1 *Jac.* 1. c. 22. §. 7.

Forfeit them, or the just Value, to be divided *ut supra*.

Persons forestalling Hides, or buying them otherwise than in open Fair or Market. 1 *Jac.* 1. c. 22. §. 7.

Six Shillings and eight Pence a Hide, to be divided *ut supra*.

Tanner who over-limes his Hides, or useth in Tanning any Thing save Ash-Bark, Tapwork, Malt, Meal, Lime, Culver-dung or Hen-dung, or suffers them to be frozen, or parched with Fire or Sun; or tans rotten Hides, or works them in other Sort than is by the Statute limited. 1 *Jac.* 1. c. 22. §. 11.

Forfeits every Hide so tann'd, and put to Sale, or the full Value thereof, to be divided *ut supra*.

Tanner, who by Mixtures raises any Hide for Sole-Leather not fit for that Use. 1 *Jac.* 1. c. 22. §. 14.

Forfeits it, to be divided *ut supra*.

Persons putting to Sale tanned Leather, red and unwrought, but in Fair or Market, unless searched and sealed before, or offering to sell such Leather before it be parched and sealed. 1 *Jac.* 1. c. 22. §. 14.

Six Shillings and eight Pence a Hide, and for every Dozen of Calf-Skins or Sheep-Skins, 3 *s.* 4 *d.* besides the Hides and Skins themselves, or the full Value thereof, to be divided *ut supra*.

Persons putting to Sale any Leather insufficiently tanned or dried. 1 *Jac.* 1. c. 22. §. 15.

Forfeit the Whole, to be divided *ut supra*.

Tanner hastening the Tanning of his Leather, by giving it unkind Heats with hot Wooze, or otherwise. 1 *Jac.* 1. c. 22. §. 17.

Ten Pounds, to be divided *ut supra*, and to stand upon the Pillory Three Days in the next Market.

Cithes. See **Cythes.**

Offences.

Tobacco.

Penalties.

[**Two**] **MAY** grant a special Warrant to search for, and seize Walnut-Tree-Leaves, Hop-Leaves, &c. cut, mixed, or manufactured to resemble Tobacco, and the Engines, &c. And if seized within Six Miles of any Sea-Port, such Leaves, &c. to be brought to the next Custom-house Warehouse; and if at any greater Distance. Stat. 1 *Geo.* 1. *sess.* 2. c. 46. §. 4.

To secure them at the King's Cost, till the Cause of Seizure be determined by the Quarter-Sessions, who are to hear and determine the same at the farthest at the second Quarter-Sessions after Seizure made.

After Condemnation, to be openly burnt or destroyed, by Order of Sessions, at the King's Charge.

Servants and Labourers employed in Cutting, Colouring, Curing, or Manufacturing any such Leaves, &c.

To be committed to the common Gaol, or House of Correction, to hard Labour, not exceeding Six Months.

A P P E N D I X.

Offences.	Tobacco.	Penalties.
to resemble Tobacco, or making a Mixture thereof, or knowingly vending the same. One Witness. Stat. 1 Geo. 1. c. 46. §. 5.	Months, without Bail or Mainprife.	

[Qu. Sess.] Two Justices of Peace may, at the Quarter-Sessions, present any Persons for sowing, planting, or making Tobacco; which Presentment is a Conviction in Law; and the Party forfeits 40 s. for every Rod, unless he, having Notice in Writing ten Days before, shall traverse such Presentment, and find Sureties to prosecute next Quarter-Sessions. Stat. 22 & 23 Car. 2. c. 6. §. 3.

Offences.	Tobacco-pipe Clay.	Penalties.
[Qu. Sess.] Exporting Tobacco-pipe Clay. Stat. 13 & 14 Car. 2. c. 18. §. 7.		Three Shillings a Pound, to be divided between the King and the Prosecutor.

Offences.	Transportation.	Penalties.
[One] TO rescue such Felon or Offenders, as are order'd for Transportation; and the Person aiding or assisting them in making their Escape. Stat. 6 Geo. 1. c. 23. §. 5.		Felon without Benefit of Clergy.

A Felon ordered for Transportation, who shall be afterwards at large within the Kingdom of *Great Britain*, without some lawful Cause, before the Expiration of the Term, for which such Felon was order'd to be transported, being lawfully convicted. Stat. 6 Geo. 1. c. 23. §. 6.

Certificate of the Clerk of the Peace, containing the Effect and Tenor of the Indictment, and Conviction of such Felon, produced in Court, is a sufficient Proof. §. 7.

Felon without Benefit of Clergy.
And may be tried either in the County where apprehended, or from whence ordered for Transportation.

Vide Smugglers or Runners of Foreign Goods.

[Two] The Lord Mayor of <i>London</i> , or one Justice of the Peace of the City of <i>London</i> , and in all other Places Two Justices, may allow of Contracts by Persons above 15 and under 21 Years of Age, with Merchants or others, for serving in the Plantations, not exceeding Eight Years. Stat. 4 Geo. 1. c. 11. §. 5.	Contracts to be certified to the next Quarter-Sessions and there registred without Fee, by the Clerk of the Peace.
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The Court before whom Felons are convicted, may nominate and appoint, if they shall think fit, Two or more Justices, to contract for the Performance of the Transportation of such Felons, to any of the Colonies and Plantations in *America*: And to order such sufficient Security, as directed by 4 Geo. 1. c. 11. And also to cause such Felons to be delivered by the Gaolers to the Persons contracting for them. Stat. 6 Geo. 1. c. 23. §. 2.

Contracts and Security to be certified by the Justices to the next Court, held for the County, &c. to be filed and kept amongst the Records of such Court.

[Qu. Sess.] To order the Treasurer of the County, &c. for which the Court was held that ordered such Felons to be transported, to pay all such Charges and Expences to such Person or Persons, as shall be employed for the Purposes aforesaid. Stat. 6 Geo. 1. c. 23. §. 3.	
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All Securities for Transportation of Felons to be by Bond in the Name of the Clerk of the Peace of the County, &c. which said Clerks of the Peace, and their Successors, shall prosecute such Bonds in their own Names, (to which Purpose they are a Body Corporate) and to be paid such Costs, Charges and Expences, as the Quarter-Sessions shall direct, out of the publick Stock by the Treasurer of the County, &c. Stat. 6 Geo. 1. c. 23. §. 4.

The Monies recovered on such Securities, to the Use of the County, &c. and paid to the Treasurer, to be Part of the County Stock.

Note; The Persons contracting, and to whom such Felons are delivered, in order to be transported; or the Persons directed by the Justices, may carry and secure them in and thro' any County of *Great Britain*. Stat. 6 Geo. 1. c. 23. §. 5.

A P P E N D I X.

Offences.

Treasurer of the County.

Penalties.

[**Qu. Sess.**] **T**HE Treasurer (or his Executors, &c.) who hath been negligent to execute his Office, or render an Account. Stat. 43 *Eliz. c. 3. §. 7.*

Five Pounds at least.

Treasurers wilfully refusing to give Relief. Stat. 43 *Eliz. c. 3. §. 12.*

Fineable, to be levied by Distress and Sale of Goods, by a Warrant of any Two to be appointed by the Rest.

Two Treasurers for the County are to be chosen yearly at *Easter*-Sessions, by the more Part of the Justices, out of such Subsidy-Men as were taxed in the last Tax of Subsidies, at Five Pounds Lands, or Ten Pounds Goods. Stat. 43 *Eliz. c. 2. §. 14.*

Treasurer for the County refusing to execute the Office, distribute Relief, or to account to their Successors, and pay the Monies in their Hands to the Lord Chief Justice of the *King's Bench*, and the Knight Marshal, by equal Portions. Stat. 43 *Eliz. c. 2. §. 16.*

Three Pounds at least, to be levied by Distress and Sale, and to be prosecuted by any Two Justices, authorized by the Rest.

Offences.

Trophy-Money.

Penalties.

[**Three**] **T**O certify under their Hands and Seals, the Examination, Stating, and Allowance by the Quarter-Sessions, of *Trophy-Money* raised, levied and collected for any precedent Year. Stat. 12 *Ann. sess. 1. c. 10. §. 2.* and *sess. 2. c. 8. §. 2.*

[**Qu. Sess.**] The Lieutenancy shall not issue out any Warrants for levying *Trophy-Money*, till the *Justices of Peace*, or the major Part of them at their Quarter-Sessions, shall have examined, stated, and allowed the Accounts of the *Trophy-Money* last raised, levied, and collected for any preceding Year, and certified such Examination of the said Accounts under the Hands and Seals of Three or more of them, to the respective Lieutenants, or their Deputies. Stat. 12 *Ann. sess. 1. c. 10. §. 2.* and *sess. 2. c. 8. §. 2.*

Turnpikes. See 1 *Geo. 2. stat. 2. c. 19.* in *Dalton*, Chap. 50. Tit. *Highways.*

Offences.

Tythes.

Penalties.

[**One**] **P**ersons subtracting, or with-holding small Tythes. Stat. 7 & 8 *W. 3. c. 6. §. 3.*

Shall levy the Sum adjudged by Two Justices, upon their Certificate, where the Party subtracting, or with-holding, removes out of the County.

Where Two Justices have adjudged what Sum any *Quaker* is to pay for great or small Tythes. Stat. 7 & 8 *W. 3. c. 6. §. 3.*

To be levied by Warrant, under either of their Hands and Seals, by Distress and Sale.

[**Two**] Defendants in the Ecclesiastical Court, against whom the Judge complains for any Contumacy or Misdemeanor, in any Suit there depending for Tythes. Stat. 27 *H. 8. c. 20. §. 1.* 2 & 3 *Ed. 6. c. 13. §. 13.* *Quorum 1.*

To be committed to Prison, till they find sufficient Sureties to be bound by Recognizance, or otherwise, to obey the Process, Proceedings, Decrees, and Sentences of the said Court.

This extends not to *London*.

To be committed to the next Gaol, till they find Surety by Recognizance, to perform the Sentence.

Persons after a Sentence for Tythes in the Ecclesiastical Court, refusing to pay Tythes, or Sums of Money adjudged, upon a Certificate thereof from the Judge. Stat. 32 *H. 8. c. 7. §. 4.* 2 & 3 *Ed. 6. c. 13. §. 1.* *Quorum 1.*

This extends not to *London*.

Upon Complaint made, within Two Years, against any Person for Subtraction, or with-holding of small Tythes, under Hand and Seal, to summon the Person, and after Appearance, or Default (Summons being proved) to examine and determine the same; by Evidence upon Oath, and in Writing under Hand and Seal, to adjudge such reasonable Allowance for Tythes and Costs, not exceeding 10 *s.* as they shall think fit, except in Case of Prescription, or *Modus Decimandi*. Stat. 7 & 8 *W. 3. c. 6. §. 2.*

Persons refusing or neglecting for ten Days after Notice to pay the Sum adjudged for Subtraction of Tythes.

The Sum to be levied by Distress, and Sale in Three Days after the Distress, unless paid before: All Charges to be deducted out of the Money raised by the Sale.

Where

A P P E N D I X

Offences.

Tythes.

Penalties.

Where any Person makes a false and vexatious Complaint for Subtraction, or with-holding of small Tythes, to give Coſts not exceeding 10*s.* to the Party proſecuted.

Neither of the Juſtices, who put this Act in Execution, muſt be Patron. Stat. 7 & 8 *W.* 3. c. 6. §. 12.

Quaker refuſing to pay, or compound for great or ſmall Tythes, or to pay any Church-Rates. Stat. 7 & 8 *W.* 3. c. 34. §. 4.

To be convened before Two Juſtices, who are to examine, upon Oath, the Truth and Juſtice of the Complaint, and by Order under their Hands and Seals direct the Payment thereof, not exceeding 10*l.*

If not Patrons, or intereſted in the Tythes, are on Complaint of any Parſon, &c. to ſummon in Writing *Quakers*, and determine on Appearance, or in Default, and Summons proved upon Oath, to hear and determine the Complaint, and make ſuch Order as directed by Stat. 7 & 8 *W.* 3. And alſo to order ſuch Coſts and Charges, as they ſhall think reaſonable, not exceeding Ten Shillings. Stat. 1 *Geo.* 1. c. 6. §. 2.
An Appeal lies.

[**Qu. Seſſ.**] May reverſe the Judgment of Two Juſtices, relating to Tythes on an Appeal; but if they affirm it, are to give Coſts againſt the Appellant, to be levied, as provided by 7 & 8 *W.* 3. c. 34. unleſs the Title of ſuch Tithes, &c. be in Queſtion. 1 *Geo.* 1. c. 6. §. 2.

Uagabonds and Vagrants. See 13 *Geo.* 2. c. 24. in *Dalton*, Chap. 196.

Offences.

Under-Sheriffs.

Penalties.

[**Two**] EVERY Under-Sheriff before he intermeddles with his Office, not taking the Oath of Supremacy, and alſo the following Oath. Stat. 27 *Eliz.* c. 12. §. 2. *Quorum* 1.

Forfeits 40 Pounds, to be divided between the King and Proſecutor, and treble Damages to the Party grieved, if he commits any Act contrary to his Duty.

I A. B. will not uſe, nor exerciſe the Office of Under-Sheriff corruptly, during the Time that I ſhall remain therein; neither ſhall or will accept, receive, or take by any Colour, Means or Device whatſoever, or conſent to the Taking of any Manner of Fee or Reward of any Perſon or Perſons, for the Impanelling or Return of any Inqueſt, Jury, or Tales, in any Court of Record for the King, or betwixt Party and Party, above two Shillings, or the Value thereof, and ſuch Fees as are allowed and appointed for the ſame by the Laws and Statutes of this Realm, but will according to my Power, truly and indifferently, with convenient Speed impanel all Jurors, and return all ſuch Writ or Writs touching the ſame, as ſhall appertain to be done by my Duty or Office, during the Time I ſhall remain in the ſaid Office.

So help me God.

Bailiffs of Franchiſes, Deputies, or Clerk of a Sheriff, or Under-Sheriffs intermeddling with their ſeveral Offices, before they have taken the ſaid Oaths. *Ibid.*

Forfeit Forty Pounds *ut ſupra*.

[**Qu. Seſſ.**] Have Power to hear and determine the Defaults and Offences aforeſaid. *Ibid.*
See **Sheriffs**.

Offences.

Wages.

Penalties.

[**Two**] Givers of greater Wages, than are ſet by the Juſtices in *Eaſter*-Sessions yearly. Stat. 5 *Eliz.* c. 4. §. 18.

Five Pounds, and ten Days Imprifonment, without Bail.

Takers of more Wages, than are ſet by the Juſtices. Stat. 5 *Eliz.* c. 4. §. 19.

One and twenty Days Imprifonment, without Bail.

To hear and determine all Wages, Demands, Frauds, and Defaults of Labourers in the *Woollen*, *Linnen*, *Fuſtian*, *Cotton*, and *Iron Manufactures*, for or concerning any Work done in the ſame Manufactures. Stat. 1 *Ann.* ſeſſ. 2. c. 18. §. 4.

Witneſſes to be ſummoned. An Appeal lies to the Quarter-Sessions.

Vide Title **Servants**.

Wages of the Knights of the Shire.

[**Qu. Seſſ.**] *Sheriffs*, *Coroners*, *Chief Conſtables*, and *Bailiffs*, not being preſent at aſſeſſing the Wages of Knights of the Shire, which is 4*s.* a Day. Stat. 23 *H.* 6. c. 11. §. 1.

Forty Shillings.

The

y

Twenty

A P P E N D I X.

Offences.

Wages.

Penalties.

Wages of the Knights of the Shire.

The Sheriff, or other Officer, who levies more than is assessed for the Knights of the Shires Wages. Stat. 23 <i>H. 6. c. 11. §. 1.</i>		Twenty Pounds to the King, ten Pounds to the Profecutor.
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Wages of Burgeffes.

[Two] To tax every City and Borough in the several Counties in *Wales*, where they inhabited respectively, towards the Wages of the Burgeffes, which is 2 s. a Day. Stat. 35 *H. 8. c. 11. §. 4.*

Waggons and Waggoners. See **Carriers and Carriage.**

Offences.

Watch.

Penalties.

[Two] TO certify that a Watchman, or other Person, endeavouring to apprehend a Burglar, or House-breaker, was killed, which intitles the Executors or Administrators of the Person killed to forty Pounds. Stat. 5 *Ann. c. 31. §. 2.*

See 5 *H. 4. c. 3.* in *Dalton*, Chap. 104. Tit. *Watch.*

Watermen. See *Dalton*, Chap. 105.

Offences.

Weights and Measures.

Penalties.

[One] ONE felling, buying or keeping any Weight, or Measure, which is not according to the Standard of the <i>Exchequer</i> . Stat. 16 <i>Car. 1. c. 19. §. 2.</i> One Witness.		Five Shillings for the Poor, to be levied by Distress and Sale; in Default of Distress, to be committed till Payment.
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[Two] Clerk of the Market, or any other Officer, who seals any Weight or Measure, not agreeable to the Standard, or refusing to seal such as are agreeable thereto. Stat. 16 <i>Car. 1. c. 19. §. 4.</i> One Witness.		Five Pounds for the Poor, to be levied <i>ut supra.</i>
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If they take any other Fine, Fee, Reward, or Sum of Money, than are allowed by Statute or ancient Custom, for Signing or Examining Weights and Measures, or otherwise misdemean themselves. Stat. 16 <i>Car. 1. c. 19. §. 5.</i> One Witness.		First Offence 5 <i>l.</i> second 10 <i>l.</i> and 20 <i>l.</i> for every other, for the Poor, to be levied <i>ut supra.</i>
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Selling Corn or Salt by other Bushel, or Measure, than according to the Standard struck even by the Brim. Stat. 22 <i>Car. 2. c. 8. §. 2.</i>		Forty Shillings, to be levied by Distress and Sale.
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Selling or buying Corn without Measuring, or in other Manner, than according to 22 <i>Car. 2. c. 8.</i> and that without shaking the Measure by the Buyer. Stat. 22 & 23 <i>Car. 2. c. 12. §. 2.</i>		Besides the Penalties of the former Act, all the Corn or Salt, or the Value thereof, forfeited to the Person complaining.
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The Sub-Commissioners, or Collectors of the Excise, not providing or procuring within their respective Circuits or Divisions, a substantial Ale-Quart and Ale-Pint, <i>Winchester</i> Measure. Stat. 11 & 12 <i>W. 3. c. 15. §. 3.</i>		Five Pounds, to be levied and employed <i>ut supra.</i>
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The Mayor or Chief Officer of every City, Town Corporate, Borough, or Market-Town, neglecting, or refusing, upon Request to him made, to stamp and mark Ale-Quart, and Ale-Pint. Stat. 11 & 12 <i>W. 3. c. 15. §. 5.</i> One or more Witnesses. Prosecution to be within 30 Days.		Five Pounds, to be levied and employed <i>ut supra.</i>
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Note; This Act extends not to the Universities, by Stat. 12 & 13 *W. 3. c. 11. §. 19.*

A P P E N D I X.

Offences.

Selling in any other Water-Measure, than is according to Stat. 1 *Ann. sess.* 1. c. 15. §. 1.
One Witness.
Note; This extends not to *London*.

[Two] Persons buying and selling with any other Weights and Measures than such as are marked, except on Shipboard. Stat. 11 *H.* 7. c. 4. §. 12. *Quor*' 1.

[Qu. Scff.] Any Person buying or taking any Corn by any other Measure, than eight Bushels striked for the Quarter. Stat. 1 *H.* 5. c. 10. §. 2.

Importing or making any Tun of Wine less than 252 Gallons *English* Measure, the Pipe 126, the Barrel of Herrings and Eels 30 Gallons, the Butt of Salmon 84 Gallons. Stat. 2 *H.* 6. c. 11. §. 3, 4.

Every City, Borough, and Town within *England*, that has not a common Balance, with common Weights sealed, according to the Standard of the *Exchequer*, at the Costs of the City, &c. in the Keeping of the Head Officer, or Constable there. Stat. 8 *H.* 6. c. 5. §. 9.

In every City, Borough, and Town, there shall be a common Bushel sealed. Stat. 11 *H.* 6. c. 8. §. 10.

Measures and Weights of Brass shall be sent to every City and Borough, there to be kept, as their Treasure, according to which all Measures and Weights in every County shall be reformed. Stat. 11 *H.* 7. c. 4.

The Mayor, or Chief Officer, in Cities and Boroughs, shall have a special Mark, wherewith he shall seal the Measures and Weights, and shall take for Sealing a Bushel one Penny, every other Measure an Half-penny; 100 Weight one Penny, half 100 an Half-penny, every less Weight a Farthing, refusing or delaying to Seal, or doing any Thing contrary to Stat. 11 *H.* 7. c. 4.

Justices of the Quarter-Sessions are to give in Charge the Statute for ascertaining the Measures of Ale and Beer. Stat. 11 & 12 *W.* 3. c. 15. §. 9.

Weights and Measures.

Ten Shillings, to be levied by Distress and Sale.
One Half to the Informer, the other to the Poor.

First Offence 6 s. 8 d. Second 13 s. 4 d. and Pillory; and the Weights and Measures to be broke, and burnt.

Five Pounds to the King, and as much to the Party grieved, and a Year's Imprisonment.

Forfeits the Commodities therein contained to the Lord of the Town, where they are found; the Professor to have the fourth Part.

The City forfeits 10 l. to the King, the Borough 5 l. and every other Town 40 s. The Inhabitants to weigh *gratis*. Foreigner to pay for under 40 lb. a Farthing, for between 40 and 100 lb. a Half-penny; for between 100 and 1000 lb. one Penny, towards maintaining the Weights.

Refrained to Market-Towns, by 11 *H.* 7. c. 4.

Upon the Penalties in 8 *H.* 6. c. 5.

Forty Shillings, to be divided between the King and the Party grieved.

Offences.

[Two] TO put in Execution the Statute of 7 & 8 *W.* 3. c. 18. for laying a Duty on Houses; and also 8 & 9 *W.* 3. c. 20. and 5 *Ann.* c. 13. concerning the same Duty. Stat. 8 *Ann.* c. 4.

[Three] May annually appoint two such Persons, as they shall think able, and responsible to be Collectors of the Duties on Houses, whether the Names be or be not presented by the preceding Collectors. Stat. 6 *Geo.* 1. c. 21. §. 61.

Where there shall be any Arrears of the Duty on Houses, by the Failure of any Collector, for which any Parish or Place shall be answerable, to cause such Arrears to be raised by Re-assessment, and to be paid to the Receiver General, or into the Exchequer. *Ibid.*

To be levied by such Ways and Means, as the Duties on Houses are raised and levied.

Offences.

[One] Persons suspected for having or conveying any *Wood*, *Under-wood*, *Poles* or *young Trees*, *Bark* or *Bast of Trees*, or any *Gates*, *Stiles*, *Posts*, *Pales*, *Rails*, *Hedge-wood*, *Broom* or *Furze*, found by a Search-Warrant, and can give no good Account how they came by the same; or if they do not, in

Wood.

First Offence, convicts within 43 *Eliz.* c. 7. and accordingly punished; and shall make such Recompence, and in such Time, as Justice shall appoint; and a Sum not exceeding 10 s. as Justice shall direct for the Poor; in Default to be committed to the House of Correction, not to exceed a Month, or be whipped.

Second

A P P E N D I X.

Offences.

Wood.

Penalties.

convenient Time, produce the Person, of whom they bought the same, or some Witnesses to prove Sale on Oath, Constables or any other Person may apprehend them. Stat. 15 Car. 2. c. 2. §. 3.

Second Offence, to be sent to the House of Correction for a Month, to be kept to hard Labour.
Third, to be deemed incorrigible Rogues.

See 43 Eliz. c. 7. in Title **Dycharads.**

Maliciously setting on Fire, or burning Wood, Under-wood, or Coppice. Stat. 1 Geo. 1. c. 48. §. 4.

Felony.

[Two] When appointed by the Sessions, shall summon twelve Commoners to set out the fourth Part of Woods, or Coppices, where they have Common, for the Lord, Owner of the Soil, to fell, or cut down. Stat. 35 H. 8. c. 17. §. 7.

If any Person shall either *by Day or Night*, maliciously and in a clandestine and private Manner, cut, take, destroy, break, throw down, bark, pluck up, burn, deface, spoil, or carry away any Wood-Springs, or Springs of Wood, Trees, Poles, Wood, Tops of Trees, Under-woods, or Coppice-woods, Thorns, or Quicksets, without the Consent of the Owner, or Person intrusted with the Care and Custody thereof; or shall break open, throw down, level, or destroy any Hedges, Gates, Posts, Stiles, Railings, Walls, Fences, Dikes, Ditches, Banks, or other Inclosures of Woods, Wood-grounds, Parks, Chafes or Coppices, Plantations, Timber-Trees, Fruit-Trees, or other Trees, Thorns, or Quicksets. Stat. 6 Geo. 1. c. 16. §. 1.

Lords of Manors, Owners and Proprietors, that are damaged, shall recover such Damages against the Parish, as the Stat. 13 Ed. 1. directs, if the Parish do not convict the Offender in six Months.

May upon Complaint of any Inhabitant of the Parish, where Wood, Wood-Springs, &c. are in a riotous, open, tumultuous, or in a secret and clandestine Manner, forcibly or wrongfully, and without Consent of the Proprietor, &c. cut down, destroyed, broke, barked, thrown down, burned, took, defaced, spoiled, or carried away: Or where any Hedges, Gates, Posts, Stiles, Rails, Fences, Ditches, Banks, or Inclosures are maliciously broke open, thrown down, levelled, or destroyed, cause Offenders to be apprehended, if convicted. Stat. 6 Geo. 1. c. 16. §. 2.

Liable to the Penalties and Punishments in the Stat. 1 Geo. 1. *sess.* 2. c. 48.

Or Justices in open Sessions, upon Complaint of any Inhabitant of the Parish where Timber, Trees, &c. are maliciously cut, &c. may cause the Offenders to be apprehended, and finally hear, determine, and adjudge such Offenders; and after Conviction. Stat. 1 Geo. 1. c. 48. §. 2.

Commit them to the House of Correction to hard Labour, for three Months, without Bail; and to be whipped once a Month in the next Market-Town, on the Market-Day, between Eleven and Two. And not to be discharged, till Security given for their good Behaviour for two Years, §. 3. Where there is no House of Correction, to be committed to the common Gaol for four Months, and to be whipped by the common Hangman once a Month.

Offences.

Wool.

Penalties.

[Qu. Scff.] Persons pressing together with Screws, Presses, or other Engines into any Sack, Bag, &c. or putting or pressing any *Wool* or *Yarn* made of *Wool*, into any Cask or Vessel, or causing to be laid near the Shore, or Coasts of the Sea, or any navigable River; or into any House or Place adjoining, any *Wool*, *Wool-fells*, or *Yarn* made of *Wool*, to export the same. Stat. 13 & 14 Car. 2. c. 18. §. 7.

Forfeit the same, or to the Value, to be divided between the King and the Prosecutor.

Conveying of Packs, Bags, or Casks of *Wool*, &c. to or from any Place in *England*, &c. but at seasonable Times, *viz.* from *March* 1. to *September* 29. between the Hours of Four in the Morning and Eight

The Loss of all such Goods, or the Value, to be divided *ut supra.*

A P P E N D I X.

<i>Offences.</i>	Wool.	<i>Penalties.</i>
in the Evening, and from <i>September 29.</i> to <i>March 1.</i> between Seven in the Morning and Five in the Evening. Stat. 13 & 14 <i>Car. 2. c. 18. §. 9.</i>		
The Transportation or Conveying the Wool, &c. mentioned in Stat. 13 & 14 <i>Car. 2. c. 18. §. 11.</i>		A common Nufance.
See Title Cloth , and 12 <i>Geo. 2. c. 21.</i> in <i>Dalton</i> , Chap. 196.		

<i>Offences.</i>	Words spoke against the Queen's Title.	<i>Penalties.</i>
[One] T O take the Information of Words spoken against the Queen's Title to the Crown, &c. in three Days after they were spoken, but not after. Two Witneffes. Stat. 4 <i>Ann. c. 8. §. 3.</i> 6 <i>Ann. c. 7. §. 3.</i>		

<i>Offences.</i>	Wrecks.	<i>Penalties.</i>
[One] O Wner of, or Captain, Master, Mariner or other Officer, belonging to any Ship, who shall wilfully cast away, burn, or otherwise destroy the Ship, of which he is Owner, or to which he belongeth, or in any wife direct or procure the fame to be done, if to the Prejudice of Perfons underwriting Policies of Infurance, or Merchants loading Goods thereon. Stat. 4 <i>Geo. 1. c. 12. §. 3.</i>		To fuffer Death.

Note; The Stat. 12 *Ann. feff. 2. c. 18.* enforced and made perpetual by 4 *Geo. 1. c. 12. §. 1.*
See **Ships**.

<i>Offences.</i>	Wrought Plate.	<i>Penalties.</i>
[One] E VERY Officer for the Duties on <i>Wrought Plate</i> or Manufactures of Silver, who shall be impowered to make a Charge on the Maker or Worker of Plate, &c. shall in the first Place be sworn for the due and faithful Execution of his Office by any Justice of the Peace, who shall give such Officer a Certificate thereof. Stat. 6 <i>Geo. 1. c. 11. §. 11.</i>		

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F I N I S.

A D D E N D A.

C H A P. CXCVII.

Containing the Statutes 16, 17, 18 & 19 Geo. 2.

BY 16 Geo. 2. *cap.* 8. two Justices of the Peace for the County or Place from whence spirits 16 Geo. 2. c. 8. §. 7. Spirits. are intended to be exported, may administer an Oath, that the Duties were duly enter'd and paid, and that the Spirits are exported for Merchandize to be spent beyond the Seas.

Persons retaling spirituous Liquors without License, and not renewing as directed by the Act, forfeit 1b. §. 9. 10*l.* for each Offence, and upon Nonpayment, when lawfully demanded, any one Justice, on Oath made of such Neglect, shall commit the Offenders to the House of Correction, to be kept to hard Labour for two Months, not to be discharged till Payment of 10*l.* or the expiration of the said two Months.

No Licenses shall be granted to any Person whatsoever, for retaling spirituous Liquors, but to those only, who shall keep Taverns, victualling Houses, Inns, Coffee-Houses, or Ale-Houses, and all Licenses granted to any other Persons, are void. 1b. §. 10.

Persons selling spirituous Liquors, by retale, must be licensed by two or more Justices for the County, &c. wherein such Persons shall sell the said Liquors. 1b. §. 11.

By 16 Geo. 2. *cap.* 15. it is enacted, That if any Felon, or other Offender, ordered for Transportation, or agreed to transport him or herself on certain Conditions, to any of his Majesty's Colonies in *America*, either for Life, or any Number of Years, shall be afterwards at large in any Part of *Great Britain*, without some lawful Cause, before the Expiration of the Term for which he or she were to be transported, and being thereof lawfully convicted, shall suffer Death, as in Cases of Felony, without Benefit of Clergy. 16 Geo. 2. cap. 15. Transportation.

Whoever shall discover, apprehend and prosecute to Conviction of Felony, without Benefit of Clergy, any such Offenders, shall be intitled to a Reward of 20*l.* and shall have the like Certificate, and like Payments made without Fee or Reward, as any Persons may be intitled to for the apprehending, prosecuting, and convicting of Highwaymen, by any Law for that Purpose. 1b. §. 3.

By 16 Geo. 2. *cap.* 18. it is enacted, That all Justices of the Peace, within their respective Jurisdictions, may do all things belonging to their Office as Justices, so far as the same relates to the Laws for the Relief, Maintenance, and Settlement of poor Persons; for passing and punishing Vagrants; for Repair of the Highways; or to any other Laws concerning Parochial Taxes, Levies, or Rates, notwithstanding those Justices are chargeable with the Taxes, Levies or Rates, within any such Parish or Place affected by the Acts of such Justices. 16 Geo. 2. cap. 18. §. 1. Justices of the Peace.

No Actions of any Justices of the Peace, performed before the making this Act, shall hereafter be made void, because the Justices themselves are chargeable with the Rates as aforesaid. 1b. §. 2.

This Act shall not empower any Justice of the Peace for any County or Riding at large, to act in the Determination of any Appeal to the Quarter-Sessions for such County or Riding, from any Order relating to the Parish or Place where such Justice of the Peace is so charged as aforesaid. 1b. §. 3.

By 16 Geo. 2. *cap.* 26. it is enacted, That if any Person shall sell, or expose to sale, any News Paper, or any Book, Pamphlet, or Paper, deemed to be a News Paper, within the Meaning of any of the Acts of Parliament, relating to the Stamp-Duties now in Force, not being stamp'd or marked, as in the said Acts are directed, any Justice of the Peace may commit every such Offender, being thereof convicted before him, to the House of Correction, for three Months; and any Person may apprehend and carry the Offender before a Justice of the Peace of the County or Place where such Offence shall be committed; and on producing a Certificate of such Conviction, under the Hand of such Justice (which Certificate such Justice shall give without Fee) he shall be intitled to the Reward of 20*s.* to be paid by the Receiver General of his Majesty's Stamp-Duties. 16 Geo. 2. cap. 26. §. 5. Unstamp'd News Papers.

By 16 Geo. 2. *cap.* 29. the confining the drawing of Carts to three Horses only, being found inconvenient to Farmers and others, and highly detrimental to the Markets of this Kingdom; it is therefore enacted, That the said Number of Three Horses shall be enlarged to Four Horses, under all the Provisions, Exceptions, and Limitations in the Acts of 5 Geo. 1. and 14 Geo. 2. 16 Geo. 2. cap. 29. Carriages.

By 16 Geo. 2. *cap.* 31. it is enacted, That if any Person shall any ways assist any Prisoner to attempt his Escape from any Gaol, tho' no Escape be actually made, if such Prisoner then was attainted 16 Geo. 2. cap. 31. §. 1. Refuse.

tainted or convicted of Treason or Felony, except petty Larceny, or lawfully committed to, or detained in any Gaol for Treason or Felony, except petty Larceny, expressed in the Warrant of Commitment or Detainer, every such Offender, being lawfully convicted, shall be adjudged guilty of Felony, and shall be transported to *America*, for seven Years; and if such Prisoner then was convicted of, committed to, or detained in any Gaol for any Crime, not being Treason or Felony, or then was in Gaol upon any Process for Debt, &c. amounting to 100*l.* every Person so offending, and being lawfully convicted, shall be adjudged guilty of a Misdemeanor, and be liable to a Fine and Imprisonment.

Ib. §. 2. If any Person shall convey, or cause to be convey'd, any Disguise, Instrument, or Arms, to any Prisoner in Gaol, or to any other Person for his Use, without the Consent or Privity of the Keeper or under Keeper; such Person, altho' no Escape or Attempt be actually made, shall be deem'd to have delivered such Disguise, &c. with an Intention to assist such Prisoner to escape or attempt to escape; and if such Prisoner then attainted, or convicted of Treason or Felony, except petty Larceny, or lawfully committed to, or detained in any Gaol for Treason, or Felony, except petty Larceny, expressed in the Warrant of Commitment or Detainer, every such Offender being lawfully convicted, shall be adjudged guilty of Felony, and shall be transported to *America* for seven Years; but if the Prisoner then was convicted, committed, or detained for any Crime, not being Treason or Felony, or upon any Process for Debt, &c. amounting to 100*l.* every such Person so offending, and being lawfully convicted, shall be adjudged guilty of a Misdemeanor, and be liable to a Fine and Imprisonment.

Ib. §. 3. If any Person shall assist any Prisoner to attempt to escape from any Constable, or other Officer or Person who shall then have the lawful Charge of such Prisoner, in order to carry him to Gaol, by Virtue of a Warrant of Commitment for Treason or Felony, except petty Larceny, or if any Person shall assist any Felon, to attempt his Escape from any Boat or Vessel carrying Felons for Transportation, or from the Contractor for the Transportation of such Felons, or his Agents, &c. the Offender being lawfully convicted, shall be adjudged guilty of Felony, and shall be transported to *America* for seven Years.

Ib. §. 4. All Prosecutions for any of the said Offences, shall be commenced within a Year after the Offence committed.

Ib. §. 5. If any Person who shall be order'd for Transportation, shall return, or be at large in any Part of *Great Britain*, without some lawful Cause, before the Expiration of the Term for which he was ordered to be transported, he shall be liable to the same Punishment, and to the like Methods of Prosecution, as other Felons transported, or ordered to be transported, are liable unto by Virtue of the Laws now in Force.

17 Geo. 2. cap. 3. §. 1. Poor. By the 17 *Geo. 2. cap. 3.* it is enacted, That the Church-wardens and Overseers of the Poor, or other Persons authorized to take care of the Poor, shall cause publick Notice to be given in the Church, of every Rate for Relief of the Poor, allowed by the Justices, the next *Sunday* after such Allowance is obtained; and no Rate shall be reputed sufficient to be collected, till after such Notice given.

Ib. §. 2. The Church-wardens and Overseers, or other Persons authorized, shall permit any Inhabitant to inspect such Rate at all reasonable Times, paying one Shilling; and shall give Copies on Demand, being pay'd Sixpence for every 24 Names.

Ib. §. 3. If any Church-wardens, &c. shall not permit any Inhabitant to inspect, or refuse to give Copies, as aforesaid, he shall for every such Offence forfeit 20 Pounds to the Party aggrieved; to be sued for and recovered in any of his Majesty's Courts of Record, wherein no Essoin, &c. or more than one Imparance shall be allowed.

17 Geo. 2. cap. 5. Vagrants. By the 17 *Geo. 2. cap. 5.* the Statute of 13 *Geo. 2. cap. 24.* inserted Page 484 *supra*, is repealed. As there are many Clauses common to both Acts, we shall here chiefly take notice of the Sections wherein they differ.

§. 1, 2, 3. *Sec. 1.* A Justice may convict Offenders by his own View; the rest of this Clause as also §. 2 and 3, are to the same effect, as in the said 13 *Geo. 2.*

§. 4. *Sec. 4.* The same in effect as §. 4. pag. 484 *supra*, and Persons refusing to be conveyed by Pass, according to the Act, shall be deemed incorrigible Rogues.

Sec. 5. Any Person may apprehend Offenders, and the Penalty on Officers &c. neglecting their Duty; the Reward for taking up Vagabonds, and the Penalty on not paying the Reward, are to the same Effect as in §. 5. pag. 485 *supra*.

Sec. 6. Directs privy Search as in §. 6. pag. 485, and also that every Justice shall, on receiving Information that Rogues and Vagabonds are within his Jurisdiction, issue his Warrant to the proper Officer to apprehend them, and such Rogues, &c. may be brought before any Justice of the same County, &c.

Sec. 7. Rogues, &c. thus apprehended, are to be examined by such Justice upon Oath, as in §. 7. pag. 485, *supra*, and such Examination is to be signed by the Person examined, as well as by the Justice, to be transmitted to the next General or Quarter Sessions, &c. All such Persons apprehended, shall be publickly whipt, or sent to the House of Correction to remain until the next General or Quarter Sessions, or less time, as the Justice shall think proper; after Whipping or Confinement, the Justice may, by Pass under Hand and Seal, in the Form hereafter directed, cause such Persons to be conveyed to the Place of their last legal Settlement; but if that cannot be found, then to the Place of their Birth; or if they be under 14 Years, and have Father or Mother living, then to their Abode, there to be delivered to some Church-warden, &c. The Form of the Pass is as follows.

To the Constables of _____ in the County of _____ or to the Tythingman, or other Officer (as the Case shall be, or if the Offender is committed to the House of Correction, then to the Governor or Master thereof) and also to all Constables and other Officers, whom it may concern, to receive and convey; and to the Church-wardens, Chapel-wardens, or Overseers of the Poor of the Parish, Town, or Place (as the Case shall be) of _____ in the County of _____ or either of them, to receive and obey.

WHEREAS _____ was (or were) apprehended in the Parish of _____ (or in the Town of _____ or other Place, describing it) as a Rogue and Vagabond, or as Rogues and Vagabonds, *videlicet*, wandering and begging there (or as the Case shall be) and upon Examination of the said _____ taken before _____ upon Oath (which Examination is hereunto annexed) it doth appear, that his, her, or their last legal Settlement is at _____ in this County (or in the County of _____) or that the said _____ was (or were) born in the Parish of _____ in this County (or in the County of _____) and hath (or have) not since obtained any legal Settlement; or that the said _____ is (or are) under the Age of fourteen Years, and hath (or have) a Father or Mother living, or abiding in the Parish (or Town) of _____ (or other Place, describing it): These are therefore to require you the said Constable, or other Officer (or Governor, or Master of the House of Correction (as the Case shall be) to convey the said _____ in the next direct Way to the said Parish (or Town) of _____ (or other Place) within the said County, and there to deliver him (her or them) to some Church-warden, Chapel-warden, or Overseer of the Poor of the same Parish (Town or Place) to be there provided for according to Law, (or in case the said Parish, Town, or Place, to which such Person or Persons is or are to be sent, lies in some other County, Riding, Division, Corporation, or Franchise, having Separate General or Quarter-Sessions of the Peace, then the Form shall be as followeth, *videlicet*, To convey the said _____ to the Parish (or Town) of _____ that being the first Parish (or Town) in the next Precinct through which he (she or they) ought to pass in the direct way to the said Parish (or Town) of _____ to which he (she or they) is (or are) to be sent, and to deliver him (her or them) to the Constable, or other Officer of such first Town (or Parish) in such next Precinct, together with this Pass, and the Duplicate of the Examination of the said _____ taking his Receipt for the same; and the said _____ is (or are) to be thence conveyed on in like manner to the said Parish (or Town) of _____ there to be delivered to some Church-warden, Chapel-warden or Overseer of the Poor of the same Parish (Town or Place) to be there provided for according to Law; and you the said Church-wardens, Chapel-wardens, and Overseers of the Poor, are hereby required to receive the said Person (or Persons) and provide for him, her (or them) as aforesaid.

Sett. 8. A Duplicate of the Pass and Examination are to be filed at the next General or Quarter Sessions as in §. 8. pag. 486 *supra*.

Sett. 9. Where Offenders shall be committed to the House of Correction as before, and the Justices of the Sessions adjudge such Person a Rogue, a Vagabond or an incorrigible Rogue; they may order such Rogue or Vagabond to hard Labour, for any farther time, not exceeding six Months, and such incorrigible Rogue, for any time not exceeding two Years, nor less than six Months, from the time of such Order of Sessions, and such Offender may be corrected by Whipping, &c. as in §. 9. pag. 486 *supra*.

Sett. 10. The Form of the Pass, for passing or conveying Rogues, &c. is as follows.

WHEREAS by a Pass (reciting the Substance or Effect of the said Pass) I (or we) do hereby order and direct the said Person (or Persons) to be conveyed on Foot (or in a Cart, or by Horse, &c.) to the said Town (or Parish) of _____ in _____ (or other Place, describing it) in the way to such Parish (Town or Place, as the Case shall be) in _____ Days time; for which the said Constable, &c. is to be allowed the Sum of _____ and no more.
Given under my Hand (or our Hands) this Day, &c.

Sett. 11. The Officer receiving such Pass, shall convey the Person therein named, according to the Directions thereof, the next direct way to the Place where such Person is ordered to be sent, if in the same County where he was apprehended; but if the Place, to which such Person is to be sent, lies in some other County, &c. the Officer shall deliver him to the Constable, &c. of the first Town, Parish, or Place in the next County, in the direct way to the Place to which such Person is to be conveyed, together with the Pass and Duplicate of Examination, taking a Receipt for the same; and such Constable, &c. shall apply to a Justice of the Peace in the same County, &c. who shall make the like Certificate as before (*mutatis mutandis*) and deliver it to the Constable, who shall convey the Person to the first Parish, &c. in the next County, &c. in the direct way to the Place where such Person is to be conveyed, and so from one County to another, till they come to the Place where such Person is to be sent, and the Constable, &c. shall deliver such Person to the Church-warden or other, ordered to receive him by the Pass, together with the Duplicate of Examination, taking a Receipt for the same. And if the Church-warden, &c. shall think the Examination false, he is to carry the Person so sent, before some Justice of the Peace, who may commit such Person to the House of Correction, till the next Quarter-Sessions, where the Justices may deal with such Person as an incorrigible Rogue. The Person so sent shall not be removed from the Place to which sent but by Order of two Justices, as other poor Persons are removed to the Place of their Settlement.

Sec. 12. Persons committing Acts of Vagrancy, shall pay for their own Passage, in part or in whole, if found able.

Sec. 13. Vagrants, whose legal Settlement is in *Scotland*, are to be sent thither as in §. 14 pag. 487 *supra*, and if any Person, after being so sent, be found wandering, begging or misbehaving, in *England*, such Offender shall be deemed an incorrigible Rogue, and punished accordingly.

Sec. 14. The Regulations for passing Vagrants into *Ireland*, the Isles of *Man*, *Ferfey*, *Guernsey* or *Scilly*, are to the same Effect as in §. 18. pag. 488 *supra*.

Sec. 15. No Master of a Vessel shall be compelled to take on board more than one Vagrant for every 20 Tons Burden.

Sec. 16. Justices to make Rates, &c. as in §. 19. pag. 488 *supra*.

Sec. 17. is to the same Effect as §. 20 pag. 488 *supra*.

Sec. 18. Any Person counterfeiting or altering a Certificate, &c. forfeits five Pounds; the rest as in §. 22 pag. 488, 489 *supra*.

Sec. 19. See §. 23 pag. 489 *supra*.

Sec. 20. See §. 24 *ibid*.

Sec. 21. This not to abridge the Power of the Lord Chancellor, &c. concerning Lunatics.

Sec. 22. See §. 26 pag. 489 *supra*.

Sec. 23. See §. 27 *ibid*. but the time of Commitment to the House of Correction is limited to one Month.

Sec. 24. If Persons having Children with them, are found offending against this Act, such Child being above seven Years old, may be sent to the House of Correction; and the Justices may place them out to Service, or Apprentices to any that will take them, within their Jurisdictions, till they come to the Age of 21 Years, or less time, as the Justices think fit; and any Offender found again with the same Child, so placed out, shall be deemed an incorrigible Rogue.

Sec. 25. If any Woman wandering and begging, shall be delivered of any Child, and become thereby chargeable; the Church-wardens or Overseers may detain such Woman till she can be taken before a Justice, who shall examine her, and commit her to the House of Correction till the next General or Quarter Sessions; and the Justices there may order her to be publicly whipp'd, and detained in the House of Correction for any farther time, not exceeding six Months; and on Application of the Church-wardens or Overseers, the said Justices shall order the Treasurer of the County or District, to pay a reasonable Satisfaction, as they shall settle, for the Charges such Place has been at on the Woman's Account; and if the Woman be detained and taken before a Justice, the Child, if a Bastard, shall not be settled on the Place where born, but the Woman's Settlement shall be a Settlement for the Child.

Sec. 26. Any Person aggrieved for the Act of any Justice, may appeal to the General or Quarter Sessions, giving timely Notice, whose Order shall be final.

Sec. 27. See §. 30 pag. 489 *supra*, and if any Persons be delivered to a Bedel or Constable, within the City or Liberties, that Bedel or Constable shall not deliver them to any other Precinct, but in the next County.

Sec. 28. When Offenders against this Act are examined at Sessions, and no Place is found to pass them to, the Justices may order them to be detained and employed in the House of Correction, till they can be placed out as Servants, Apprentices, Soldiers, Mariners or otherwise, within this Realm, or in any of his Majesty's Colonies in *America*.

Sec. 29. This Act not to prejudice the Heirs, &c. of *John Dutton*.

Sec. 30. See §. 32 pag. 489 *supra*.

Sec. 31. See §. 33 pag. 489, 490 *supra*.

Sec. 32. See §. 34 *ibid*.

Sec. 33. Sums to defray the Expences arising in the Execution of this Act, are to be raised as Rates are directed to be raised by 12 *Geo. 2.* see pag. 479 *supra*.

Sec. 34. Persons sued for any thing done in Execution of this Act, may plead the General Issue, &c. and if a Verdict pass for the Defendant, or the Plaintiff be nonsuited or discontinued, &c. the Defendant may recover treble Costs; and the 13 *Geo. 2. cap. 24.* is hereby repealed, but all Acts thereby repealed continue so.

By 17 *Geo. 2. cap. 8.* To prevent the committing of Abuses in the weighing and packing of Butter in the Town of *New Malton* in the County of *York*, Offenders against that Act are to be convicted by Proof, on Oath of one or more credible Witness or Witnesses, before any Justice of Peace of any of the Ridings of the County of *York*, where the Offence shall be committed; and in default of Payment of the Forfeiture upon Demand (being 3*s.* 4*d.* for every Cask, Pot or Vessel of Butter sold or transported, without being first brought to the Market at *New Malton*, to be there viewed, searched, weighed and sealed, as by the Act is more particularly directed) the said Forfeiture shall be levied by Distress and Sale of the Offender's Goods, by Warrant under the Hand and Seal of any one or more Justice or Justices of the Peace of the said Ridings. One half of the Forfeiture shall be to the Use of the Poor, and the other half to the Informer.

Persons aggrieved by any Determination of the Justices of Peace, may appeal to the next General Quarter-Sessions for the Riding where the Offence was committed.

Some Doubts having arisen on the Act of 16 *Geo. 2.* about the Power of Justices in several Cases relating to the Forfeitures for retaling spirituous Liquors, it is therefore enacted by the 17 *Geo. 2. cap. 17.* That all Penalties and Forfeitures imposed by the said Act, and also by this Act, may be recovered, levied and mitigated, by the same Methods as are practised by any Laws of Excise.

Justices,

17 *Geo. 2.*
cap. 8.
§. 2.
Butter.

ib. §. 5.

17 *Geo. 2.*
cap. 17.
Spirits.

Justices, if they think proper, instead of levying the Penalty, may commit the Offender to the ^{Ib. §. 17.} House of Correction to hard Labour for two Months; and the Persons so committed, before they are discharged, shall be stripped naked from the Middle upwards, and be whipp'd till their Bodies are bloody.

No License shall be granted for retaling spirituous Liquors, except to such Persons only who keep ^{Ib. §. 18.} Taverns, Victualling-Houses, Inns, Coffee-Houses, or Ale-Houses; and all other Licenses shall be void; and if any Person having a lawful License, shall afterwards, during the Continuance of such License, exercise the Trade of a Distiller, Grocer, or Chandler, or keep a Brandy Shop, for Sale of spirituous Liquors, the License in every such Case shall be void, and the Retalers shall forfeit 10*l.* for every Offence.

All Persons who by themselves, or Servants, shall retale spirituous Liquors, mixt or unmixt with ^{Ib. §. 19.} any Ingredients, to be drank or consumed in any Quantity whatsoever, in any Places to them belonging; or shall retale or send the same abroad in less Quantity than two Gallons, without first taking out a License, and renewing the same, as in the Act 16 *Geo. 2.* is particularly directed, shall be deemed a Retaler of spirituous Liquors within the Meaning of the said Act, and shall forfeit 10*l.* for every Offence.

No License for retaling spirituous Liquors, shall empower any Person to sell the same in any Places, ^{Ib. §. 21.} except in the Houses or Places thereto belonging, wherein they shall inhabit at the time of granting such License.

By 17 *Geo. 2. cap. 29.* for the making more effectual Provision for enlightening the Streets of the ^{17 Geo. 2. cap. 29. Lampi.} City of *London*, it is enacted, That if any Person shall wilfully break, throw down, or extinguish any Lamp set up to light the Streets, or damage the Posts, Irons, or other Furniture thereof, such Offender being convicted by the Oath of one or more credible Witnesses or Witnesses, before any one Justice of the Peace for the City of *London*, shall for the first Offence, forfeit the Sum of 40*s.* and for the second, the Sum of 50*s.* and for the third Offence, the Sum of Three Pounds.

By the 17 *Geo. 2. cap. 30.* for the more effectual preventing of the affixing counterfeit Stamps to ^{17 Geo. 2. cap. 30. Linen.} foreign or other Linens, it is enacted, That if any Person shall affix, or cause or procure to be affixed, any Stamp in Imitation of those put upon the Linen Manufactures of *Scotland* or *Ireland*, on any foreign Linens imported into this Kingdom, such Offender shall forfeit the Sum of 5*l.* for each Piece of Linen so stamped. And if any Person shall expose to Sale, or pack up for Sale, any foreign Linens, knowing them to be so stamped as aforesaid, as the Manufacture of *Scotland* or *Ireland*, such Offender shall forfeit the said Linens, and the Sum of 5*l.* for each Piece thereof so sold, exposed to Sale, or packed up as aforesaid. And if any Person shall affix any counterfeit Stamp or Stamps, upon any Linens of the Manufactures of *Great Britain* or *Ireland*, in order to vend the same as Linens duly stamped, such Offender shall forfeit the Sum of 5*l.* for every Piece of Linen so stamped. And if any Person shall sell, expose to, or pack up for Sale, any such Linens, knowing the same to be stamped as aforesaid, such Offender shall forfeit the Linens, and 5*l.* for each Piece so sold, &c.

Any Justice of the Peace, for the Place where any Offence shall be committed against this Act, ^{Ib. §. 2.} may convict the Party offending, upon the Oath of one Witness, and upon Conviction, the Justice may grant his Warrant under his Hand and Seal, to levy the Penalty by Distress and Sale of the Offender's Goods and Chattels &c. And in case Goods and Chattels of the Offender sufficient to pay such Penalty cannot be found, such Justice shall, upon Proof thereof made upon Oath before him, by the Person who shall have the Execution of the Warrant for levying such Distress, commit the Offender to the Gaol of the County, &c. without Bail for six Months, unless the Penalty be sooner paid, which Penalty shall be applied to the Use of the Informer, deducting two Shillings in the Pound for the Constable or Officer executing the Warrant.

By the 17 *Geo. 2. cap. 35.* it is enacted, That the Justices of the Peace, in the several Counties ^{17 Geo. 2. cap. 35 §. 1. Coals.} in the kingdom of *England*, Dominion of *Wales*, and of the Town of *Berwick* upon *Tweed*, or any three or more of them, whereof one to be of the *Quorum*, are hereby empowered to set the Rates and Prices of all such Coals called Sea Coals, as shall be brought by Sea into any other Rivers, Creeks, Havens, or Ports, and sold by Retale, after landed, in any other Cities, &c. within the Kingdom of *England*, Dominion of *Wales*, and Town of *Berwick* upon *Tweed*, to which the Act of the 17 *Car. 2.* recited doth not extend, as they from time to time shall judge reasonable, allowing a competent Profit to the Retaler, beyond the Price paid by him to the Importer, and the ordinary Charges thereupon accruing; and if any Ingrosser or Retaler of such Coals, shall refuse to sell as aforesaid, then the Justices of the Peace respectively, are hereby authorized to appoint and empower such Officers, or other Persons, as they shall think fit, to enter into any Wharf, or other Place, where such Coals are stored up; and in case of Refusal, taking a Constable, to force Entrance, and to sell the said Coals at such Rates, as the Justices respectively shall judge reasonable, rendering to such Ingrosser or Retaler the Money for which the Coals shall be so sold, necessary Charges being deducted; and if any Action shall be commenced against the Justice of Peace, Constable, or any Officer, or Person, for any thing to be done in Pursuance of this Act, the Defendant may plead the General Issue, and give the special Matter in Evidence; and if the Verdict be found for him, or the Plaintiff become Nonsuited, such Defendant shall recover his Damages, and Treble Coasts of Suit, for his unjust Vexation in that Behalf.

Provided, that no Person, having Interest in any Wharf, used for the receiving and uttering of ^{Ib. §. 2.} Coals, or that trades by himself or others, in his own or any other Name, in the Sale of Coals, or the ingrossing, in order to sell the same, and not for his own private Use only, shall Act, or otherwise intermeddle in the setting the Price of Coals.

17 Geo. 2. cap. 37. §. 1. Rates. By 17 Geo. 2. cap. 37. it is enacted, That where there shall be any Dispute, in what Parish or Place improved or drained Lands lie, and ought to be rated; the Occupiers of such Lands, or Houses built thereon, Tenements, Tithes arising therefrom, Mines therein, and saleable underwoods, shall be rated to the Relief of the Poor, and to all other Parochial Rates within such Parish and Place which lies nearest to such Lands, as all other Lands within such Parish and Place, are by Law liable to be rated; and if on Application to the Officers of such Parish or Place, any Dispute shall arise, the Justices for the County, &c. where such Lands lie, at their next General Quarter-Sessions, after such Application made, and after Notice given to the Officers of the several Parishes and Places adjoining to such Lands, and to all other Persons interested therein, to hear and determine the same on the Appeal of any Person interested, and to cause such Lands or Hereditaments to be equally assessed, and such Determination shall be final and conclusive.

Ib. §. 2. No Allotment to be made by the Justices, shall determine the Boundaries of any Parishes or Places, other than for the Purpose of rating such Lands, &c. to the Relief of the Poor, and to all other Parochial Rates within such Parish or Place, to which they shall be so allotted.

17 Geo. 2. cap. 38. §. 1. Poor. By reason of some Defects in the Act 43 Eliz. the Money raised for Purposes therein mentioned, is liable to be misapplied, and there is often great Difficulty and Delay in raising of the same; for Remedy whereof, it is therefore enacted, by 17 Geo. 2. cap. 38. That the Church-wardens and Overseers of the Poor shall Yearly, within 14 Days after other Overseers shall be appointed, deliver in to the succeeding Overseers, a just account in Writing, fairly entered in a Book to be kept for that Purpose, and signed by the Church-wardens and Overseers, of all Sums of Money by them received, or rated and not received; and also of all Materials that shall be in their Hands, or in the Hands of any of the Poor to be wrought, and of all Monies paid by such Church-wardens and Overseers so accounting, and of all other things concerning their Office; and shall also pay all Sums of Money, &c. as shall be in their Hands, to the succeeding Overseers; which Account shall be verified by Oath, or Affirmation of Quakers, before one or more Justices, which said Oath, or Affirmation, such Justices are hereby authorized and required to administer, and to sign the same, without Fee, and the said Books shall be preserved by the Church-wardens and Overseers; to be inspected at all reasonable Times, paying 6d. for such Inspection, and shall, upon Demand, give Copies, at the Rate of 6d. for every 300 Words, and so in Proportion for any greater or lesser Number.

Ib. §. 2. If the Church-wardens and Overseers of the Poor shall neglect to make up their Account within the Time herein before limited, or shall neglect to pay over the Money, and other things in their Hands, any two Justices may commit them to the common Gaol, till they shall have accounted and paid as aforesaid.

Ib. §. 3. If any Overseer shall die, or remove, or become insolvent, before the Expiration of his Office, any two Justices may appoint another Overseer in his stead, who shall continue in Office till new Overseers are appointed; and every Overseer shall, before such Removal, deliver his Accounts on Oath, with all Rates, and other things, concerning his Office, under the like Penalties as are inflicted on an Overseer refusing to do the same, after the Expiration of his Office; and if any Overseer shall die, his Executors or Administrators shall, within forty Days after his Decease, deliver over all things concerning his Office, to some Church-warden, or other Overseer of the same Place; and shall pay out of the Assets left by such Overseer, all Sums of Money remaining due, which he received by Virtue of his Office, before any of his other Debts are paid.

Ib. §. 4. If any Person shall find himself aggrieved, by any Assessment made for Relief of the Poor, or shall have any material Objection to any Person's being put on, or left out of such Assessment, or to the Sum charged on any Persons therein, or shall have any material Objection to such Account, or any Part thereof, or shall find himself aggrieved by any thing done or omitted by the Church-wardens and Overseers, or by any of his Majesty's Justices, they may, giving reasonable Notice, appeal to the next General or Quarter-Sessions; where the same shall be heard, and finally determined; but if reasonable Notice be not given, then they shall adjourn the Appeal to the next Quarter-Sessions; and the Justices may award to the Party, for whom such Appeal shall be determined, reasonable Costs, as they are empowered to do in case of Appeals concerning the Settlement of poor Persons, by an Act made 8 & 9 Will. 3.

Ib. §. 5. In all Corporations or Franchises, who have not four Justices, any Person may appeal to the next General or Quarter-Sessions of the Peace, for the County, &c. wherein such Corporation or Franchise is situate.

Ib. §. 6. On all Appeals from Rates and Assessments, the Justices (where they shall see just Cause) shall amend the same, in such manner only as shall be necessary for giving Relief, without altering such Rates, with respect to other Persons mentioned in the same; but if upon an Appeal from the whole Rate, it shall be found necessary to set aside the same, then the Justices shall order the Church-wardens and Overseers to make a new equal Rate, and they are hereby required to make the same accordingly.

Ib. §. 7. The Goods of any Person assessed, and refusing to pay, may be levied by Warrant of Distress, in any Part of the County; and if sufficient Distress cannot be found within the said County, on Oath made thereof before some Justice of any other County (which Oath shall be certified on the said Warrant) the Goods may be levied in such other County or Precinct, by virtue of such Warrant and Certificate; and if any Person shall find himself aggrieved by such Distress, he may appeal to the next General Quarter-Sessions for the County or Precinct where such Assessment was made, and the Justices there are hereby required to hear and finally determine the same.

Where any Distress shall be made for Money justly due for Relief of the Poor, the Distress itself ^{Ib. §. 8.} shall not be deemed unlawful, nor the Parties making it, be deemed Trespassers, on account of any Defect, or Want of Form in the Warrant for the Appointment of such Overseers, or in the Rate, or in the Warrant of Distress thereupon; nor shall the Parties distraining, be deemed Trespassers *ab initio*, on account of any Irregularity, which shall be afterwards done by the Parties distraining; but the Parties aggrieved by such Irregularity, may recover full Satisfaction for the special Damage, and no more, in an Action of Trespass, or on the case, at the Election of the Plaintiffs.

Provided always, that where the Plaintiffs shall recover in such Action, they shall be paid their ^{Ib. §. 9.} full Costs of Suit, and have all the like Remedies for the same, as in other Cases of Costs.

No Plaintiff shall recover in any Action for any such Irregularity, if tender of Amends hath been ^{Ib. §. 10.} made by the Parties distraining, before such Action brought.

If any Person shall neglect to pay to such Overseers, any Sum of Money that shall be legally rated, ^{Ib. §. 11.} the succeeding Overseers shall levy such Arrears, and reimburse their Predecessors all Sums of Money which they have expended for the Use of the Poor, and which are allowed to be due to them in their Accounts.

Where Persons shall come into, or occupy any Premises, out of which any other Person assessed ^{Ib. §. 12.} shall be removed, or which, at the time of making such Rate, was unoccupied, then every Person, so removing from, or coming into, or occupying the same, shall be liable to pay to such Rate, in Proportion to the time that such Person occupied the same respectively, under the like Penalty of Distress, as if such Person so removing, had not removed, or the Person coming in or occupying, had been originally assessed in such Rate; which Proportion, in case of Dispute, shall be ascertained by any two or more Justices.

True Copies of all Rates, hereafter to be made for Relief of the Poor, shall be fairly entered in a ^{Ib. §. 13.} Book, by the Church-wardens and Overseers of the Poor, within 14 Days after all Appeals from such Rates are determined, and shall attest the same by putting their Names thereto; and all such Books shall be preserved by the Church-wardens and Overseers for the Time being, or one of them, in every such Parish, &c. whereto all Persons liable to be assessed may freely resort, and shall be delivered over from time to time, to the new Church-wardens and Overseers, as soon as they enter into their Offices, to be preserved, and produced at the General or Quarter-Sessions, when any Appeal is to be heard.

Any Parish-Officer neglecting to obey the Directions of this Act, for the Space of two Calendar ^{Ib. §. 14.} Months, being convicted on Oath before any two Justices, shall forfeit a Sum not exceeding 5 *l.* or less than 20 *s.* for the Use of the Poor, to be levied by Distress and Sale of the Offender's Goods.

Overseers in every Township or Place where there are no Church-wardens, shall perform all Acts ^{Ib. §. 15.} relating to the Poor, as Church-wardens and Overseers may do by this or any other Statute concerning the Poor; and shall suffer all such Penalties for Neglect thereof, as Church-wardens and Overseers are liable to, by virtue of this or any former Statute concerning the Poor.

By the 18 *Geo. 2. cap. 10.* for the speedy and effectual recruiting of his Majesty's Regiments of ^{18 Geo. 2. cap. 10. Recruits.} Foot serving in *Flanders, Minorca, Gibraltar* and the Plantations, and the Regiments of ^{cap. 10. Recruits.} Marines, Justices of Peace among others, are appointed Commissioners for putting this Act in Execution; but as this Act expires *April 12, 1746.* we think it needless to insert it here.

By 18 *Geo. 2. cap. 20.* for the further Qualification of Justices of the Peace, it is enacted, That ^{18 Geo. 2. cap. 20. Justices of Peace.} no Person shall be capable of being or acting as a Justice of the Peace, for any County or Division of *England or Wales*, who shall not have in Law or Equity, for his own Use, in Possession, a Freehold, Copyhold, or Customary Estate for Life, or for some greater Estate, or an Estate for some long Term of Years, determinable upon one or more Life or Lives, or for a certain Term originally created for 21 Years, or more, in Lands, &c. in *England or Wales*, of the clear yearly Value of 100 *l.* above what will discharge all Incumbrances affecting the same, and all Rents and Charges payable out of the same; or who shall not be intitled to the immediate Reversion of Lands, &c. leased for One, Two, or Three Lives, or for any Term of Years, determinable on the Death of One, Two, or Three Lives, upon reserved Rents of the Yearly Value of 300 *l.* and who shall not, before he takes upon him to act as a Justice, at some General or Quarter-Sessions for the County or Division for which he intends to act, first take and subscribe the Oath following, *viz.*

I A. B. do swear, That I truly and bona fide have such an Estate, in Law or Equity, to and for my own Use and Benefit, consisting of (specifying the Nature of such an Estate, whether Messuage, Land, Rent, Tithe, Office, Benefice or what else) as doth qualify me to act as a Justice of the Peace for the County, Riding, or Division of according to the true Intent and Meaning of an Act of Parliament, made in the eighteenth Year of the Reign of his Majesty King George the Second, intituled, An Act to amend and render more effectual an Act passed in the fifth Year of his present Majesty's Reign, intituled, An Act for the further Qualification of Justices of the Peace; and that the same (except where it consists of an Office, Benefice, or Ecclesiastical Preferment, which it shall be sufficient to ascertain by their known and usual Names) is lying, or being, or issuing out of Lands, Tenements, or Hereditaments, being within the Parish, Township, or Precinct of or in the several Parishes, Townships, or Precincts of in the County of or in the several Counties of (as the Case may be)

Which Oath taken and subscribed, shall be kept by the Clerk of the Peace of the County, &c. ^{Ib. §. 2.} among the Records for the Sessions of the same.

- Ib. §. 3. The Clerk of the Peace, on Demand, shall forthwith deliver an attested Copy to any Person, paying 2 s. for the same; which being proved to be a true copy of such Oath, shall be admitted in Evidence on any Issue in any Action, &c. to be brought on this Act.
- Ib. §. 4. Any Person who shall act as a Justice of the Peace, for any County or Division within *England* or *Wales*, without having taken and subscribed the said Oath, or without being qualified according to the Intent of this Act, shall, for every Offence, forfeit 100 l. one Moiety to the Poor of the Parish in which he most usually resides, and the other to the Person who shall sue for the same; to be recovered with full Costs of Suit, by Action of Debt, &c. in any Court of Record at *Westminster*, in which no Essoin, &c. or more than one Imparance shall be allowed; and in every such Action, &c. the Proof of his Qualification shall lie on the Person against whom it is brought.
- Ib. §. 5. If the Defendant in any such Suit, &c. shall intend to insist on any Lands, &c. not contained in such Oath, as his Qualification to act as a Justice, in Part, or in the whole, at the Time of the supposed Offence, wherewith he is charged, he shall, at or before the Time of his pleading, deliver the Plaintiff or his Attorney a Notice in Writing, specifying such Lands, &c. (other than those contained in the Oath) and the Parish or Place, or Parishes or Places, and the County or Counties wherein the same are respectively situate (Offices and Benefices excepted, which it shall be sufficient to ascertain by their usual Names); and if the Plaintiff in such Suit shall think fit thereon not to insist further, he may, with Leave of the Court, discontinue such Suit, on Payment of Costs to the Defendant, as the Court shall award.
- Ib. §. 6. Upon Trial of the Issue in any Suit to be brought, no Lands, &c. which are not contained in the Oath and Notice, or one of them, shall be allowed to be insisted on by the Defendant, as any Part of his Qualification.
- Ib. §. 7. Where the Lands contained in the said Oath or Notice, are, together with other Lands, belonging to the Person taking such Oath, or delivering such Notice, liable to any Charges or Incumbrances, within the Intent, and for the Purposes of this Act, the Lands, &c. contained in the Oath or Notice, shall be deemed to be chargeable only so far, as the other Lands, &c. jointly charged, are not sufficient to discharge the same.
- Ib. §. 8. Where the Qualification required, or any Part of it, consists of Rent, it shall be sufficient to specify in the Oath or Notice, so much of the Lands, &c. out of which such Rent is issuing, as shall be of Value to answer such Rent.
- Ib. §. 9. If the Plaintiff, or Informer in any such Suit, shall discontinue the same, otherwise than aforesaid, or be Nonsuit, or Judgment be otherwise given against him, then the Person against whom the Action shall have been brought, shall recover treble Costs.
- Ib. §. 10. Only one Penalty of 100 l. shall be recovered from the same Person by this, or an Act of 5 *Geo. 2. cap. 18.* for the same, or any other Offence committed by the same Person, upon which one Penalty of 100 l. shall have been recovered, and due Notice given to the Defendant, of the Commencement of such Action.
- Ib. §. 11. Where an Action shall be brought, and due Notice given thereof, no Proceedings shall be had on any subsequent Action, &c. against the same Person, for any Offence committed before the Time of giving such Notice; but the Court, where such subsequent Action shall be brought, may, on the Defendant's Motion, stay Proceedings thereon, so as such first Action be prosecuted without Fraud, and with Effect; for no Action which shall not be so prosecuted, shall be deemed an Action within the Intent of this Act.
- Ib. §. 12. Every Action, &c. given by this or the said former Act, shall be commenced within six Months after the Fact, on which the same is grounded, shall have been committed.
- Ib. §. 13. This Act shall not extend to any City or Town, being a County of itself, or to any other City, Town, Cinqueport, or Liberty, having Justices within their respective Precincts, by Charter, Commission, or otherwise; but in every such City, &c. such Persons may be Justices of the Peace, and in such manner as they might have been if this Act had never been made.
- Ib. §. 14, 15 and 16. These Sections contain the like Proviso's and Exceptions, as the 5 *Geo. 2. cap. 18. vide supra* pag. 7.
18 *Geo. 2. cap. 27. §. 1.*
Linen, &c. Felony.
- By 18 *Geo. 2. cap. 27.* it is enacted, That every Person who shall, by Day or Night, feloniously steal any Linen, Fustian, Callico, Cotton, Cloth, or Cloth worked, woven, or made of any Cotton or Linen-Yarn mixed, or any Thread, Linen, or Cotton-Yarn, Linen, or Cotton-Tape, Inkle, Filleting, Laces, or any other Linen, Fustian, or Cotton Goods, or Wares, laid or exposed to be printed, whitened, bowked, bleached, or dried, in any whitening or bleaching Croft, or Grounds, Bowking-House, &c. or other Building, or Place made Use of by any Callico-Printer, Whitster, Croster, Bowker, or Bleacher, for printing, whitening, bowking, bleaching or drying the same, to the Value of 10 s. or shall aid, hire, or procure any other to commit such Offence, or shall buy or receive any such Wares so stolen, knowing them to be stolen, being convicted, shall be declared guilty of Felony, and shall suffer Death as in Cases of Felony, without Benefit of Clergy.
- Ib. §. 2, 3. The Court may transport the Offender for 14 Years, and if he break Gaol, escape before Transportation, or return into, or be at large, in *Great Britain*, before the Expiration of the Term, he shall suffer Death as a Felon, without Benefit of Clergy.
- Ib. §. 4. The Act of 4 *Geo. 2. cap. 16. supra* pag. 363, is repealed.
- 18 *Geo. 2. cap. 33. Courts.* The 18 *Geo. 2. cap. 33.* repeals a Clause of the Statute 3 & 4 *Will. & Mar.* whereby it is declared lawful for any Inhabitant within the Bills of Mortality, who dwells off from the Pavement, or uses his Carts, as well off as upon the Pavement, and for any Brewer, or Scavenger, to use any Cart, Car or Dray, with Wheels shod with Iron, and narrower than six Inches in the fellies, and drawn with more than two Horses,

By *Sett.* 2. it is enacted, That any Person whatsoever may make use of any Cart, Car or Dray, ^{18 Geo. 2. cap. 33.} with Wheels of six Inches in the fellies, and not wrought about with Iron, drawn by three Horses.

But he that uses any such Cart, &c. drawn by more than three Horses, is liable to the Penalties *Ib.* §. 3. of the Statute 2. *Will. & Mar.*

The Name of the Owner of every Cart is to be placed thereon, and numbred, and registered with *Ib.* §. 4. 5. the Commissioners for Licenſing hackney Coaches.

By 18 *Geo.* 2. *cap.* 34. the Statutes 12 *Geo.* 2. *cap.* 28. and 13 *Geo.* 2. *cap.* 19. *vide supra* pag. 106, ^{18 Geo. 2. cap. 34. Gaming.} are explained, amended, and made more effectual.

By 18 *Geo.* 2. *cap.* 36. the wearing of Cambrick, and *French* Lawn, is prohibited after *June* 24 ^{18 Geo. 2. cap. 36.} 1748, under the Penalty of 5*l.* upon Conviction on Oath of one Witness, before any Justice of Peace.

By 19 *Geo.* 2. the king is impowered to secure and detain such Persons as he shall suspect are con- ^{French Cam- brick and Lawn.} spiring against his Person and Government, for which Purpose it is enacted, That Persons imprisoned by Warrant signed by six of the privy Council, for Suspicion of High Treason, or treasonable Practices, or by Warrant signed by any of the Secretaries of State for such Causes, may be detained in ^{19 Geo. 2. Treason.} safe Custody without Bail or Mainprize until the 19th of *April* 1746, and till then no Judge or Justice of Peace shall Bail or try any such Person so committed, without an Order signed by six of the privy Council.

C H A P. CXC VIII.

Cases relating to the Jurisdiction of Justices of the Peace; abstracted from the Reports of Lord Raymond and Chief Baron Comyns.

THE Justices in Sessions have a Power by the Stat. 5 & 6 *Ed.* 6. *c.* 25. to suppress Alehouses, and ^{Alehouses. L^d Raym. 1303.} need not proceed by Information or Conviction; but they have thereby a discretionary Power to suppress them, without shewing any Cause or Misdemeanor: And where the Act speaks of a Conviction, that is only intended where the Justices proceed for the Penalty, which ought to be by *Scire Facias*.

The Court of King's Bench were unanimously of Opinion, that an Apprentice letting himself to ^{Apprentices. L^d Raym. 1352.} Service without his Master's Consent, gained no Settlement by such Service, altho' his Master was broke: for this would not determine the Apprenticeship; for the Apprentice continued not *sui juris*. And though in the Case before the Court, the Master had afterwards delivered up the Indenture, yet this was not looked upon as a subsequent Consent, and will not make the Apprentice's letting himself to a third Person good, so as to gain a Settlement. But if the letting had been with the Master's Consent, the Service would have been a Settlement.

Upon a special Order of Sessions removed into the King's Bench by *Certiorari*, for discharging ^{L^d Raym. 1410.} an Apprentice, who appeared by the Order to have been bound to a Glazier, a Freeman of *London*, before the Chamberlain; it was moved to quash the Order, for that the Apprentice being bound before the Chamberlain of *London*, the Justices of Peace had no Power to discharge him, the Liberties and Privileges of the Citizens of *London*, as to having and retaining Apprentices, being expressly saved by the Stat. 5 *Eliz.* *cap.* 4. §. 40. But the Court held, that the Apprentice being out of *London* and serving his Master out of the City, there can be no Proceedings against him before the Chamberlain; but the Justices of Peace have a Jurisdiction to discharge him, notwithstanding he was bound in *London*.

An Exception was also taken to the Order in this Case, because the Trade to which the Apprentice was bound, *viz.* a Glazier, was not within the Statute of 5 *Eliz.* But though it was formerly held, the Trade ought to be a Trade within the Statute; yet the latter Resolutions have been otherwise.

An Order was made by Justices of Peace, that the Church-wardens and Overseers of the Poor ^{Bastard. L^d Raym. 858.} should seize of the Goods of a putative Father of a Bastard, what they should judge proper to secure the Parish from the Maintenance of the Child. Upon a Removal of this Order into the King's Bench it was quashed, because by the 13 & 14 *Car.* *cap.* 12. they have only Authority to make an Order to impower the Church-wardens and Overseers, &c. to seize what the Justices should judge proper, and not what the Church-wardens, &c. should judge proper. Part of the Order was also quashed, because it ordered that the Defendant should give Security for Payment of the Sum imposed for the Maintenance of the Child; when it did not appear that the Defendant had disobeyed the Order in Point of Payment. And by 18 *Eliz.* *cap.* 3. an Order for Security cannot be made, till after Contempt.

If a Man is adjudged by two Justices the reputed Father of a Bastard, and ordered to pay, and ^{L^d Raym. 1157.} on Appeal the Order is confirmed, the Justices at the Sessions cannot commit for Non-payment, but must proceed on the Recognizance taken by the two Justices.

Justices of Peace may order Payment of Money for Maintenance of a Bastard on a Day certain, ^{L^d Raym. 1197.} weekly, and before the Week is quite up. If the Money be ordered to be paid to the Overseers of the Poor, it is well enough.

L^d Raym. 1563. An Order made upon the Defendant to maintain a Bastard Child, was quashed, because though in the Complaint it was alledged the Child was born in the Parish of *Hitchin* in *Hertfordshire*, yet there was no Adjudication by the Justices, nor no Words of the Justices from whence it could be collected, in what Parish the Child was born.

L^d Raym. 1423. An Order was made by two Justices of the Peace upon the Defendant, to keep a Bastard, as being the reputed Father. This Order was appealed from to the Quarter-Sessions, where upon full Hearing of the Merits, the Order was discharged; but the Defendant was bound to appear at the next Quarter-Sessions, under Apprehension that better Evidence might be procured. After this the two Justices made a new Order upon the Defendant for keeping this Bastard: But the Court of King's Bench quashed this last Order; for their first Order being regularly discharged upon an Appeal, the Defendant was legally acquitted, and cannot be drawn in Question again for the same Fact.

Bridges. Comyns 86. A *Certiorari* lies to remove an Order made by the Justices of the Peace, concerning the Repair of a Bridge and Wear, pursuant to a private Act of Parliament; and the Justices ought to return the private Act upon which their Order is founded.

L^d Raym. 1175. An Indictment for not repairing a Bridge ought to shew what sort of Bridge it is, whether for Carts and Carriages, or for Horses, or for Footmen only.

Certiorari. L^d Raym. 1199. A *Certiorari* to return all Orders against *A.* and *B.* will not remove Orders only against *A.*

Constable. L^d Raym. 736. A Constable may execute the Warrant of a Justice of Peace out of his Liberty, but he is not compellable to execute it there.

L^d Raym. 1189. A Constable of a Hundred being indicted for not returning the Warrant of two Justices, for levying a Forfeiture on Conviction of Deer-stealing; the Defendant pleaded Not Guilty, and was tried and convicted at the Assizes. The Record was removed into the King's Bench by *Certiorari*, where, after several Arguments, Judgment was given for the Queen, and the Defendant fined 200*l.* by the Opinion of three Judges against *Holt*, Chief Justice. They held that the Constable is obliged to execute the Justices Warrant on a Conviction of Deer-stealing, and that a Constable of a Hundred is as much an Officer of the Justices, as a Constable of a Parish: That it not being said in the Act who should execute the Warrant, the Constable must execute it, he being the proper Officer attendant on the Justices of Peace. That there being several Things appointed by the Act of Parliament to be done by the Constables; as detaining the Offender in Custody till a Return may be made to the Warrants; searching for Venison, Skins of Deer, and Toils; which shews that the Legislature looked upon him as the proper Person in this Case. *Holt* made no Question but that an Indictment would lie in this Case, and that the Constable was a proper Officer to execute the Warrant; but his Objection was to the Warrant, as not mentioning Time nor Place, nor when and where it should be returned; whereas there ought to be both; and all Process in the superior Courts are so.

L^d Raym. 1195, 1196. Upon the Arguments in this Case, the Court held, that in Case an Offender was but once convicted, and had Goods only sufficient to satisfy Part of the Sum forfeited, that his Goods could not be taken, but he must be imprisoned for a Year, and set in the Pillory. But in Case he were twice convicted, and had Goods sufficient to satisfy one Conviction, but not both; he should pay one, and suffer corporal Punishment for the other: But the Law never intended he should suffer both Ways upon one Conviction, to pay Part, and be set in the Pillory for the Residue.

L^d Raym. 1196. Upon the Return of Want of Distress, the Justice of Peace should make a Record of it, and give Judgment for the corporal Punishment.

The Constable is not obliged to return the Warrant itself to the Justice, but may keep it for his own Justification, in Case he should be questioned for what he had done; but only give him an Account what he had done upon it.

Deer-stealing. L^d Raym. 545. A Man convicted upon the Statute of Deer-stealing, 3 & 4 *W. & M. cap. 10.* cannot be committed, if he have sufficient Distress.

L^d Raym. 581, 582. In Convictions by Justices of Peace, in a summary Way, where the ancient Course of Proceeding by Indictment and Trial by Jury is dispensed with, the Court may more easily dispense with Forms; and it is sufficient for the Justices, in the Description of the Offence to pursue the Words of the Statute; and they are not confined to the legal Forms requisite in Indictments for Offences by the Common Law. For though all Acts which subject Men to new and other Trials, than those by which they ought to be tried by the Common Law, being contrary to the Rights and Liberties of *Englishmen*, as they were settled by *Magna Charta*, ought to be taken strictly; yet when such a Statute is made, one ought to pursue the Intent of the Makers, and expound it in so reasonable a Manner as that it may be executed. But it is also incumbent upon Judges, to take great Care that in the Execution of this Law they do not go beyond the Act of Parliament. Said by Chief Justice *Holt*, in pronouncing the Opinion of the Court upon a Conviction for Deer-stealing by a Justice of Peace, upon the 3 & 4 *W. & M. cap. 10.* the Conviction being removed into the King's Bench by *Certiorari*.

L^d Raym. 583, 584. Upon a Conviction for Deer-stealing on this Statute, exception was taken that *illicite occidit* is not sufficient, but that it ought to be *furtive*, or *cum animo furandi*, or something resembling it; for every unlawful killing is not within the Act. But *per Holt* Chief Justice; if there is a Pretence of Right, we ought to suppose that the Justice would do Right, and acquit the Defendant; because he is intrusted with the Execution of the Law. The Intent of the Act was to prevent killing in a clandestine Manner by Stealth; but it is enough to lay the Fact in the Words of the Act of Parliament, and that ought to be admitted upon Evidence. The Title of the Act is against Deer-stealers, but there is not any such Word in the Body of the Act: And therefore if there was a Dispute concerning the Limits of a Walk in a Forest, and one claims, as Part of his Walk, what is, in Fact, Part

of the Division of another, and accordingly kills Deer there, the Case is out of the Intent of the Act, but is plainly within the Words. The Intent of the Act was to punish Rogues and Vagabonds; not to punish Persons, who by Mistake in the Execution of their Trusts exceed what the Law warrants. If the Keeper of a Walk gives Leave to a Person to kill a Deer, though this Licence does not give him sufficient Authority to kill it, yet it will not be an unlawful killing within the Statute, because there is a Colour of Right.

Three Men were convicted upon the 3 & 4 W. & M. cap. 10. made against Deer-stealers, viz. L^d Raym. two of them for killing five Deer in a Park, and the third for aiding and assisting, by inciting and 842. persuading the others to kill the said Deer, and by lending them a Horse and a Dog for that Purpose. This Conviction was moved into the King's Bench by *Certiorari*, and Exceptions were taken to it. The grand Question was, whether the third Defendant was convicted of any Offence within the said Act of Parliament? And three Justices, against *Holt* Chief Justice, held the Conviction good.

A Conviction against the Defendant for killing Deer, was removed into the King's Bench by *Cer-* L^d Raym. *tiorari*; and quashed, because it said only, that he killed Deer *in quodam loco*, where they had been 791. usually kept, and did not say inclosed.

Upon an Information before two Justices of the Peace, the Defendant was convicted on 8 Ann. Excise. cap. 9. for not permitting, and refusing to assist an Officer of the Excise to weigh Candles. By this L^d Raym. Statute an Excise Officer may by Day or Night, but if in the Night, it must be with a Conitable, 1375. enter into a House, &c. It was laid in the Information, that the Officer entered into the House lawfully, and not said, whether it was in the Day or Night. Hence an Exception was taken for the Defendant; but the Court affirmed the Conviction: For it is laid in the Information to have been lawfully, and it does not appear upon the Face of the Information, that it was wrong; and therefore the Court will not intend it was so. If it had been unlawfully, the Defendant would have had the Benefit of it, in his Defence before the Justices.

Where a Fact is made Felony by a Statute, it is not indictable as a Trespass.

An Inquisition of forcible Detainer, taken before two Justices of the Peace, being removed into L^d Raym. the King's Bench by *Certiorari*, was quashed, because it did not appear that the Jury, before whom 712. the Inquisition was taken, were of that Neighbourhood, nor of the County. Forcible Dt- tainer.

Some Persons being convicted, upon View of three Justices of the Peace, of a Forcible Detainer, L^d Raym. were by them committed to Gaol, till they should pay a Fine to the King; but the Justices did 926. assess no Fine. The Court of King's Bench held this Conviction naught, and it was quashed, and L^d Raym. the Defendants discharged. 1514.

A Man indicted of Forcible Entry may hinder the Justices from awarding Execution, either by *Forcible Entry* traversing the Force (though the Books heretofore have been *pro* and *con*, as to that Opinion) or by L^d Raym. Plea of Possession of three Years. 440.

By the 15 Rich. 2. cap. 2. Commitment by a Justice of Peace for a Forcible Entry ought to be L^d Raym. forthwith: And there is no Difference in Reason, why Restitution upon the 8 Hen. 6. should not be 483. immediately, as well as the Commitment upon the 15 Rich. 2. There is rather greater Reason, because the Conviction upon the 15 Rich. 2. is not traversable, as the Inquisition upon 8 Hen. 6. is. And it would be a great Mischief, and against the Reason of the Common Law, if it should be otherwise; because the Title in so long Time might be altered: And the Possession intimates, that the Person possessed is the rightful Owner, and so some Reason for Restitution; yet where a long Space of Time intervenes, this Reason is not of Force.

An Inquisition of Forcible Entry ought to shew what Estate the Tenant has, and ought to shew L^d Raym. an express Disseisin. 610.

An Indictment upon the Stat. 8 H. 6. for a Forcible Entry, was found before the Justices of the Comyns 61. Peace; but no Restitution awarded at the Time of the Conviction. At the End of two Years and a Half, Restitution of the Possession upon this Indictment was awarded to the Party ousted; and upon a Motion in the King's Bench (after Deliberation) Restitution was granted by the whole Court, and it was held that Restitution ought to have been awarded immediately; the Intent of the Statute being to give a present Remedy, and for that Reason does not delay it till the Quarter-Sessions; but impowers a private Justice to put the Act in Execution, which is not done, if he does not restore the Party ousted.

A Conviction *super præmissis*, for three Penalties of 5 *l.* each, for killing three Hares, where it Game. appears it was done the same Time, is bad, for the Statute does not give 5 *l.* for every Hare, it be- Comyns 274. ing but one Offence.

Upon a Conviction upon the 5 Ann. cap. 14. for killing of Hares, it ought to be made out be- Comyns 525. fore the Justice, that the Defendant had no such Qualification as the Law requires; therefore the Justice ought to return, that he had no Manner of Qualification, before he can convict the Defendant.

Justices of Peace cannot assess a Fine certain, for killing of Rabbits in a private Warren; for the L^d Raym. Stat. 22 & 23 Car. 2. cap. 25. gives treble Costs and Damages, but no Fine. 151.

A Conviction before a Justice of Peace for unlawfully keeping a Lurcher, and a Gun, to kill and L^d Raym. destroy the Game, was quashed; because it only averred generally that he was not qualified, and 1415. did not aver that the Defendant had not the particular Qualifications mentioned in the Statute, as to Degree, Estate, &c.

A Man being convicted by a Justice of Peace, for killing a fallow Deer of the King's in *Cran-* L^d Raym. *born Chace*; the Conviction was quashed, because the Informer was a Witness; divers Convictions 1545. having been quashed for the same Reason before.

Highways.
L^d Raym.
725.

The Inhabitants of every Parish of Common Right ought to repair the Highways; and therefore if particular Persons are made chargeable to repair the said Ways, by a Statute lately made, and they become insolvent, the Justices of Peace may put that Charge upon the rest of the Inhabitants.

L^d Raym.
858.

An Indictment found for not working in the Repair of the Highways in *London*, upon the 22 & 23 *Car. 2. cap. 17. §. 6.* was held bad; because that six Days were appointed between such and such Days for the Work, but the particular Days were not mentioned; for the Appointment ought to be of such Days in particular, *viz.* the 20th of *April*, &c. and Notice ought to be given accordingly.

L^d Raym.
922.

A Man was indicted for not repairing the Pavement before his House in *Old-Street*; and the Indictment was quashed, because it was not said how he was obliged to repair it; and this was not within the late Act of Parliament for paving the Streets.

Indictment.
L^d Raym.
991.

A Man was indicted for assaulting and bearing a Custom-House Officer, in the Execution of his Office; and the Indictment was quashed, because the Stat. 13 & 14 *Car. 2. c. 11. §. 6.* inflicts a Penalty, and prescribes the particular Method of punishing that Offence, *viz.* by the Justices of Peace, by Fine and Imprisonment; and therefore no Indictment lies for this Offence.

L^d Raym.
1116.

An Indictment does not lie against a Man for enticing away the Apprentice of another; for it is a private injury, for which an Action upon the Case will lie; but it is not of such a public Nature, as to maintain an Indictment.

L^d Raym.
1197.

A Woman was convicted at the Sessions, for being a common Bawd, and fined 100*l.* but the Judgment was reversed, upon a Writ of Error in the King's Bench; for the Judgment ought to have been, for keeping a common Bawdy-House.

It was agreed by the Court in this Case, that if a Person was only a Lodger in a House, yet if she made Use of her Room for the entertaining and accommodating People in the Way of a Bawdy-House, it would be keeping of a Bawdy-House, as much as if she had the whole House.

L^d Raym.
1210.

An Indictment for assembling *rioteuse ad quoddam illicitum faciendum*, was quashed for being too general; the Act ought to be shewn, that the Court may judge whether the Act be unlawful or not.

L^d Raym.
1368.

The Defendant was indicted at the general Quarter-Sessions, for secreting a Woman with Child by him, to hinder her Evidence, and to elude the Execution of the Law for the Crime aforesaid. The Indictment being removed into the King's Bench by *Certiorari*, the Defendant demurred, and Judgment was given for him, that this Indictment was not maintainable; it being no Offence for which an Indictment would lie, as this Fact was charged.

Where Authority is given to two Justices of Peace to do any Act, the Sessions may do it in all Cases, except where Appeal is directed to the Sessions.

Justices of
Peace.

L^d Raym.
426.

Justices of Peace at their Sessions may adjourn an Appeal upon Debate, for farther Consideration.

L^d Raym.
676.

An Attachment is not grantable for Non-performance of an old Order of Justices, confirmed in the King's Bench; the proper Remedy is to apply to the Justices for a new Order.

L^d Raym.
871.

An order made at the general Quarter-Sessions, that the Defendant should be prosecuted as a common Barrator, and that the Prosecution should be at the Charge of the County, being removed into the King's Bench by *Certiorari*, was quashed; because the Justices have not Power to charge the County with the Costs of such a Prosecution.

L^d Raym.
1309.

Mr. *A.* is a Rascal, a Villain, and a Lyar, spoken of a Justice of Peace in the Execution of his Office, were held actionable by the Court of King's Bench, they being laid to have been spoken of the Plaintiff in the Execution of his Office, and so found; so that it is the same as if the Defendant had said, that the Plaintiff is a Villain in the Execution of his Office, a Rascal in the Execution of his Office, and a Lyar in the Execution of his Office; which carry with them a great Scandal, and in common Understanding import a great Imputation against the Plaintiff's Integrity and Behaviour in that Office; and therefore Judgment was given for the Plaintiff, although it had been insisted on for the Defendant, that the Words were not actionable, and some strong Cases cited; but none of them came up to the present.

L^d Raym.
1407.

In summary Convictions before Justices of the Peace, the Party ought to be heard, and for that Purpose ought to be summoned in Fact; and if the Justices proceed against a Person without summoning him, it would be a Misdemeanor in them, for which an Information would lie against them. See the Case of *The King and Venables*, Ld Raym. 1405 to 1407.

Labourers.
L^d Raym.

767.

An Indictment was found at the Sessions of the Peace of the Corporation of *Wells* in *Somersetshire*, against the Defendant, for having used a Trade, not having served an Apprentice for seven Years: and being moved into the King's Bench by *Certiorari*, it was quashed; because the Justices at such Sessions have not Jurisdiction to take such Indictments.

L^d Raym.
1305.

The Statute of Labourers was first intended to extend only to Servants who had the rated Wages, and not to covenant Servants; and then if the Servant had proved how long he had served, it appeared how much was due: but now the Act has been extended to covenant Servants, and that masters the Mischief in this Case; for it will be difficult, perhaps, for the Servant to prove how much he had agreed for; but however he ought not, against a Rule of Law, to be admitted to prove it himself. An Order of Sessions made upon a Master, to pay his Servant 7*l.* for Wages in Husbandry, was quashed, for this Reason.

Murder.
L^d Raym.

1485.

A. throws a Bottle at *B.* and the blow is returned, they are parted, and an Hour after they fight without any Reconciliation intervening, and *A.* kills *B.* it is Murder. See *Oneby's Case* in Ld Raym. Rep. pag. 1485. & seq.

The Building of a House in a larger Manner than it was before, whereby the Street becomes darker, is not any publick Nufance by Reason of the Darkning. *Nufance.*
I.^d Raym.

The Defendant was indicted for keeping of Hogs in *London*, in some of the back Streets, *contra formam statuti*; and a Motion was made in the King's Bench to quash the Indictment, because there was a particular penalty appointed for this Offence, *viz.* Forfeiture of the Swine, to the Use of the Poor of the Parish where they are kept; and therefore an Indictment would not lie, at least not upon the Statute as this was, by concluding *contra formam statuti*. But it was agreed by the Court, that where a new Penalty is appointed by Act of Parliament, for a Matter that was an Offence at Common Law, there you may either take the Remedy which is given by Statute, or proceed by way of Indictment, as you might have done before; and therefore keeping Swine in the City being a Nufance at Common Law, the Prosecutor is at Liberty either to proceed by Way of Indictment for the Nufance, or to take the more expeditious Remedy, which is given him by the Act of Parliament, by Sale of the Swine. But where the Statute makes the Offence, there you must pursue that. As to the *contra formam statuti*, the Offence being an Offence at Common Law, that was but Surplufage, and would do no Harm. The Court farther said, that if the Defendant had any Hopes in his Exception, he should demur; for that it was a Rule, never to quash Indictments for Nufances. ⁷³⁷
I.^d Raym. ¹¹⁶³

An Order of two Justices made for the Removal of a Man and his Children, was, upon a *Certiorari* into the King's Bench, quashed; for the Removal of a Man and his Family has been judged uncertain; and the Children ought to be removed to the Place of their Settlement, which may be distinct from that of the Father. *Poor.*
Comyns 86.

It has been said, that the Justices of Peace out of Sessions could not make an Order for an express Sum for the Maintenance of a poor Man; but that they might sign a Rate made by the Parishioners. But the Court of King's Bench, in the Case of *Walbam and Sparkes*, said, that all the Justices of Peace in *England* did so; and therefore though they have not an Authority to do it in strictness of Law, yet *communis error jus facit*. ⁴²
L.^d Raym.

An Order for the Removal of a poor Woman was held ill, because she was thereby sent to her Master, and not to the Parish where settled. *Comyns* 97.

An Order was made to remove three Persons and their Families, and it was quashed, because general; for it might be that some of their Families were not removable. If a Man marries a poor Woman who is settled in *B.* and had Children by a former Husband, and he is settled in *A.* his Wife shall be removed to him to *A.* but such of her Children as are more than seven Years of Age shall not be removed, those under seven Years of Age may, for Cause of Nurture; but ought to be maintained at the Charge of the Parish of *B.* ¹
L.^d Raym. ³⁹⁵

No Parish shall be bound by Order of the Justices made upon Appeal, which is not Party to it. It is not necessary that there be an Adjudication in an Order, that a Man is likely to become chargeable to the Parish. ⁵¹³
L.^d Raym.

The Justices of Peace have no Authority to settle any Person in an extraparochial Place; for the Statute which gives them Authority, extends only to the Poor within Parishes; Parishes in Reputation are within the Act, but Places extraparochial are out of it. ⁵⁴⁹
L.^d Raym.

A poor Infant ought to be maintained by the Parish where it was born, if it has not obtained another Settlement; and therefore it is incumbent upon the Parish where it was born to find another Place of Settlement. ⁵⁶⁷
L.^d Raym.

Justices of Peace make a Warrant to levy a Poors Rate upon *J. S.* which was directed to the Constables of the Parish of *A.* *J. S.* had Land in *A.* upon which he had no Chattles; but his House stood in the adjoining Parish of *B.* in the same County, in which he had Goods. The Constables of *A.* levied these Goods by Virtue of the said Warrant; and *Holt* Chief Justice ruled upon Evidence at the Trial at *Hertford* Summer Assizes 1698. that the Goods were well levied. ⁷³⁵
L.^d Raym.

An original Order made at the general Quarter-Sessions for the West-Riding of *Yorkshire* (where of the Tenor was thus, *viz.* It is ordered that the Church-wardens and Overseers of the Poor of the Parish of *Abberford* do make an Assesment to the Church and Poor, by a Pound Rate; and in the said Assesment do assess *Graystonfield* Lands, and all other Lands within the said Constabulary, to the Use aforesaid, equally by a Pound Rate) was removed, with other Orders, into the King's Bench upon a *Certiorari*. Upon a Motion to quash this Order, because the Justices have not any Jurisdiction to make such original Order at the Quarter-Sessions; though it had been otherwise if it had come before them by Appeal; a Day was given to hear Counsel on both Sides. Nobody then appearing to maintain the Order, it was moved to quash it next day; and this was granted, *Powell* Justice saying it was impossible to make it good. ⁷⁹⁸
L.^d Raym.

No *Mandamus* lies to command Church-wardens and Overseers of the Poor, to make a Rate to reimburse former Overseers. ¹⁰⁰⁹
L.^d Raym.

If Overseers lay out Money for the Poor, and then a Rate is made, they may reimburse themselves out of that Rate; but a Rate cannot be made to reimburse them. ^{ib.}
L.^d Raym.

If a Rate is made for the Poor, which by accident falls short, the Overseers lay out Money, and the Parish make a new rate, if then the Justices refuse to confirm it, a *Mandamus* will lie. ^{ib.}
L.^d Raym.

Church-wardens and Overseers, with the Confirmation of the Justices, may order Money to be levied for the Poor, without the Concurrence of the Parish. ^{ib.}
L.^d Raym.

A Farmer is not taxable for the Poor's Rate for his Stock; but a Tradesman is for his Stock in Trade. ¹²⁸¹
L.^d Raym.

The Place of the Birth of a poor Child, where the Father has got no Settlement, is the Place of Settlement of the Child; yet where the Father has gained a Settlement, his Children, though born ¹³³²
L.^d Raym.

born in another Parish, shall be looked on as settled at the Place of their Father's last legal Settlement, and shall be removed thither, as well after the Death of their Father, if Occasion requires, as in his Life-time, supposing they have gained no Settlement of their own.

L^d Raym.
1394.

An Order of Justices of the Peace, for appointing an Overseer of the Poor, was quashed, because it did not appear by the Order, that the Person appointed was a substantial Householder.

L^d Raym.
1454.

A Motion was made in the King's Bench, to quash an Order of the Quarter-Sessions, whereby the Father-in-Law was ordered to maintain his Daughter-in-Law; because he was not by Law obliged to maintain her. A Rule was made to shew Cause, why it should not be quashed; which Rule was made absolute, no Person shewing Cause to the contrary.

L^d Raym.
1473.

J. B. rented an House and some Closets at W. about 30 *l. per Annum*, and inhabited the said House for several Years, and died insolvent, he left a Widow and one Daughter E. B. The Widow, soon after removed to P. into a Messuage or Tenement about 40 *s. per Annum* Value, and some Lands about 10 *l. per Annum*, that was her own Estate for Life, both House and Land being Copyhold, and took her Daughter with her, then about the Age of fourteen Years; and the Daughter lived with her Mother at P. above two Years in the said Messuage or Tenement; but the Mother let the said Lands to a Tenant; whereupon the general Quarter-Sessions were of Opinion that E. B. was settled at W. the Place of her Father's Settlement, and not at P. where she lived with her Mother; and therefore confirmed the Order of two Justices of Peace, for sending E. B. to W. but the Court of King's Bench quashed these Orders, and adjudged the Place of E. B.'s last legal Settlement to be at P. The Reasons alledged by the Counsel in this Case, and approved of by the Court, were, that the Mother being a Widow, and gaining a new Settlement after her Husband's Death, the Daughter gained a Settlement also, as Part of her Family; and there is no Difference between a Father's gaining a Settlement and a Mother's, in such a Case as this; for the Mother is obliged to provide for her Children, after her Husband's Death, as the Father was when living; and she could not leave this Daughter behind her, neither could she be removed from her. But if after her Husband's Death she had married a Man settled in another Parish, though her Children by her former Husband must have gone with her for Nurture, yet they would have been no Part of her second Husband's Family; and therefore would have gained no Settlement thereby in the Parish, where the Father-in-Law was settled.

Orders.
L^d Raym.

Prædicto in Orders or Indictments does not refer to the County mentioned in the Margin, though it does in Declarations, and for this Reason an Order made by two Justices was quashed.

1304.
L^d Raym.
1198.

If an Order by two Justices of Peace says *doth* adjudge instead of *do*, the singular Number for the Plural, it will be ill, and an Order was quashed upon a *Certiorari* for this Reason.

Riot.
L^d Raym.
215.

When a Riot is suppressed by the Justices, together with the Sheriff, having the *Posse Comitatus* with them for that Purpose, and they convict the Rioters by a Record of the Force, upon their proper View, the Sheriff ought to be Party in such Inquisition; and so he ought by the 19 *Hen. 7. cap. 13.* But if the Rioters disperse of themselves, and after they are parted an Inquisition is made of it by two Justices of Peace, there is no Need that it appear by the Inquisition, that the Sheriff was Party to the Inquiry.

L^d Raym. ib.

When the Conviction of a Riot is by Inquisition taken before two Justices of Peace, the Inquisition has no Need to be as taken *pro Domino Rege & corpore Comitatus*, but *pro Domino Rege* is sufficient, or rather better; for their Inquiry is not for the County, but for the King; and so is the Constant Form of such Inquests. But when an Inquisition is by the Grand Jury, then it ought to be *pro Domino Rege & corpore Comitatus*.

L^d Raym. ib.

Though the Words of the Statute of 13 *Hen. 4. cap. 7.* are, that the Justices shall make Inquiry within one Month after the Riot, yet an Inquiry by them after the Month is good; for the Statute intended only to hasten their Proceedings, by subjecting them to the Penalty in Case they did not make Inquiry within the Month, and not to restrain their Authority to the Month, so as it could not be executed afterwards: The Lapse of the Month makes them incur the Penalty, but does not determine their Power.

L^d Raym.
965.

If a Number of People assemble together in a lawful Manner, and upon a lawful Occasion, as for electing a Mayor, or the like, and during the assembly a sudden affray happens; this will not make it a Riot *ab initio*, but only a common affray. But if a Number of People assemble in a riotous Manner to do an unlawful Act, and a Person, who was upon the Place before upon a lawful Occasion, and not privy to their first Design, comes and joins with them, he will be guilty of a Riot equally with the rest.

Robbery.
Comyns 478.

It was held in the Case of *The King and Frances and others*, by a Majority of all the Judges at *Serjeants-Inn*, on a special Verdict on an Indictment for a Robbery on the Highway, that the Words *then* and *there immediately* do not sufficiently ascertain the Time to find the Prisoners guilty. The Case was, that a Man in the Highway holding some Pieces of Gold, *Frances* struck his Hand, whereby the Gold fell to the Ground, the Owner offering to take it up, the Prisoners swore that if he touched it, they would knock out his Brains; the Jury also found that the said Prisoners *then and there immediately* took up the said Pieces of Gold and rode off with them, &c. The Court of King's Bench, pursuant to this Opinion of the Majority of the Judges held that the Defendants ought to be discharged of this Indictment.

Trees.
Comyns 131,
132.

In a Conviction before Justices of the Peace on the 43 *Eliz. cap. 7.* for cutting down Trees, the Number and Quantity of the Trees ought to be mentioned expressly.

Warrant.
L^d Raym.
740.

An Officer cannot justify the Imprisonment of a Man for Non-payment of Taxes under the general printed Warrant which the Collectors have, signed by two Justices of Peace; but he ought to have a special Warrant.





